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1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, May 20, 2008
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741-6008



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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2006-26490; Directorate Identifier 2006-CE-075-AD; Amendment 39-15481; AD 2008-09-01]

RIN 2120-AA64

Airworthiness Directives; Alpha Aviation Design Limited (Type Certificate No. A48EU Previously Held by APEX Aircraft and AVIONS PIERRE ROBIN) Model R2160 Airplanes

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

ACTION: Final rule.

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

To prevent failure of the wing structure and assembly components due to undetected fatigue and corrosion * * *

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

DATES: This AD becomes effective May 27, 2008.

On May 27, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200

New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329-4146; *fax:* (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 5, 2008 (73 FR 6634). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

To prevent failure of the wing structure and assembly components due to undetected fatigue and corrosion * * *

The MCAI requires that you inspect the wing structure and fuselage attachment and repair any defects that you find.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect 9

products of U.S. registry. We also estimate that it will take about 15 work-hours per product to comply with basic requirements of this AD. The average labor rate is \$80 per work-hour. Required parts will cost about \$1,326 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$22,734 or \$2,526 per product.

We have no way to determine what aircraft will need replacement parts that may be required based on the results of any inspection.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-09-01 Alpha Aviation Design Limited (Type Certificate No. A48EU previously held by APEX Aircraft and AVIONS PIERRE ROBIN): Amendment 39-15481; Docket No. FAA-2006-26490; Directorate Identifier 2006-CE-075-AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 27, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model R2160 airplanes, serial numbers 001 through 378, certificated in any category.

Subject

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

Reason

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

To prevent failure of the wing structure and assembly components due to undetected fatigue and corrosion * * *

The MCAI requires that you inspect the wing structure and fuselage attachment and repair any defects that you find.

Actions and Compliance

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

(1) Disassemble the wings from the fuselage and inspect the wing structure and assembly components using instruction No. 1 in Robin Aviation Service Bulletin No. 123, revision 3, dated December 23, 1999. If any defects are found, repair following Robin Aviation Service Bulletin No. 123, revision 3, dated December 23, 1999. Use the following compliance times for the inspection:

(i) *For airplanes with less than 4,000 hours time-in-service (TIS):* When the airplane reaches a total of 3,500 hours TIS or within the next 100 hours TIS after May 27, 2008 (the effective date of this AD), whichever occurs later, and thereafter at intervals not to exceed 750 hours TIS.

(ii) *For airplanes with 4,000 hours TIS or more that have not complied with the special instruction in paragraph E of Avions Pierre Robin Service Bulletin No. 123, revision 2, dated November 14, 1995:* Within the next 100 hours TIS after May 27, 2008 (the effective date of this AD) and thereafter at intervals not to exceed 750 hours TIS.

(iii) *For airplanes with 4,000 hours TIS or more that have complied with the special instruction in paragraph E of Avions Pierre Robin Service Bulletin No. 123, revision 2, dated November 14, 1995:* Within the next 750 hours TIS after May 27, 2008 (the effective date of this AD) and thereafter at intervals not to exceed 750 hours TIS.

(2) When the airplane reaches a total of 3,500 hours TIS with original wing-to-fuselage bolts installed or 3,500 hours TIS of an airplane since new bolts have been installed or within the next 100 hours TIS after May 27, 2008 (the effective date of this AD), whichever occurs later, do a non-destructive inspection of the wing-to-fuselage retaining bolts and replace any bolts that do not pass this inspection following instruction No. 2 in Robin Aviation Service Bulletin No. 123, revision 3, dated December 23, 1999. Thereafter, repetitively inspect wing-to-fuselage retaining bolts and replace any bolts that do not pass this inspection every 750 hours TIS following instruction No. 2 in Robin Aviation Service Bulletin No. 123, revision 3, dated December 23, 1999.

Note 1: The requirement for a 3,500-hour inspection is a time since new or time since installation (that is, the TIS of new bolts).

(3) Within the next 50 hours TIS after re-assembling the wing and thereafter at intervals not to exceed 100 hours TIS, inspect the wing-to-fuselage retaining bolts for correct torque settings following instruction No. 3 in Robin Aviation Service Bulletin No. 123, revision 3, dated December 23, 1999. The required torque value is 22 ft-lb with nut part number 95.24.39.010. Tighten to 16 ft-lb (pre-loading) and then torque from 16 to 22 ft-lb.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *ATTN:* Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329-4146; *fax:* (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI Civil Aviation Authority AD DCA/R2000/28, dated September 28, 2006, and Robin Aviation Mandatory Service Bulletin No. 123, revision 3, dated December 23, 1999, for related information.

Material Incorporated by Reference

(i) You must use Robin Aviation Mandatory Service Bulletin No. 123, revision 3, dated December 23, 1999, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Alpha Aviation, Ingram Road, Hamilton Airport, RD 2, Hamilton 2021, New Zealand; *telephone:* 011 64 7 843 7070; *fax:* 011 64 7 843 8040; *Internet:* <http://www.alphaaviation.co.nz>.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on April 11, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-8509 Filed 4-21-08; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2007-29065; Directorate Identifier 2007-NM-142-AD; Amendment 39-15486; AD 2008-09-05]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 747 airplanes. This AD requires inspecting the trunnion fork assembly of the wing landing gears to determine the part number and serial number and to determine the category of the trunnion fork assemblies. For certain airplanes, this AD also requires, if necessary, various inspections to detect discrepancies of the trunnion fork assemblies, related investigative/corrective actions, and a terminating action. This AD results from a report of a fractured trunnion fork assembly. We are issuing this AD to prevent a fractured trunnion fork assembly, which could result in the collapse of a wing landing gear on the ground and possible damage to hydraulic equipment and the aileron and spoiler cables. Such damage could result in reduced controllability of the airplane.

DATES: This AD is effective May 27, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 27, 2008.

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

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6443; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 747 airplanes. That NPRM was published in the **Federal Register** on August 31, 2007 (72 FR 50282). That NPRM proposed to require inspecting the trunnion fork assembly of the wing landing gears to determine the part number and serial number and to determine the category of the trunnion fork assemblies. For certain airplanes, that NPRM also proposed to require, if necessary, various inspections to detect discrepancies of the trunnion fork assemblies, related investigative/corrective actions, and a terminating action.

Comments

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

Request To Revise Initial Compliance Time

Boeing requests that the compliance time specified in paragraph (g) of the NPRM be revised from 18 months to either 18 months or within 18 months after the date of issuance of the original Standard Certificate of Airworthiness or the original Export Certificate of Airworthiness, whichever occurs later. Boeing states that operators of airplanes delivered more than 18 months after the effective date of the AD will be unable to comply with the requirements of paragraph (g) of the NPRM.

We do not agree. We have confirmed with Boeing that affected airplanes currently in production are compliant with the requirements of this AD. Therefore, for affected airplanes delivered after the effective date of the AD, no additional time will be necessary to comply with the requirements of paragraph (g) of this AD. We have made no change to the compliance time specified in paragraph (g) of this AD in this regard.

Requests To Allow Review of Maintenance or Delivery Records

Boeing and Lufthansa request that, for clarification purposes, paragraph (g) of the NPRM be revised to allow review of

maintenance or delivery records instead of doing the proposed inspection. The commenters note that such an alternative is specified in paragraphs 3. and 4. of Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-32A2482. Boeing notes that we have included a similar provision in other ADs.

We agree with the commenters to clarify paragraph (g) of this AD. It was our intent that either the inspection or record review be done in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-32A2482. Therefore, we have revised paragraph (g) of the AD accordingly.

Request To Allow a Magnetic-Particle Inspection

Boeing requests that we allow a magnetic-particle inspection in accordance with Boeing Standard Operating Procedure Manual 20-20-01 as an alternative to the high frequency eddy current inspection required by paragraph (h)(1) of the NPRM. Boeing states that it intended the HFEC inspection to be done "in-situ" by the operators. Boeing also states that one operator intends to remove the trunnion forks from the airplane and inspect them for cracks at an overhaul facility that has magnetic-particle inspection capability. In addition, Boeing states that it intends to add this option in the next revision of Boeing Alert Service Bulletin 747-32A2482, if revised.

We partially agree. We acknowledge that a magnetic-particle inspection may be done instead of an HFEC inspection; however, Boeing has not completed developing procedures for a revised service bulletin. We may consider approving the revised service bulletin as an alternative method of compliance (AMOC) once it has been completed. Paragraph (k) of this AD provides for operators' requests for approval of an AMOC to address these unique circumstances. Therefore, we have made no change to this AD in this regard.

Request To Include a Parts Installation Paragraph

Boeing requests that we add a parts installation paragraph to the NPRM for Category A, B, C, or D trunnion fork assemblies that are installed after the terminating action specified in Boeing Alert Service Bulletin 747-32A2482 has been done (i.e., Part 5 of the Accomplishment Instructions of the service bulletin). Boeing states that such a paragraph will ensure that the actions specified in the service bulletin are done on spare parts within the compliance times mandated by the NPRM. Boeing is concerned about

landing gear parts being interchanged between airplanes.

We partially agree. We acknowledge that spare parts must be addressed due to the interchangeability of landing gears. However, it is not necessary to change the AD. The AD refers to Boeing Alert Service Bulletin 747-32A2482 as the appropriate source of service information for doing the required actions. Note (b) of Tables 4 (for Categories A and C trunnion fork assemblies) and 5 (for Categories B and D trunnion fork assemblies) of paragraph 1.E, "Compliance," of the service bulletin specifies that the following three types of trunnion fork assemblies can be installed:

1. New trunnion fork assembly;
2. Category Not Affected trunnion fork assembly; or
3. Category B (Group 1 airplanes) or D (Group 2 airplanes) trunnion fork assembly on which Part 3 or Part 4 of Boeing Alert Service Bulletin 747-32A2482 has been done.

Once the compliance threshold has been reached for doing the terminating action required by this AD, operators are prohibited under 14 CFR 39.3 from replacing a trunnion fork assembly with an assembly other than one identified in note (b) of Tables 4 and 5. Therefore, we have made no change to the final rule in this regard.

Request To Correct Typographical Errors

Boeing requests that the categories specified in the first column in Table 1 of the NPRM be corrected to match those specified in Tables 4 and 5 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-32A2482. Boeing states that "Categories A and D" should be "Categories A and C" in paragraph (h)(1) of Table 1, and "Categories B and C" should be "Categories B and D" in paragraph (h)(2) of Table 1.

We agree that two typographical errors appear in Table 1 of the NPRM. It was our intent to align the categories of Table 1 with those in Tables 4 and 5 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747-32A2482. Therefore, we have revised this AD accordingly.

Conclusion

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

Costs of Compliance

There are about 1,055 airplanes of the affected design in the worldwide fleet. This AD affects about 215 airplanes of U.S. registry. The required inspection for part number, serial number, and category takes about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of the inspection required by this AD for U.S. operators is \$17,200, or \$80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008-09-05 Boeing: Amendment 39-15486.
Docket No. FAA-2007-29065;
Directorate Identifier 2007-NM-142-AD.

Effective Date

- (a) This airworthiness directive (AD) is effective May 27, 2008.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to Boeing Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747-32A2482, dated June 14, 2007.

Unsafe Condition

- (d) This AD results from a report of a fractured trunnion fork assembly. We are issuing this AD to prevent a fractured trunnion fork assembly, which could result in the collapse of a wing landing gear on the ground and possible damage to hydraulic equipment and the aileron and spoiler cables. Such damage could result in reduced controllability of the airplane.

Compliance

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

Service Bulletin

- (f) The term "service bulletin," as used in this AD, means Boeing Alert Service Bulletin 747-32A2482, dated June 14, 2007.

Initial Inspection for Part Number, Serial Number, and Category

- (g) Within 18 months after the effective date of this AD, inspect the pad-up area on the forward upper inboard surface of the trunnion fork assembly of both the left and right wing landing gears to determine the part number and serial number and to determine the category of the trunnion fork assemblies. A review of airplane maintenance or delivery records is acceptable instead of the inspection if the part number and serial number of the installed fork assembly can be conclusively determined from that review. Do the actions in accordance with the Accomplishment Instructions of the service bulletin.

Follow-On Actions for Category A, B, C, or D Trunnion Fork Assemblies

(h) If any part number and serial number identified as Category A, B, C, or D in Tables 2 and 3 of paragraph 1.E., "Compliance," of

the service bulletin is found installed during the inspection required by paragraph (g) of this AD: At the applicable compliance time(s) listed in Table 4 or 5 of paragraph 1.E., "Compliance," of the service bulletin, except as provided by paragraph (i) of this AD, do

the applicable action(s) in Table 1 of this AD and applicable related investigative/corrective actions, in accordance with the Accomplishment Instructions of the service bulletin.

TABLE 1.—REQUIREMENTS FOR CATEGORY A, B, C, OR D TRUNNION FORK ASSEMBLIES

For—	Do—	And—	Or—
(1) Categories A and C trunnion fork assemblies.	A detailed inspection for damage to the protective finish and for corrosion of the trunnion fork assembly and a high frequency eddy current (HFEC) inspection to detect cracks (Part 2).	An ultrasonic inspection to determine the wall thickness in the area forward of the outer cylinder attach lugs in 8 zones, and a hardness measurement if applicable (Part 3).	Do the terminating action (Part 5).
(2) Categories B and D trunnion fork assemblies.	An ultrasonic inspection to determine the wall thickness in the area forward of the outer cylinder attach lugs in 8 zones, and a hardness measurement (Part 3).	None	None.

(i) Where paragraph 1.E., "Compliance," of the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Terminating Action

(j) Replacing the trunnion fork assembly of the wing landing gear with a trunnion fork assembly identified in Part 5 of the Accomplishment Instructions of the service bulletin, in accordance with and at the applicable time specified in Table 4 or 5 of paragraph 1.E., "Compliance," of the service bulletin, constitutes terminating action for the requirements of this AD for that side only.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 747-32A2482, dated June 14, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies of the service information incorporated by reference at the

FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on April 14, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-8530 Filed 4-21-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0031; Directorate Identifier 2007-NM-313-AD; Amendment 39-15484; AD 2008-09-04]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-8-31, DC-8-32, DC-8-33, DC-8-41, DC-8-42, and DC-8-43 Airplanes; Model DC-8-50 Series Airplanes; Model DC-8F-54 and DC-8F-55 Airplanes; Model DC-8-60 Series Airplanes; Model DC-8-60F Series Airplanes; Model DC-8-70 Series Airplanes; and Model DC-8-70F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all McDonnell Douglas airplanes identified

above. This AD requires revising the FAA-approved maintenance program to incorporate new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective May 27, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 27, 2008.

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

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140,

1200 New Jersey Avenue, SE.,
Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Samuel Lee, Aerospace Engineer,
Propulsion Branch, ANM-140L, FAA,
Los Angeles Aircraft Certification
Office, 3960 Paramount Boulevard,
Lakewood, California 90712-4137;
telephone (562) 627-5262; fax (562)
627-5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all McDonnell Douglas Model DC-8-31, DC-8-32, DC-8-33, DC-8-41, DC-8-42, and DC-8-43 airplanes; Model DC-8-50 series airplanes; Model DC-8F-54 and DC-8F-55 airplanes; Model DC-8-60 series airplanes; Model DC-8-60F series airplanes; Model DC-8-70 series airplanes; and Model DC-8-70F series airplanes. That NPRM was published in the *Federal Register* on January 18, 2008 (73 FR 3419). That NPRM proposed to require revising the FAA-approved maintenance program to incorporate new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the one commenter, Boeing.

Changes Made to This AD

For standardization purposes, we have revised this AD in the following ways:

- We have added a new paragraph (h) to this AD to specify that no alternative inspections, inspection intervals, or critical design configuration control limitations (CDCCLs) may be used unless they are part of a later approved revision of the Boeing DC-8 Special Compliance Item Report, MDC-02K9030, Revision A, dated August 8, 2006 (hereafter referred to as "Report MDC-02K9030"), or unless they are approved as an alternative method of compliance (AMOC). Inclusion of this paragraph in the AD is intended to ensure that the AD-mandated airworthiness limitations changes are treated the same as the airworthiness limitations issued with the original type certificate. We have renumbered the subsequent paragraphs accordingly.

- We have simplified the language in Note 1 of this AD to clarify that an operator must request approval for an AMOC if the operator cannot

accomplish the required inspections because an airplane has been previously modified, altered, or repaired in the areas addressed by the required inspections.

Request To Revise Note 1

Boeing requests that we revise Note 1 of the NPRM to clarify that deviations from the AWLs specified in Report MDC-02K9030, should be approved as an AMOC according to paragraph (h) of the NPRM. Boeing states that Note 1 of the NPRM might be interpreted to mean that the Airworthiness Limitations (AWLs) specified in Report MDC-02K9030 must be revised to reflect modifications, alterations, or repairs that are initiated by an operator and outside of Boeing's design cognizance and responsibility. Boeing requests that we revise Note 1 as follows:

- Replace the words "revision to" with "deviation from" in the last sentence.

- Delete the words "(f), or" and "as applicable" from the last sentence.

As stated previously, we have simplified the language in Note 1 of this AD for standardization with other similar ADs. The language the commenter requests we change does not appear in the revised note; therefore, no additional change to this AD is necessary in this regard.

Request To Clarify Approval of Component Maintenance Manual (CMM) Changes

Boeing requests that we revise the heading and certain wording for the "Changes to Component Maintenance Manuals (CMMs) Cited in Fuel Tank System AWLs" section of the NPRM. Boeing believes that section was intended to address situations where an operator chooses to deviate from the procedures in the CMM referenced in Report MDC-02K9030. Boeing states that its proposed changes are intended to clarify that only deviations proposed by an operator require approval of the Manager, Los Angeles Aircraft Certification Office, FAA. Boeing further states that wording in the NPRM could be interpreted to mean that approval of a CMM in its entirety, including any future CMM revisions by Boeing, would require direct approval of the Manager, Los Angeles, ACO, or governing regulatory authority. Specifically, Boeing requests that we revise that section as follows:

- Revise the heading to "Deviations from Component Maintenance Manuals (CMMs) Cited in Fuel Tank System AWLs."

- Revise the third sentence to state that the Manager, Los Angeles ACO,

must approve "any deviations from" the CMMs "as defined in Report MDC-02K9030."

- Replace the words "revision of" with "deviation from" in the fourth sentence.

- Revise the fourth sentence to state that those CMMs "as defined in Report MDC-02K9030" will be handled like a change to the AWL itself.

- Delete the entire last sentence.

We agree that clarification is necessary. Our intent is that any deviation from the CMMs as defined in Report MDC-02K9030 must be approved by the Manager, Los Angeles ACO, or the governing regulatory authority, before those deviations can be used. However, we have not changed the AD as suggested by the commenter, since the "Changes to Component Maintenance Manuals (CMMs) Cited in Fuel Tank System AWLs" section of the NPRM is not retained in this final rule.

Conclusion

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

Costs of Compliance

We estimate that this AD affects 125 airplanes of U.S. registry. We also estimate that it takes about 1 work-hour per product to comply with this AD. The average labor rate is \$80 per work-hour. Based on these figures, we estimate the cost of this AD to U.S. operators to be \$10,000, or \$80 per product.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:
 Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

2008-09-04 McDonnell Douglas:
 Amendment 39-15484. Docket No. FAA-2008-0031; Directorate Identifier 2007-NM-313-AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 27, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC-8-31, DC-8-32, DC-8-33, DC-8-41, DC-8-42, and DC-8-43 airplanes; Model DC-8-51, DC-8-52, DC-8-53, and DC-8-55 airplanes; Model DC-8F-54 and DC-8F-55 airplanes; Model DC-8-61, DC-8-62, and DC-8-63 airplanes; Model DC-8-61F, DC-8-62F, and DC-8-63F airplanes; Model DC-8-71, DC-8-72, and DC-8-73 airplanes; and Model DC-8-71F, DC-8-72F, and DC-8-73F airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) in accordance with paragraph (i) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

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

Compliance

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

Revise the FAA-Approved Maintenance Program

(f) Before December 16, 2008, revise the FAA-approved maintenance program to incorporate the information specified in Appendixes B, C, and D of the Boeing DC-8 Special Compliance Item Report, MDC-02K9030, Revision A, dated August 8, 2006.

Accomplishing the revision in accordance with a later revision of the Boeing DC-8 Special Compliance Item Report, MDC-02K9030, is an acceptable method of compliance if the revision is approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

No Reporting Requirement

(g) Although the Boeing DC-8 Special Compliance Item Report, MDC-02K9030, Revision A, dated August 8, 2006, specifies to submit certain information to the manufacturer, this AD does not require that action.

No Alternative Inspections, Inspection Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

(h) After accomplishing the applicable actions specified in paragraph (f) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of Boeing DC-8 Special Compliance Item Report, MDC-02K9030, Revision A, dated August 8, 2006, that is approved by the Manager, Los Angeles ACO; or unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (i) of this AD.

AMOCs

(i)(1) The Manager, Los Angeles ACO, FAA, ATTN: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM-140L, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5262; fax (562) 627-5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Material Incorporated by Reference

(j) You must use Boeing DC-8 Special Compliance Item Report, MDC-02K9030, Revision A, dated August 8, 2006, to do the actions required by this AD, unless the AD specifies otherwise. (The revision date for this document is identified only on the title page and in the "Index of Page Changes" section of the document.) This document contains the following effective pages:

Pages	Revision	Date
Index of Page Changes Pages i through iii	A	August 8, 2006.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855

Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024).

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at

the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on April 4, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. E8-8532 Filed 4-21-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0410; Directorate Identifier 2007-NM-362-AD; Amendment 39-15485; AD 2006-12-10 R1]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) that applies to certain Boeing Model 747-400 series airplanes. That AD currently requires inspecting the support bracket of the crew oxygen cylinder installation to determine the manufacturing date marked on the support, and performing corrective action if necessary. This new AD retains all the requirements of the existing AD and expands the applicability of the existing AD to include certain airplanes that are not on the U.S. Register. This AD results from a report indicating that certain oxygen cylinder supports may not have been properly heat-treated. We are issuing this AD to prevent failure of the oxygen cylinder support under the most critical flight load conditions, which could cause the oxygen cylinder to come loose and leak oxygen. Leakage of oxygen could result in oxygen being unavailable for the flightcrew or could result in a fire hazard in the vicinity of the leakage.

DATES: Effective May 7, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 7, 2008.

On July 17, 2006 (71 FR 33604, June 12, 2006), the Director of the Federal Register approved the incorporation by reference of Boeing Special Attention Service Bulletin 747-35-2114, dated December 19, 2002.

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

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

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

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6457; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Discussion

On May 31, 2006, we issued AD 2006-12-10, amendment 39-14635 (71 FR 33604, June 12, 2006), for certain Boeing Model 747-400 series airplanes (i.e., those identified in Boeing Special Attention Service Bulletin 747-35-2114, dated December 19, 2002). That AD requires inspecting the support bracket of the crew oxygen cylinder installation to determine the manufacturing date marked on the support, and performing corrective action if necessary. That AD resulted from a report indicating that certain oxygen cylinder supports may not have been properly heat-treated. We issued that AD to prevent failure of the oxygen cylinder support under the most critical flight load conditions, which could cause the oxygen cylinder to come loose and leak oxygen. Leakage of oxygen could result in oxygen being unavailable

for the flightcrew or could result in a fire hazard in the vicinity of the leakage.

Actions Since Existing AD Was Issued

Since we issued AD 2006-12-10, Boeing issued Special Attention Service Bulletin 747-35-2114, Revision 1, dated June 7, 2007, to add airplanes to the effectivity of the service bulletin. With the exception of the added airplanes, the actions specified in Revision 1 are the same as those specified in Boeing Special Attention Service Bulletin 747-35-2114, dated December 19, 2002 (referenced as a source of service and applicability information in AD 2006-12-10).

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to revise AD 2006-12-10. This new AD retains the requirements of the existing AD. This AD also adds new airplanes to the applicability.

Costs of Compliance

No airplane added to the applicability of this AD is currently on the U.S. Register. However, if any affected airplane is imported and placed on the U.S. Register in the future, it will be subject to the per-airplane cost specified below.

There are about 83 airplanes of the affected design in the worldwide fleet. This AD affects about 15 airplanes of U.S. registry. The required inspection will take about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is \$1,200, or \$80 per airplane.

FAA's Determination and Requirements of This AD

No additional airplanes affected by this AD are on the U.S. Register. We are issuing this AD because the unsafe condition described previously is likely to exist or develop on other products of the(se) same type design(s) that could be registered in the United States in the future. This AD requires inspecting the support bracket of the crew oxygen cylinder installation to determine the manufacturing date marked on the support, and performing corrective action if necessary.

Since no additional airplanes that are U.S. registered are affected by this AD, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0410; Directorate Identifier 2007-NM-362-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39-14635 (71 FR 33604, June 12, 2006) and adding the following new airworthiness directive (AD):

2006-12-10 R1 Boeing: Amendment 39-15485. Docket No. FAA-2008-0410; Directorate Identifier 2007-NM-362-AD.

Effective Date

(a) This AD becomes effective May 7, 2008.

Affected ADs

(b) This AD revises AD 2006-12-10.

Applicability

(c) This AD applies to Boeing Model 747-400 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747-35-2114, Revision 1, dated June 7, 2007.

Unsafe Condition

(d) This AD results from a report indicating that certain oxygen cylinder supports may not have been properly heat-treated. We are issuing this AD to prevent failure of the oxygen cylinder support under the most critical flight load conditions, which could cause the oxygen cylinder to come loose and leak oxygen. Leakage of oxygen could result in oxygen being unavailable for the flightcrew or could result in a fire hazard in the vicinity of the leakage.

Compliance

(e) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

Inspection and Corrective Action

(f) At the compliance time specified in paragraph (f)(1) or (f)(2) of this AD as applicable, except as provided by paragraph (g) of this AD: Inspect the support bracket of the crew oxygen cylinder installation to determine the manufacturing date marked on the support, and do the corrective action as applicable, by doing all of the actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747-35-2114, dated December 19, 2002; or Revision 1, dated June 7, 2007. Corrective action, if applicable, must be done before further flight after the inspection. After the effective date of this AD only Revision 1 of the service bulletin may be used.

(1) For airplanes identified in Boeing Special Attention Service Bulletin 747-35-2114, dated December 19, 2002: Within 18 months after July 17, 2006 (the effective date of AD 2006-12-10).

(2) For airplanes not identified in Boeing Special Attention Service Bulletin 747-35-2114, dated December 19, 2002: Within 18 months after the effective date of this AD.

(g) If the configuration of the crew oxygen cylinder installation is changed from a one-cylinder to a two-cylinder configuration: Do the actions required by paragraph (f) of this AD before further flight after the change in configuration, or at the applicable time specified in paragraph (g)(1) or (g)(2), whichever is later.

(1) For airplanes identified in Boeing Special Attention Service Bulletin 747-35-2114, dated December 19, 2002: Within 18 months after July 17, 2006.

(2) For airplanes not identified in Boeing Special Attention Service Bulletin 747-35-2114, dated December 19, 2002: Within 18 months after the effective date of this AD.

Parts Installation

(h) At the time specified in paragraph (h)(1) or (h)(2) of this AD as applicable, no person may install an oxygen cylinder support bracket having part number 65B68258-2 and having a manufacturing date between 10/01/98 and 03/09/01 inclusive (meaning, a manufacturing date of 10/01/98 or later and 03/09/01 or earlier).

(1) For airplanes identified in Boeing Special Attention Service Bulletin 747-35-2114, dated December 19, 2002: As of July 17, 2006.

(2) For airplanes not identified in Boeing Special Attention Service Bulletin 747-35-2114, dated December 19, 2002: As of the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies,

notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) AMOCs approved previously in accordance with AD 2006–12–10, are approved as AMOCs for the corresponding provisions of paragraph (f) and (g) of this AD.

Material Incorporated by Reference

(j) You must use Boeing Special Attention Service Bulletin 747–35–2114, dated December 19, 2002; or Boeing Special Attention Service Bulletin 747–35–2114, Revision 1, dated June 7, 2007; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Special Attention Service Bulletin 747–35–2114, Revision 1, dated June 7, 2007, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On July 17, 2006 (71 FR 33604, June 12, 2006), the Director of the Federal Register approved the incorporation by reference of Boeing Special Attention Service Bulletin 747–35–2114, dated December 19, 2002.

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

Issued in Renton, Washington, on April 14, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Airplane Certification Service.

[FR Doc. E8–8531 Filed 4–21–08; 8:45 am]

BILLING CODE 4910–13–P

PEACE CORPS

22 CFR Part 304

RIN 0420–AA23

Claims Against the Government Under the Federal Tort Claims Act

AGENCY: Peace Corps.

ACTION: Direct final rule.

SUMMARY: The Peace Corps is revising its regulations concerning claims filed under the Federal Tort Claims Act. This change clarifies the Chief Financial Officer's authority to approve claims for amounts under \$5,000.

DATES: This direct final rule is effective on June 19, 2008, without further action, unless adverse comment is received by Peace Corps by June 5, 2008. If adverse comment is received, Peace Corps will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments by e-mail to sglasow@peacecorps.gov. Include RIN 0420–AA23 in the subject line of the message. You may also submit comments by mail to Suzanne Glasow, Office of the General Counsel, Peace Corps, Suite 8200, 1111 20th Street, NW., Washington, DC 20526. Contact Suzanne Glasow for copies of comments.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Associate General Counsel, 202–692–2150, sglasow@peacecorps.gov.

SUPPLEMENTARY INFORMATION: The Chief Financial Officer will be the final deciding authority for claims worth less than \$5,000.

Section-by-Section Analysis

Section 304.10

Subpart (b) is amended to reflect the fact that the Chief Financial Officer will make final determinations for claims worth less than \$5,000.

Executive Order 12866

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

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by state, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects

Claims.

■ Accordingly, under the authority of 22 U.S.C. 2503(b) and 28 U.S.C. 2672,

Peace Corps amends the Code of Federal Regulations, Title 22, Chapter III, as follows:

PART 304—CLAIMS AGAINST THE GOVERNMENT UNDER THE FEDERAL TORT CLAIMS ACT

■ 1. The authority citation for part 304 continues to read as follows:

Authority: 28 U.S.C. 2672; 22 U.S.C. 2503(b); E.O. 12137, as amended.

■ 2. In § 304.10, paragraph (b) is revised to read as follows:

§ 304.10 Review of claim.

* * * * *

(b) After legal review and recommendation by the General Counsel, the Director of the Peace Corps will make a written determination on the claim, unless the claim is worth less than \$5,000, in which case the Chief Financial Officer will make the written determination.

Dated: April 16, 2008.

Carl R. Sosebee,

Acting General Counsel.

[FR Doc. E8–8658 Filed 4–21–08; 8:45 am]

BILLING CODE 6015–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2004–0439, FRL–8556–2]

RIN 2060–AN12

Petition for Reconsideration and Withdrawal of Findings of Significant Contribution and Rulemaking for Georgia for Purposes of Reducing Ozone Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is amending a final rule it issued under Section 110 of the Clean Air Act (CAA) related to the transport of nitrogen oxides (NO_x). On April 21, 2004, we issued a final rule (Phase II NO_x SIP Call Rule) that required the State of Georgia (Georgia) to submit revisions to its State Implementation Plan (SIP) to include provisions that prohibit specified amounts of NO_x emissions—one of the precursors to ozone (smog) pollution—for the purposes of reducing NO_x and ozone transport across State boundaries in the eastern half of the United States. This rule became effective on June 21, 2004.

Subsequently, the Georgia Coalition for Sound Environmental Policy (GCSEP

or Petitioners) filed a Petition for Reconsideration requesting that EPA reconsider the applicability of the NO_x SIP Call Rule to Georgia.

In response to this Petition, and based upon review of additional available information, EPA proposed to remove Georgia from the NO_x SIP Call Rule. (June 8, 2007). Specifically, EPA proposed to rescind the applicability of the requirements of the Phase II NO_x SIP Call Rule to Georgia, only. Six parties commented on the proposed rule. No requests were made to hold a public hearing. After considering these comments, EPA is issuing a final rule as proposed.

DATES: This final rule is effective on May 22, 2008.

ADDRESSES: The EPA has established a docket for this action, identified by Docket ID No. EPA-HQ-OAR-2005-0439. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The 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: Tim Smith, Air Quality Policy Division, Geographic Strategies Group, (C539-04), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-4718, e-mail smith.tim@epa.gov. For legal questions, please contact Winifred Okoye, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564-5446, e-mail at okoye.winifred@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action removes the applicability of certain requirements related to NO_x emissions in Georgia. If these requirements were not removed, they would potentially affect electric utilities, cement manufacturing, and

industries employing large stationary source internal combustion engines.

B. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

- I. General Information
 - A. Does This Action Apply to Me?
 - B. How Is This Preamble Organized?
- II. Background
 - A. Background on NO_x SIP Call Rule, Subsequent Litigation and Rulemaking Related to Georgia
 - B. GCSEP Requests Related to Phase II NO_x SIP Call Rule
- III. Proposed Response to GCSEP's Petition for Reconsideration
 - A. Proposed Action
 - B. Rationale for Proposed Action
 - C. Final Action
- IV. Response to Comments on Proposal
 - A. Legal Rationale
 - B. Emissions Cap
 - C. Comparison With the Atlanta State Implementation Plan
 - D. Other Issues
- V. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act (RFA)
 - 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 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
 - K. Congressional Review Act
 - L. Judicial Review

II. Background

A. Background on NO_x SIP Call, Subsequent Litigation and Rulemaking Related to Georgia

On October 27, 1998, EPA took final action to prohibit specified amounts of emissions of oxides of NO_x, one of the main precursors of ground-level ozone, from being transported across State boundaries in the eastern half of the United States. (The NO_x SIP Call Rule) (63 FR 57356), (October 27, 1998). We found that sources and emitting activities in 22 States and the District of Columbia (23 States)¹ were emitting

¹The 23 States were Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin (63 FR 57394).

NO_x in amounts that significantly contribute to downwind nonattainment of the 1-hour ozone national ambient air quality standard (NAAQS or standard). (63 FR 57356). We also determined separately that sources and emitting activities in these 23 States were emitting NO_x in amounts that significantly contribute to and interfere with maintenance of downwind nonattainment of the 8-hour ozone NAAQS (63 FR 57358, 57379). To determine significant contribution, we examined both the air quality impacts of emissions and the amount of reductions that could be achieved through the application of highly cost-effective controls. The air quality impacts portion of our significant contribution analysis relied on state specific modeling, and modeling and recommendations by the Ozone Transport Assessment Group (OTAG) 62 FR 60335 (November 7, 1997), and 63 FR 57381-57399.

This analysis examined the impact of upwind emissions on downwind nonattainment areas. We explained that a downwind area should be considered,

“nonattainment,” for purposes of section 110(a)(2)(D)(i)(I), under the 1-hour ozone NAAQS if the area (as of 1994-96 time period) had nonattainment air quality and if the area was modeled to have nonattainment air quality in the year 2007, after implementation of all measures specifically required of the area under the CAA as well as implementation of Federal measures required or expected to be implemented by that date.

63 FR 57386; See also 63 FR 57373-75; 62 FR 60324-25. We also explained that “nonattainment [area] includes areas that have monitored violations of the standard and areas that ‘contribute to ambient air quality in a nearby area’ that is violating the standard.” 63 FR 57373. Thus, to qualify as a downwind nonattainment receptor, an area had to be both in current nonattainment and also modeled to have nonattainment air quality in 2007. An area shown to be in attainment at either time was not considered a downwind receptor. 63 FR 57371, 73-75, 57382-83. See also 63 FR 57385-87 for our discussion on the determination of downwind nonattainment receptors.

Further, we assessed each upwind State's contribution to 1-hour standard downwind nonattainment independent of the State's contribution to 8-hour standard nonattainment. 62 FR 60326; 63 FR 57377 and 57395. We determined and concluded that the level of NO_x emissions reductions necessary to address the significant contribution for the 8-hour NAAQS would be achieved using the same control measures as required for the 1-hour standard (63 FR

57446). Therefore, we promulgated only one NO_x emissions budget for each of the affected upwind States (63 FR 57439). Further, we required these States to submit revised SIPs, prohibiting those amounts of NO_x emissions such that any remaining emissions would not exceed the level specified in the NO_x SIP Call regulations for that State in 2007. 62 FR 60364–5; 63 FR 57378 and 57426.

With regard to Georgia, we determined that sources and emitting activities in Georgia were significantly contributing to 1-hour standard nonattainment in Birmingham, Alabama and Memphis, Tennessee (63 FR 57394). At the time the NO_x SIP Call Rule was being developed, monitored air quality data for 1994–1996 indicated that Memphis, Tennessee had nonattainment air quality² although we had redesignated the Memphis, Tennessee nonattainment area as an attainment area in 1995.³ 60 FR 3352 (January 17, 1995). Further, Birmingham, Alabama was a designated nonattainment area for the 1-hour ozone NAAQS at the time of promulgation of the NO_x SIP Call rule. In addition, the modeling done at that time showed that the Memphis and Birmingham areas were modeled to have nonattainment air quality for the 1-hr standard in the year 2007. Thus, at that time Memphis, Tennessee and Birmingham, Alabama were “nonattainment” for purposes of the NO_x SIP Call Rule.

A number of parties, including certain States as well as industry and labor groups, challenged the NO_x SIP Call Rule. Specifically, Georgia and Missouri industry petitioners, citing the OTAG modeling and recommendations, maintained that EPA had record support for the inclusion of only the eastern part of the state of Missouri (Missouri), and northern Georgia as contributing significantly to downwind nonattainment. The United States Court of Appeals for the District of Columbia (D.C. Circuit or Court), upheld our findings of significant contribution for almost all jurisdictions covered by the NO_x SIP Call, with respect to the 1-hour

² Monitored air quality data indicated that the Memphis, Tennessee nonattainment area had nonattainment air quality from 1994 through 2000. Since 2001, the Memphis, Tennessee nonattainment area has had monitored attainment air quality data.

³ In the NO_x SIP Call Rule, we relied on the designated area solely as a proxy to determine which areas have air quality in nonattainment. “Our reliance on designated nonattainment areas for purposes of the 1-hour NAAQS does not indicate that the reference in section 110(a)(2)(D)(i)(I) to ‘nonattainment’ should be interpreted to refer to areas designated nonattainment.” 63 FR 57375 n.25.

standard⁴ but vacated and remanded the inclusion of Georgia and Missouri, *Michigan v. EPA*, 213 F. 3d 663 (D.C. Cir. 2000), cert. denied, 121 S. Ct. 1225 (2001) (*Michigan*). The Court agreed with the litigants that only the eastern portion of Missouri and northern portion of Georgia were within the geographic area for photochemical modeling known as the “fine grid,” and thus, that the record for the rulemaking supported only including those portions of the two States.⁵

Subsequently, in response to the Court decision in *Michigan*, we proposed (in what is known as the “Phase II NO_x SIP Call rule”), the inclusion of only the fine grid parts of Georgia and Missouri in the NO_x SIP Call with respect to the 1-hour standard only. (67 FR 8396, (February 22, 2002)). We also proposed revised NO_x budgets for Georgia and Missouri that would include only the fine grid portions of these States. On April 21, 2004, we finalized the Phase II NO_x SIP Call rule. This rule included eastern Missouri and northern Georgia as proposed, allocated revised NO_x budgets that reflected the inclusion of sources in only these areas, and set revised SIP submittal and full compliance dates of April 1, 2005 and May 1, 2007, respectively. 69 FR 21604, (April 21, 2004).

B. GCSEP Requests Related to Phase II NO_x SIP Call Rule

After our promulgation of the Phase II NO_x SIP Call rule, GCSEP, on June 16, 2004, took several legal actions: (1) A request that EPA reconsider the rulemaking in light of new information (2) a request that EPA stay the effectiveness of the rule pending a review of that information, and (3) a formal challenge to the rule in Federal Courts.

Petition for Reconsideration. GCSEP requested that EPA “convene a proceeding for reconsideration of the rule,” under section 307(d)(7)(B) of the Act. (Petition for Reconsideration, June 16, 2004) (Petition.) GCSEP made this request based on assertions that:

- Certain events occurred after the close of the notice and comment period on our February 22, 2002, proposal (that is, these events occurred after April 15, 2002), and
- EPA needed to reopen the rule for public notice and comment on those specific events.

⁴ In light of various challenges to the 8-hour standard, we stayed the 8-hour basis for the NO_x SIP Call rule indefinitely. (65 FR 56245), (September 18, 2000).

⁵ As the Court stated, “[a]ccordingly, they say the NO_x Budget for Missouri and Georgia should be based solely on those emissions.” 213 F.3d at 684.

GCSEP asserted that it “was impracticable to raise [its] objection within [the provided comment period] or [that] the grounds for [its] objection arose after the public comment period (but within the time specified for judicial review).” CAA Section 307(d)(7)(B). In addition, GCSEP further asserted that its objection was “of central relevance to the outcome of the rule.” CAA Section 307(d)(7)(B).

Request for Stay of Effectiveness. GCSEP also requested an administrative stay of the effectiveness of the Phase II NO_x SIP Call Rule as it relates to Georgia only. The stay would delay the applicability of Phase II NO_x SIP Call requirements to Georgia during the period EPA would conduct notice-and-comment rulemaking to address the issues raised in the Petition. On March 1, 2005, EPA proposed to stay the effectiveness of the Phase II NO_x SIP Call Rule, as requested by GCSEP, as to Georgia only. (70 FR 9897, (March 1, 2005)). Four parties commented on the proposed rule, raising issues related to the merits of the stay, and issues related to the merits of the Petition. On August 31, 2005, EPA finalized, as proposed, a stay of the effectiveness of the Phase II NO_x SIP Call Rule as it related to Georgia only. (70 FR 51591, (August 31, 2005)). EPA also responded to comments on the stay but indicated that it would respond to comments on the merits of the Petition in a subsequent rulemaking that would address the Petition.

Challenge in Circuit Court. Finally, GCSEP filed a challenge to the Phase II NO_x SIP call rule in the Court of Appeals for the 11th Circuit, which has since been transferred to the D.C. Circuit. *Georgia Coalition for Sound Environmental Policy v. EPA*, Case No. 04–13088–C. The EPA and GCSEP have requested and the Court has granted the request to hold the challenge in abeyance pending completion of the present rulemaking.

III. Proposed Response to GCSEP’s Petition For Reconsideration

A. Proposed Action

In a June 8, 2007, rulemaking notice, EPA initiated the process to respond to the Petition. In that notice, we proposed to remove only Georgia from inclusion in the Phase II NO_x SIP call rule. In the proposal, EPA specifically noted that we were not reopening any other portions of the NO_x SIP Call and Phase II NO_x SIP Call rules for public comment and reconsideration. 72 FR 31774 (June 8, 2007).

In the Petition, GCSEP had argued that Georgia did not meet EPA’s stated

rationale for the NO_x SIP call rule when EPA promulgated the Phase II NO_x SIP Call rule. In short, GCSEP argued that (1) EPA based its inclusion of northern Georgia on a finding that northern Georgia contributes to nonattainment of the one-hour standard in Birmingham, Alabama and Memphis, Tennessee; (2) but that neither Birmingham nor Memphis was a nonattainment area at the time of the Phase II rulemaking; and (3) as a result of the revised attainment status of Birmingham and Memphis, there are no 1-hour ozone nonattainment areas in any States affected by NO_x emissions from northern Georgia, and (4) therefore northern Georgia no longer satisfied EPA's stated rationale for inclusion in the NO_x SIP Call Rule.

At proposal, we explained that in the 1998 NO_x SIP Call Rule, we articulated a test for defining a given downwind "receptor" location as "nonattainment" under section 110(a)(2)(D)(i)(I). We defined "nonattainment" areas as including "areas that have monitored violations of the standard and areas that 'contribute to ambient air quality in a nearby area' that is violating the standard" (63 FR 57373; See also, 63 FR 57375–85). Additionally, as noted previously, to be defined as "nonattainment" receptors, the receptor also had to be modeled to have nonattainment air quality in the year 2007 when SIP Call controls would be in place.

As earlier explained, with regard to Georgia, EPA had determined that sources and emitting activity in that State emit NO_x in amounts that significantly contribute to nonattainment of the 1-hour ozone standard in the Birmingham, Alabama and Memphis, Tennessee nonattainment areas (63 FR 57394). Although we had redesignated the Memphis, Tennessee nonattainment area in 1995, monitored air quality data for 1994–1996 indicated nonattainment air quality.⁶ While Birmingham, Alabama was designated nonattainment for the 1-hour ozone NAAQS and also had nonattainment air quality. Thus, at the time of the promulgation of the 1998 NO_x SIP Call rule, both Memphis, Tennessee and Birmingham, Alabama were in "nonattainment" for purposes of the NO_x SIP Call Rule. In addition, the earlier referenced modeling results indicated that both areas were also

projected to have nonattainment air quality in 2007.

We have now redesignated both of these areas as 1-hour ozone attainment areas and both currently have monitored air quality data that does not violate the 1-hour ozone standard. Specifically, on March 12, 2004, we redesignated Birmingham, Alabama, to attainment of the 1-hour ozone NAAQS. 69 FR 11798, (March 12, 2004). In addition, the Memphis, Tennessee nonattainment area, which was redesignated in 1995 has had monitored attainment air quality data since 2001.

Therefore, we agree with GCSEP that at promulgation of the Phase II NO_x SIP Call Rule, both Memphis, Tennessee and Birmingham, Alabama are now in attainment of the 1-hour ozone standard. Thus, both areas no longer meet the definition of "nonattainment" used in the 1998 NO_x SIP Call to identify downwind receptor areas for the air quality impacts portion of the significant contribution analysis.

B. Final Action

At promulgation of the Phase II NO_x SIP Call Rule, both Memphis, Tennessee and Birmingham, Alabama were in attainment of the 1-hour ozone standard. In light of the fact that both downwind receptor areas are no longer "nonattainment" areas, for purposes of the significant contribution analysis, we are withdrawing our findings of significant contribution for Georgia for the 1-hr ozone standard, as proposed. This in effect means that Georgia is no longer required to submit a revised SIP that prohibits certain amounts of NO_x emissions under the Phase II NO_x SIP Call Rule.

IV. Response to Comments on the Proposed Rule

Six commenters submitted comments on the June 8, 2007 proposal. The comments are summarized below along with EPA's responses. In this section, we are also responding to those comments on the merits of this Petition that we received at proposal of the stay of the effectiveness of the NO_x SIP Call rule in Georgia and had indicated would be better addressed in the context of this rulemaking. 70 FR 51591, 51594 (August 31, 2005).

A. Legal Rationale

Comment: Several commenters agreed with EPA's proposed rationale for removing Georgia from the NO_x SIP Call rule. These commenters agreed with EPA that Georgia no longer met EPA's criteria for "significant contribution" when Birmingham was redesignated as attainment area.

Response: EPA agrees with these commenters.

Comment: One commenter stated that given the NO_x emissions reduction requirements that are already in place in Georgia, implementing the NO_x SIP Call rule would not result in further NO_x emissions reductions, particularly from electricity generating units (EGUs). This commenter asserted that requiring Georgia to implement the NO_x SIP Call requirements without regard to those reductions already achieved and required in the future, would be "arbitrary, capricious and not in accordance with the law."

Response: As earlier stated, in the June 8, 2007, proposal we explained that our inclusion of Georgia in the Phase II NO_x SIP Call rule was based on our definition of "nonattainment" and determination of "significant contribution to downwind nonattainment" as articulated in the 1998 NO_x SIP Call rule. 72 FR 31773. Based on this definition and determination, we had found that emissions activities from northern Georgia contributed significantly to nonattainment of the one-hour ozone standard in both Memphis, Tennessee and Birmingham, Alabama. 72 FR 31774. We also explained at proposal that both Memphis, Tennessee and Birmingham, Alabama were designated as attainment areas at the time of the Phase II NO_x SIP Call Rule. 72 FR 31774. Consequently, this rulemaking reflects our belief that emissions activities in Georgia did not meet the 1998 NO_x SIP Call rule definition and determination at the time of the Phase II NO_x SIP Call Rule and thus, that emissions from northern Georgia could no longer be identified as "contributing significantly" to downwind nonattainment problems. Thus, although the commenter suggests we consider achieved and future reductions, our basis for this action does not rely on other emissions controls in Georgia.

Comment: One commenter disagreed with both EPA's proposed removal of Georgia, and stated rationale for the removal. This commenter noted that *Michigan*, 213 F.3d 663, did not question the inclusion of the northern Georgia or the "fine grid" portion of the NO_x SIP Call photochemical modeling in the NO_x SIP Call rule. This commenter believed that because the inclusion of the fine grid portion of Georgia was never in question, EPA cannot legally question that now. This commenter also asserted that the grounds presented by GCSEP are not of "central relevance to the outcome of the rule" because the inclusion of the "fine

⁶ Monitored air quality data indicated that the Memphis, Tennessee nonattainment area had nonattainment air quality from 1994 through 2000. Since 2001, the Memphis, Tennessee nonattainment area has had monitored attainment air quality data.

grid” portion of Georgia was not at issue and therefore, that reconsideration of Georgia’s inclusion in the NO_x SIP Call rule is not appropriate. The commenter asserted that the only “relevant” issues were the line between the fine grid and coarse grid and the calculation of emissions budgets, neither of which were addressed by the Petition. One commenter disagreed with another commenter’s assertion that EPA cannot revisit the original findings as it related to Georgia. This commenter believed that the issue of whether the Court questioned any conclusions on “significant contribution” is irrelevant in this context because the facts and issues presented in this rulemaking were not before the Court in *Michigan*.

Response: Our position on the continued inclusion of Georgia in the NO_x SIP Call rule is not inconsistent with the *Michigan* holding, *inter alia*, that “[b]efore assessing ‘significance,’ EPA must find (1) emissions activity within a state; (2) show with modeling or other evidence that such emissions are migrating into other states; and (3) show that the emissions are contributing to nonattainment.” *Michigan*, 213 F.3d at 680 (emphasis added). Further, we note that the petitioners had maintained that there was record support for inclusion of emissions from only the eastern half of Missouri and the northern two thirds of Georgia as contributing to downwind ozone problems. We also note the holding that “the fine grid portion[] of [Georgia was] closest to * * * [the Birmingham] nonattainment area[].” *Michigan*, 213 F.3d at 682. Thus, this action reflects our belief that with the redesignation of the Birmingham, Alabama nonattainment area, we can no longer conclude that emissions activities in Georgia are “contributing to [the Birmingham] nonattainment [area].”

We do agree, however, that *Michigan* did not question either the “proposition that the fine grid portion of each State should be considered to make a significant contribution downwind,” or OTAG’s modeling analysis, but again we note the applicable holding that the “critical issue is whether the targeted ‘source’ or ‘emissions activity’ ‘contribute[s] significantly to nonattainment’ in another state.” *Michigan*, 213 F.3d at 682 (alteration in original). Again, we believe that the redesignation of Birmingham, Alabama and Memphis, Tennessee raises the question as to “whether the targeted ‘source’ or ‘emissions activity’ ‘contribute[s] significantly to nonattainment’ in another state,” at the time of the Phase II NO_x SIP Call rule. And we believe we no longer have

record support showing that Georgia ‘contribute[s] significantly to nonattainment’ in another state” that would warrant our continued inclusion of Georgia in the NO_x SIP Call rule.

We also note that the issue at hand in this rulemaking was not presented in *Michigan* and thus, was not decided in *Michigan*. That is, the Court did not rule on whether EPA could continue to subject a State to the NO_x SIP Call requirements if, at the time of the rulemaking for inclusion of that State, emissions activity from sources in that State were no longer significantly contributing to nonattainment in downwind areas. And even if we concede and agree with both comments that *Michigan* does not require us to revisit the inclusion of the “fine grid portion” in the NO_x SIP Call rule, and that GCSEP’s petition raises issues beyond the scope of the Phase II NO_x SIP Call rulemaking, we believe we must be cognizant of the fact that Memphis, Tennessee and Birmingham, Alabama are no longer downwind nonattainment receptors as contemplated by the NO_x SIP Call rule, and take action accordingly. EPA must have a rational basis for including any area within the scope of the NO_x SIP Call and EPA concludes that it would not be rational to apply the SIP Call to an area that does not contribute to any downwind receptor.

We also disagree with the comment that petitioners did not meet the grounds for reconsideration as provided in CAA section 307(d)(7)(B). Much confusion exists as to whether this rulemaking is under CAA section 307(d)(7)(B). Although GCSEP invoked CAA section 307(d)(7)(B) as authority for its Petition, earlier we had informed them, by letter dated October 22, 2004, that our response would be under the authority of the Administrative Proceedings Act (APA), because CAA section 307(d)(7)(B) was clearly inapplicable. (A copy of this letter is in the docket for this rulemaking.) Thus, this rulemaking is being taken under Section 553(e) of the APA, which “give[s] an interested person the right to petition for the * * * amendment, or repeal of a rule.” 5 U.S.C. § 553(e). See also our earlier response to a comment regarding our authority to stay the effectiveness of the NO_x SIP Call with respect to Georgia pending a final reconsideration rulemaking. 70 FR 51592–93 (August 31, 2005).

Comment: One commenter noted that subsequent to the Phase II NO_x SIP Call rule, EPA has revoked the one-hour ozone standard and asserted that the NO_x SIP Call requirements are obsolete for Georgia as a result of the revocation.

This commenter believed that Georgia cannot significantly contribute to nonattainment, nor interfere with maintenance, of a standard that no longer exists. The commenter asserted that we cannot justify this rule because of our authority to regulate activity that interferes with maintenance of the one-hour standard.

Response: As stated earlier, in this action, we are finalizing our removal of Georgia from the NO_x SIP Call rule in light of our redesignation of downwind receptors that emissions activities in Georgia were determined to be significantly contributing to. We note, however, that the NO_x SIP Call rule continues to apply in other areas subsequent to the revocation of the 1-hour ozone standard for purposes of anti-backsliding during transition to implementation of the 8-hour standard, 40 CFR 51.905(f) (2005), and is therefore not “obsolete.” Further, with regard to our authority to regulate emissions activity that interferes with the 1-hour ozone standard maintenance, under section 110(a)(2)(D)(i)(I), we had also determined, in the 1998 NO_x SIP Call rule, that this requirement was inapplicable to the extent the 1-hour standard would no longer apply to an area subsequent to our attainment determination. “Under these circumstances, emissions from an upwind area cannot interfere with maintenance of the 1-hour NAAQS.” 63 FR 57379.

Comment: One commenter, citing EPA’s response to comments on the continued inclusion of Missouri in the Phase II NO_x SIP Call rulemaking, argued that EPA has always taken a “once-in-always-in” approach to the NO_x SIP Call. The commenter asserted that the proposed rule is contrary to EPA’s previous “once-in-always-in” approach. The commenter noted that the facts giving rise to GCSEP’s petition occurred only at the end of a lengthy, delayed rulemaking for the Phase II NO_x SIP Call rule. This commenter also believed that the proposed rule, which took into account updated information, was inconsistent with our previous statements relating to the continued inclusion of Missouri in the NO_x SIP Call rule. The commenter also cited our specific response to comments on this issue that,

(1) “We disagree that a new emissions inventory is necessary that takes into account Missouri’s statewide NO_x rule and other post-1998 CAA rules. Because SIPs are constantly changing, it is impractical to revise emissions inventories and modeling analyses each time changes are made,” and (2) “* * * completing the NO_x SIP Call rule in Missouri is an equitable approach. It

would be inequitable to use 2003 air quality analysis for Missouri but to hold other NO_x SIP Call States to the 1998 analysis.” (69 FR 21626).

The commenter also noted our statement at the time that “an agency should not revisit an otherwise sound rulemaking just due to the passage of time leading to changed circumstances, because circumstances always change.” Response to Comments: Phase II NO_x SIP Call Rule p. 47.

One commenter disagreed with another commenter’s assertion that the proposed rule violated the “once-in-always-in” approach, because (1) the NO_x SIP Call rule had yet to be implemented in Georgia and (2) that NO_x emissions reductions have already been made by the State of Georgia under other State regulatory authorities.

Response: EPA does not agree that this rule is inconsistent with an “once-in-always-in” approach. The issue at hand is not whether Georgia (or parts of Georgia) should continue to be “in,” but whether as an initial matter Georgia (or parts of Georgia) should be “in” the Phase II NO_x SIP Call rule at all. As earlier explained, States are subject to the NO_x SIP Call requirements if they meet the 1998 NO_x SIP Call rule test for significant contribution to “nonattainment” receptors. (63 FR 57373; 57375–85). States that meet this test continue to be subject to the NO_x SIP Call requirements even with the revocation of the 1-hour ozone standard. 40 CFR 51.905(f) (2005). Because both Birmingham, Alabama and Memphis, Tennessee were meeting the 1-hour ozone standard and had been redesignated as attainment areas at the time of the Phase II NO_x SIP Call Rule, we no longer believe that the fine grid portion of Georgia met the test for significant contribution to “nonattainment” receptors at the time of promulgation of the Phase II rule.

We are also not persuaded by commenter’s citation of our responses to comments in the Phase II NO_x SIP Call rule regarding our rejection of 2003 air quality data that would take into account current (at the time) emissions reductions by Missouri and our continued reliance on emissions data from the NO_x SIP Call in subjecting Missouri to the NO_x SIP Call requirements. (See 69 FR 21626). We do not believe that our response on this issue is analogous primarily because the Chicago, Illinois nonattainment area that eastern Missouri was significantly contributing to was still in nonattainment at the time of promulgation of the Phase II NO_x SIP Call rule. Thus, eastern Missouri continued to meet the 1998 NO_x SIP

Call rule test for significant contribution to downwind “nonattainment.” Again this would not be the case with respect to Georgia in this instance because both Birmingham, Alabama and Memphis, Tennessee had been designated as attaining the 1-hour ozone standard prior to promulgation of the Phase II rule.

Further we disagree with the assertion that this rulemaking amounts to revisiting the question of whether sources in northern Georgia are linked to downwind nonattainment contrary to our stated position that “we should not revisit an otherwise sound rulemaking just due to the passage of time.” Rather as earlier stated we believe that their clean air quality and our redesignation of Birmingham, Alabama, and Memphis, Tennessee nonattainment calls into question the validity of our existing determination that Georgia “significantly contributes to downwind nonattainment” as construed in the NO_x SIP Call Rule. 63 FR 57376. Our decision also comports with our earlier statement that we intended to review the NO_x SIP Call rule to make necessary adjustments. 63 FR 57428. Further, as earlier stated, even if we concede and agree with both comments that *Michigan* does not require us to revisit the inclusion of Georgia’s fine-grid portion and that GCSEP’s petition raises issues beyond the scope of the Phase II NO_x SIP Call rulemaking, we believe we must be cognizant of the fact that Memphis, Tennessee and Birmingham, Alabama were no longer downwind nonattainment receptors as contemplated by the NO_x SIP Call at the time of the Phase II Rule. Both areas achieved the 1-hour ozone standard without the implementation of the NO_x SIP Call Rule in Georgia and thus, we see no reason for Georgia’s continued inclusion in the NO_x SIP Call. Rather, we believe that our continued subjection of the State of Georgia to the NO_x SIP Call requirements could likely be viewed as arbitrary and capricious and not in accordance with the law in light of the facts pertinent to the two downwind receptors at the time of promulgation of the Phase II NO_x SIP Call rule.

Comment: One commenter asserted that our proposal was an attempt at resurrecting the pre-1990 version of CAA Section 110(a)(2)(D)(i). The commenter noted that prior to the 1990 amendments, this section required the elimination of emissions that “prevent attainment or maintenance” of the NAAQS by another State, while under the 1990 amendments this section now prohibits emissions that “contribute significantly to nonattainment” in

another State. The commenter asserted that under the proposed rule, EPA seems to be applying the pre-1990 provision by concluding that if the downwind State had attained, without the assistance of one particular group of upwind sources, then those sources must not be part of the problem.

Response: We disagree. Under CAA Section 110(a)(2)(D)(i)(I), SIPs must contain provisions prohibiting amounts of emissions “which will contribute significantly to nonattainment” of an air quality standard in a downwind state. In the NO_x SIP Call Rule we interpreted the term “contribute significantly” by explaining that:

The determination of significant contribution includes both air quality factors relating to amounts of upwind emissions and their ambient impact downwind, as well as cost factors relating to the costs of the upwind emissions reductions. Once an amount of emissions is identified in an upwind State that contributes significantly to a nonattainment problem downwind * * * the SIP must include provisions to eliminate that amount of emissions. 63 FR 57376 (October 27, 1998).

We also set out the multi-factor test we applied in determining whether emissions from an upwind state “contribute[s] significantly” to downwind nonattainment. These factors included:

[T]he overall nature of the ozone problem (i.e., collective contribution); The extent of the downwind nonattainment problems to which the upwind State’s emissions are linked, including the ambient impact of controls required under the CAA or otherwise implemented in the downwind areas; [and] [t]he ambient impact of the emissions from the upwind State’s sources on the downwind nonattainment problems. *Id.*

In the June 8, 2007, proposal, we explained that our inclusion of Georgia in the NO_x SIP Call was based on a finding that emissions from northern Georgia contributed significantly to nonattainment of the one-hour ozone standard by both Memphis, Tennessee and Birmingham, Alabama. 72 FR 31774. We also explained that both Memphis, Tennessee and Birmingham, Alabama were designated as attainment areas at the time of the Phase II NO_x SIP Call Rule. 72 FR 31774. Consequently, today’s rulemaking reflects our belief that emissions activities in Georgia no longer meet both our determination of “significant contribution” and the multi-factor test, which we made at promulgation of the NO_x SIP Call Rule under the current section 110(a)(2)(D)(i)(I), and thus, that emissions from northern Georgia can no longer be identified as “contributing

significantly” to downwind nonattainment problems. Thus, Georgia would not need NO_x SIP Call provisions to prevent any such contribution.

B. Emissions Cap Comment

One commenter believed that our non-inclusion of Georgia in the NO_x SIP Call Rule would result in EGUs located in Georgia not being subject to an emissions cap during ozone seasons, and that the lack of a cap for sources that would otherwise be subject to the NO_x SIP Call rule may impede the ability of downwind states to maintain attainment of the 1-hour ozone NAAQS. Another commenter noted that EGUs are subject to annual caps under the Clean Air Interstate rule (CAIR), and that Georgia rules require that any add-on controls for CAIR compliance purposes should be operational during the ozone season.

Response: This action is based on the fact that the attainment of the 1-hour ozone standard and redesignation of Birmingham, Alabama and Memphis, Tennessee raises the question as to “whether the targeted ‘source’ or ‘emissions activity’ ‘contribute[s]’ significantly to nonattainment’ in another state.” It is also based on our conclusion that emitting activities in Georgia no longer “‘contribute[s]’ significantly to nonattainment’ in another state.” Although not a basis for our action, EPA notes, after reviewing the current Georgia regulations, that by adopting stringent requirements for EGU NO_x emissions in the SIP Georgia has effectively capped EGUs emissions at levels that are more stringent than would be achieved by implementing the NO_x SIP Call requirements.

With regard to the comment that the absence of a cap for sources in Georgia may impede the ability of downwind maintenance of the 1-hour ozone standard, see our earlier response, in Section III.A above, on our authority to regulate emissions activity that interfere with the maintenance of the 1-hour ozone standard.

C. Comparison With the Atlanta State Implementation Plan

We also received comments on our analysis and conclusion at proposal that NO_x emissions controls under current and anticipated Atlanta SIP requirements would ensure equivalent or better levels of NO_x emissions than would be achieved under the NO_x SIP Call. 72 FR 31775–76. Comments addressed the degree of reductions from the Atlanta SIP in comparison to the emissions reductions assumed in the NO_x SIP Call budgets for: EGUs, non-EGU boilers, cement kilns and IC

engines, as well as emissions from other categories not included within the NO_x SIP Call.

Comment: One commenter believed that EGUs requirements in the Atlanta SIP were less stringent than the levels assumed in the NO_x SIP Call budgets. This commenter noted that the NO_x SIP Call Rule was based on an average level of 0.15 pounds NO_x per million BTU for EGUs, while the 1999 Atlanta SIP was based on a level of an average of 0.20 pounds NO_x per million BTU. Moreover, the commenter noted that our calculations did not take into consideration Georgia’s 60 counties that would have been subject to the Phase II NO_x SIP Call rule that are not all addressed by the Atlanta SIP.

Other commenters believed that the emissions reductions for EGUs that would be achieved by the 1999 and subsequent Atlanta SIP requirements exceeded the requirements of the NO_x SIP Call rule. One commenter noted that emissions by 27 of the 28 EGUs that would be covered by the NO_x SIP Call rule are limited by the 1999 Atlanta SIP requirements, and that only 4 percent of the total EGUs NO_x emissions for the 2006 ozone season are emitted by the sole EGU that is not covered by those requirements. The commenter did agree that the 27 units covered under the 1999 Atlanta SIP were subject to an overall average limit of 0.20 pounds per million BTU. The commenter further stated that 19 of the 27 EGUs were required to meet 0.13 pounds per million BTU during the ozone season beginning May 1, 2003, or one year earlier than the NO_x SIP Call requirements, which were effective with the 2004 ozone season.

Several commenters noted that, based on a review of our calculations, the overall actual NO_x emissions for the 2003–2006 time period, and taking into account early reduction allowances that EGUs subject to 0.13 pounds per million BTU limits would have earned, Georgia would not only have complied with the NO_x SIP Call for this time period, but could have maintained 4027 tons of banked excess allowances as of the end of the 2006 ozone season. This estimate was based on (1) calculations by Georgia, under the NO_x SIP Call trading program at 40 CFR part 96, showing that EGUs allocations would have been 29,416 tons per year in addition to the compliance supplement pool (CSP) allowance of 10,728 tons in 2004, or in sum, 98,976 tons from 2004 through 2006 ozone seasons; (2) actual EGUs NO_x emissions of 24,966, 35,272, and 34,711 tons, respectively, for the 2004 through 2006 ozone seasons. (The commenter attributed these numbers to the Agency’s Clean Air Market

Division’s Web site.) This would result in a total of 94,949 tons for the 2004–2006 ozone seasons; and (3) a comparison of the NO_x SIP Call allocations of 98,976 tons with the 94,949 tons of actual emissions to determine that actual emissions were 4,027 tons less than would have been allocated under the NO_x SIP Call trading program. The commenters noted that, were Georgia in the NO_x SIP Call rule, Georgia could have sold these allowances, and that this would have likely resulted in NO_x emissions increases from sources in other States.

One commenter also noted that the Atlanta SIP requires both limits that are to be met on a 30 day rolling average, which is more restrictive than the seasonal budgets identified in the NO_x SIP Call trading program, and a stringent cap on EGUs emissions because the limits cannot be complied with by purchasing allowances.

Response: As earlier stated, in the June 8, 2007, proposal we explained that our inclusion of the State of Georgia in the NO_x SIP Call was based on our definition of “nonattainment” and determination of “significant contribution to downwind nonattainment” as articulated in the 1998 NO_x SIP Call rule. 72 FR 31773. Based on this definition and determination we found that emissions activities from northern Georgia contributed significantly to nonattainment of the one-hour ozone standard in both Memphis, Tennessee and Birmingham, Alabama. 72 FR 31774. We also explained that both Memphis, Tennessee and Birmingham, Alabama were designated as attainment areas at the time of the Phase II NO_x SIP Call Rule. 72 FR 31774. Consequently, this rulemaking reflects our belief that emissions activities in Georgia did not meet the 1998 NO_x SIP Call rule definition and determination at the time of the Phase II NO_x SIP Call Rule and thus, that emissions from northern Georgia can no longer be identified as “contributing significantly” to downwind nonattainment problems.

Nonetheless, we note that the compliance date for Phase II NO_x SIP Call Rule was May 31, 2007, instead of May 31, 2004, assumed by the above calculations. We also note that these calculations strongly support our conclusion that existing requirements under the Atlanta SIP result in NO_x emissions reductions which are more stringent than the NO_x SIP call.

Comment: One commenter believed that the appropriate basis for comparison between the Atlanta SIP and the NO_x SIP Call budgets should not be 2004, but rather 2007 and

subsequent years. Because the NO_x SIP Call is based upon achieving the 2007 NO_x SIP Call budget, the better analysis would be to assess whether sources in northern Georgia are modeled to achieve the 2007 NO_x SIP Call budget. The commenter stated that we had not made this showing. The commenter also stated that our documentation in the proposal did not clearly address future reductions from EGUs and other sources. (72 FR 31776). The commenter asserted that our predicted EGUs reductions based upon the Integrated Planning Model (IPM) are also indeterminate.

Other commenters supported EPA's view that existing and future Atlanta SIP requirements would result in a future trend towards decreasing EGU NO_x emissions. One commenter noted that in February 2007 (effective May 1, 2007), EGUs requirements, under the Atlanta SIP, became more stringent because the applicable average limits changed from 0.20 to 0.18 lbs/MMBTU. Additionally, the Georgia "multipollutant" rule would require the installation of 12 additional selective catalytic reduction (SCR) units between 2008 and 2015. The commenter also noted that Georgia Power has submitted an application to retire two coal-fired units in the Atlanta area and replace them with lower-emitting natural gas combined-cycle units.

Response: As explained earlier, we are determining that Georgia no longer meets the "significant contribution" test articulated in the 1998 NO_x SIP Call rule because both Memphis and Birmingham were in attainment at the time of the Phase II NO_x SIP Call rule. Nevertheless, after reviewing the available information, EPA finds ample evidence to note that beginning with the 2007 ozone season, NO_x emissions in northern Georgia will be less than assumed by the NO_x SIP Call budgets. Because, as noted in comments, Georgia NO_x requirements for the SIP are becoming more stringent over time, emissions for 2007 and subsequent years would likely result in even more favorable comparisons for the Georgia SIP requirements relative to the NO_x SIP Call rule. This assessment is not based on what the commenter terms as "indeterminate" predictions of the IPM model, but rather on the enforceable requirements of the Atlanta SIP.

Comment: Two commenters also noted that, under the Atlanta SIP, NO_x emissions reductions for IC engines and cement kilns are significantly beyond the NO_x SIP Call rule reductions. The commenters stated that these additional reductions were achieved as a result of the Georgia RACT rules for fuel burning

equipment, stationary turbines, stationary engines, large gas turbines, and small fuel burning equipment. One commenter noted that non-EGUs boilers (i.e., greater than 250 Million BTU/hour) might have become small-scale net purchasers of allowances under the Phase II NO_x SIP Call rule due to the absence of controls at the levels assumed in setting the NO_x SIP Call budgets. Nonetheless, the commenter believed that the additional reductions from other sources would more than offset those purchases, and would not affect the finding that Georgia would have been a net exporter of NO_x emissions allowances under the Phase II NO_x SIP Call rule.

One commenter expressed concerns that reductions from other (non-EGUs) sources were not well documented in the proposal, and that they may be at least already partially included in the calculations for the comparison of reductions between the Atlanta SIP and Phase II NO_x SIP Call rule.

Response: As explained earlier, we are determining that Georgia no longer meets the "significant contribution" test articulated in the 1998 NO_x SIP Call Rule because both Memphis and Birmingham attained the 1-hour ozone standard and were redesignated at the time we promulgated the Phase II NO_x SIP Call rule. Nonetheless, EPA notes that documentation provided by commenters for the non-EGUs measures in the Georgia SIP would appear to support the assertion that Georgia would have been a likely net exporter of allowances under the NO_x SIP call rule.

D. Other Issues

Comment: One commenter opposed EPA's proposed rule, and recommended that not only should Georgia be included in the NO_x SIP Call rule, but should also be responsible for NO_x emissions reductions under the rule. The commenter noted that NO_x emissions are contributors to smog, and that Atlanta suffers from urban sprawl with no incentive to keep growth within city limits.

Response: EPA agrees with the commenter that NO_x is an important contributor to air pollution in Georgia, and that Georgia may need further NO_x reductions in order to meet applicable ozone standards. This rule, however, reflects a determination that at the time of promulgation of the Phase II NO_x SIP Call rule, emissions activities from sources in Georgia were no longer significantly contributing to downwind nonattainment in other States. Thus, it is not appropriate for EPA to impose NO_x reductions requirements in Georgia under the SIP Call.

Comment: One commenter believed that the proposed action encourages parties to hinder rulemakings in hopes that new circumstances will provide a technical basis for a reprieve.

Response: EPA disagrees. We believe we are acting appropriately based on the facts at the time of the Phase II NO_x SIP Call rulemaking. Moreover, any delay in finalizing the Phase II NO_x SIP Call Rule did not contribute to adverse air quality in Birmingham and Memphis because these areas were able to attain the 1-hour standard in the intervening period. EPA also notes that during this intervening period, the Agency had to juggle competing rulemaking demands on our limited scientific and legal staff.

Comment: Two commenters expressed the concern that including Georgia in the NO_x SIP call would impose resource expenditures without significant NO_x emissions reductions. One commenter cited concerns over resource expenditures for (1) non-EGUs compliance with 40 CFR part 75 monitoring, (2) EGUs recordkeeping in addition to acid rain and CAIR, (3) Georgia SIP obligations, and (4) EPA tracking of ozone season allocations. The other commenter expressed concerns that imposition of the NO_x SIP Call would require Georgia to conduct a lengthy and expensive rulemaking process and would divert limited state resources from other efforts such as eight-hour ozone SIPs, PM_{2.5} SIPs, and regional haze SIPs.

Response: EPA generally agrees that these resource considerations support the proposed rule.

Comment: One commenter noted that numerous modeling studies have assumed full implementation of the NO_x SIP Call in all affected States including Georgia. Thus, the commenter argues, if Georgia does not implement the SIP Call, all of these modeling analyses would be incorrect.

Response: The commenter appears to assume, without providing any support, that not including Georgia in the NO_x SIP Call Rule would result in future emissions being greater than those used as inputs to previous modeling studies, and that those increased emissions would lead to increases in modeled estimates of ozone concentrations. This assumption is incorrect. As noted in the preamble to the proposed rule (72 FR 31775–31776) and as discussed above, EPA has determined that future NO_x emissions from Georgia, because of Atlanta SIP requirements, would most likely be less than the emissions that were projected to occur from implementation of the NO_x SIP Call rule by Georgia. In other words, the emission levels required by the Georgia SIP are

lower than those that would have occurred from implementation of the NO_x SIP Call in Georgia. Thus, any assumption regarding Georgia's participation in the NO_x SIP Call would likely not have affected estimates of Georgia emissions in various modeling analyses. For these reasons, we can conclude that the removal of Georgia from the NO_x SIP Call would not be expected to impact modeling inputs or results of the modeling studies.

Comment: One commenter noted that the commenter's problem with EPA's proposed rule was compounded by exclusion of Georgia from the seasonal CAIR program. The commenter further stated that Georgia is the only state out of 22 states east of the Mississippi subject to CAIR that is not otherwise subject to the CAIR summertime NO_x program.

Response: We disagree. Georgia is subject to both annual emissions budgets for NO_x under CAIR, and stringent requirements under the 1999 and subsequent Atlanta SIP requirements. In addition, as noted by commenters, Georgia SIP rules require that controls installed for purposes of meeting annual CAIR requirements must be operated during the ozone season. In sum, we believe that all these requirements will assure substantial reductions in summertime NO_x emissions in Georgia. See also 72 FR 31775-56.

Comment: One commenter noted that EPA did find in its original analysis for the NO_x SIP Call rule that the NO_x emissions in Georgia significantly contributed to 8-hour ozone nonattainment areas in 10 downwind States, including Alabama. The commenter was also cognizant of the stay of the findings of the NO_x SIP Call rule as it relates to the 8-hour ozone standard. Thus this commenter recommended that Georgia should not be removed from the Phase II NO_x SIP Call rule.

Another commenter expressed concerns that Georgia sources do not have summertime NO_x emissions caps despite significant contributions to 8-hour ozone levels.

Response: This comment and any other comments on the 8-hour basis of the NO_x SIP Call rule are beyond the scope of the proposed rule. The stay of effectiveness of the 8-hour basis for the NO_x SIP Call continues, and the proposed rule neither addressed nor reopened any issues relating to the 8-hour basis for the NO_x SIP Call rule. 72 FR 31774.

EPA notes, however, that as stated above, Georgia is subject to annual emissions budgets for NO_x under CAIR,

that controls installed for purposes of meeting annual CAIR requirements must be operated during the ozone season in Georgia, and that the Georgia SIP requirements designed to achieve emission reductions aimed at addressing 8-hour ozone nonattainment in Atlanta will assure that stringent levels of NO_x emissions will be met. As noted earlier above, these levels are more stringent than required by the NO_x SIP Call budgets.

Comment: One commenter noted that certain controls in Georgia were installed a year earlier than similar requirements in North Carolina, and the average pounds/million BTU emissions rate is lower in Georgia than in North Carolina or Alabama.

Response: This comment is beyond the scope of the proposed rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. This action grants a petition for reconsideration and removes the State of Georgia from the NO_x SIP Call Rule. It does not impose any requirement on regulated entities.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because the action removes a regulatory requirement.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 12.201; (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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This action grants a petition for reconsideration and removes the State of Georgia from the NO_x SIP Call Rule and therefore, is not expected to have a significant economic impact on a substantial number of small entities. This action neither imposes requirements on small entities, nor is it expected that there will be impacts on small entities beyond those, if any, required by or resulting from the NO_x SIP Call and the Section 126 Rules.

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 any proposed or final rules with "Federal mandates" that may result in the expenditure to State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating a 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.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The EPA prepared a statement for the final NO_x SIP Call that would be required by UMRA if its statutory provisions applied. This action does not create any additional requirements beyond those of the final NO_x SIP Call, and will actually reduce the requirements by excluding the State of Georgia, and therefore no further UMRA analysis is needed.

E. *Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an

accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" 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 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 action does not impose an enforceable duty on these entities. This action imposes no additional burdens beyond those imposed by the final NO_x SIP Call. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have Tribal implications, as specified in Executive Order 13175.

It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This action does not significantly or uniquely affect the communities of Indian Tribal governments. The EPA stated in the final NO_x SIP Call Rule that Executive Order 13084 did not apply because that final rule does not significantly or uniquely affect the communities of Indian Tribal governments or call on States to regulate NO_x sources located on Tribal lands. The same is true of this action. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action does not impose requirements beyond those, if any, required by or resulting from the NO_x SIP Call and Section 126 Rules.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards, therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. For the final NO_x SIP Call rule, the Agency conducted a general analysis of the potential changes in ozone and particulate matter levels that may be experienced by minority and low-income populations as a result of the requirements of that rule. These findings were presented in the RIA for the NO_x SIP Call. This action does not affect this analysis.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 22, 2008.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by June 23, 2008.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must 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* CAA Section 307(b)(2).

List of Subjects in 40 CFR Part 51

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

Dated: April 16, 2008.

Stephen L. Johnson,
Administrator.

■ For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart G—Control Strategy

■ 2. Section 51.121 is amended as follows:

■ a. By revising paragraph (c)(2).

■ b. By removing the entry for "Georgia" from the tables in paragraphs (e)(2)(i), (e)(4)(iii) and (g)(2)(ii).

■ c. By removing and reserving paragraph (e)(2)(ii)(C).

■ d. By removing paragraph (s).

§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.

* * * * *

(c) * * *

(2) With respect to the 1-hour ozone NAAQS, the portions of Missouri, Michigan, and Alabama within the fine grid of the OTAG modeling domain. The fine grid is the area encompassed by a box with the following geographic coordinates: Southwest Corner, 92 degrees West longitude and 32 degrees North latitude; and Northeast Corner,

69.5 degrees West longitude and 44 degrees North latitude.

* * * * *

[FR Doc. E8–8673 Filed 4–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1009; FRL–8555–4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes the State's transportation conformity requirements. The intended effect of this action is to approve the State regulations which will govern transportation conformity determinations in the State of Delaware.

DATES: *Effective Date:* This final rule is effective on May 22, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–1009. All documents in the docket are listed in the www.regulations.gov Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Martin Kotsch, (215) 814–3335, or by e-mail at kotsch.martin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 2007 (72 FR 62807), EPA published a notice of proposed

rulemaking (NPR) for the State of Delaware. The NPR proposed approval of the Delaware SIP revision for Transportation Conformity. This action is being taken under the Clean Air Act. These SIP revisions were proposed under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its SIP. The state's proposed SIP revisions were submitted to EPA on July 9, 2007 by the Delaware Department of Natural Resources and Environmental Control (DNREC). No comments were received during the public comment period on EPA's November 7, 2007 proposal. DNREC formally submitted the final SIP revision on November 1, 2007. That final submittal had no substantial changes from the proposed version submitted on July 9, 2007. A detailed description of Delaware's submittal and EPA's rationale for its proposed approval were presented in the November 7, 2007 notice of proposed rulemaking and will not be restated in its entirety here.

II. Summary of SIP Revision

Delaware's SIP revision contains the State Regulation 1132, Delaware Transportation Conformity Regulation. This SIP revision addresses the three provisions of the EPA Conformity Rule required under SAFETEA-LU: 40 CFR 93.105 (consultation procedures); 40 CFR 93.122(a)(4)(ii) (control measures) and, 40 CFR 93.125(c) (mitigation measures).

We reviewed the submittal to assure consistency with the February 14, 2006 "Interim Guidance for Implementing the Transportation Conformity provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)." The guidance document can be found at <http://epa.gov/otaq/stateresources/transconf/policy.htm>. The guidance document states that each state is only required to address and tailor the aforementioned three sections of the Federal Conformity Rule to be included in their state conformity SIPs.

EPA's review of Delaware's proposed SIP indicates that it is consistent with EPA's guidance in that it includes the three elements specified by SAFETEA-LU. Consistent with the EPA Conformity Rule at 40 CFR 93.105 (consultation procedures), Regulation 1132.3 identifies the appropriate agencies, procedures, and allocation of responsibilities as required under 40 CFR 93.105 for consultation procedures. In addition, Regulation 1132.3 provides for appropriate public consultation/public involvement consistent with 40

CFR 93.105. With respect to the requirements of 40 CFR 93.122(a)(4)(ii) and 40 CFR 93.125(c), Regulation 1132.4 specifies that written commitments for control measures and mitigation measures for meeting these requirements will be provided as needed.

Other specific requirements of the Delaware SIP revision for Transportation Conformity and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving the Delaware SIP revision for Transportation Conformity as a revision to the Delaware State SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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).

C. Petitions for Judicial Review

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

This action to approve the Delaware Transportation Conformity SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 9, 2008.

Donald S. Welsh,
Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by adding an entry for Regulation 1132 after the existing Regulation 31 to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * *	Regulation 1132—Transportation Conformity			
Section 1	Purpose	11/11/2007	5/22/2008	Added Section.
Section 2	Definitions	11/11/2007	5/22/2008	Added Section.
Section 3	Consultation	11/11/2007	5/22/2008	Added Section.
Section 4	Written Commitments for Control and Mitigation Measures.	11/11/2007	5/22/2008	Added Section.

* * * * *
[FR Doc. E8-8395 Filed 4-21-08; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2007-0185; FRL-8555-5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Incorporation of On-Board Diagnostic Testing and Other Amendments to the Motor Vehicle Emission Inspection Program for the Northern Virginia Program Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving three State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. These revisions pertain to the Commonwealth's motor vehicle inspection and maintenance (I/M) program for the Northern Virginia area that was previously SIP-approved by EPA. These three SIP revisions incorporate changes made by the Commonwealth to the I/M program since EPA last approved the I/M program as part of the SIP in 2002. The most significant change to the program is the incorporation of on-board diagnostic computer checks of 1996-and-newer model year vehicles as an element of the emission inspection

process for the Northern Virginia program area. In addition, Virginia made numerous minor changes to the program, including several changes to test procedures and standards, as well as changes to its roadside testing regimen. The I/M program helps to ensure that highway motor vehicles operate as cleanly as possible, by requiring vehicles to be periodically tested and by identifying vehicles having high emissions due to malfunctioning emission control systems. Such vehicles must then be repaired and retested by their owners, to the standards set by the Commonwealth's program. Vehicle I/M programs address nitrogen oxide and volatile organic compound emissions, both of which are precursors to formation of ground level ozone pollution, as well as the pollutant carbon monoxide. This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on May 22, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-0185. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

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

SUPPLEMENTARY INFORMATION:

I. Background

On February 12, 2008 (73 FR 8018), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of three separate revisions made by Virginia to its prior, SIP-approved motor vehicle inspection and maintenance program. These three formal SIP revisions were submitted by Virginia on December 18, 2002, April 2, 2003, and June 18, 2007, respectively.

The Northern Virginia I/M program area is comprised of the following localities: The counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. It is designated by EPA as a moderate 8-hour ozone nonattainment area. The Commonwealth's revised I/M program satisfies federal requirements under sections 182 and 184 of the Clean Air

Act applicable to enhanced I/M programs.

II. Summary of SIP Revision

The Commonwealth's December 2002, April 2003, and June 2007 I/M SIP revisions latest revisions serve to amend the Commonwealth's prior, EPA-approved enhanced I/M SIP, which was published as a final rulemaking action in the September 1, 1999 edition of the **Federal Register** (64 FR 47670).

The Commonwealth SIP revisions are comprised of amended versions of Virginia's regulations governing the emissions inspection program. The purpose of these changes to Virginia regulation was to make changes that the Virginia Department of Environmental Quality (VA DEQ) deemed necessary for continued operation of the enhanced I/M program. Some of these regulatory amendments were made by Virginia to reflect changing federal requirements and policies that apply to enhanced emission inspection programs, and some updates were to address changes made to relevant Virginia law since the inception of the enhanced I/M program.

The most significant of the changes comprised within the December 18, 2002 SIP revision is the incorporation of on-board diagnostic checks of 1996 and newer vehicles subject to emissions testing. Virginia also updated its testing procedures to stay abreast of changes needed based upon past operation of the program. Virginia also modified applicability requirements for the I/M program to address the changing dynamic of the vehicle fleet operating in the program area. Virginia also amended its regulation to enhance the Commonwealth's ability to effectively enforce the emission inspection program. Below is a summary of the most significant changes to the Commonwealth's vehicle emission inspection program regulations submitted as part of the December 18, 2002 SIP revision:

1. Incorporation of on-board diagnostic testing of vehicles equipped with second generation on-board diagnostics (OBD-II), as well as checks of OBD-II equipped 1997 and newer diesel-powered vehicles.

2. Revision of program model year coverage to exempt vehicles 25-years old and older at the time of testing, in lieu of the previous exemption of 1968 and older model vehicles.

3. Revision of acceleration-simulation mode (ASM) emission standards and removal of ASM test procedure pre-screening requirements.

4. Tightening of two-speed idle emission test standards, to reflect advanced technology and lower

emission levels of 1990 and newer vehicles.

5. Relaxation of roadside remote sensing standards, and greater flexibility for VA DEQ in use of various pollutants as roadside screening criteria.

6. Repeal of requirement for evaporative system purge testing.

7. Revision of requirements for federal and private fleet testing and reporting, and add "sensitive mission vehicle" fleet emission inspection station permit category.

8. Revision of visible emissions standard to include a standard for diesel-powered vehicles now subject to OBD testing.

9. Elimination of deadlines for waiver limit increases that have already passed; and required vehicles that received a waiver in another state to be tested if subject to Virginia's I/M program.

10. Repeal of requirements limiting warranty eligibility for certain emissions short tests.

11. Modification of penalty schedule for major violations related to emissions inspections.

12. Revision of a number of definitions to reflect related regulatory changes, and the repeal of others that are no longer needed to support the Commonwealth's regulations.

Virginia's April 2, 2003 SIP revision serves to make a technical correction to the June 2002 version of the emission inspection program regulation that was submitted as part of the December 2002 SIP revision. This later amendment corrects a technical error in Virginia's prior emission inspection program regulation concerning emission inspector identification numbers.

Virginia's June 18, 2007 SIP revision contains a more recent version of the Commonwealth's I/M regulation since the June 2002 version of the regulation submitted as part of the December 18, 2002 SIP revision. This June 2007 SIP revision contains revised provisions related to on-road testing of vehicles (i.e., remote sensing) operated (primarily) in Northern Virginia. The purpose of this SIP revision is to help Virginia ensure motorist compliance with the I/M program and to supplement state enforcement activities.

EPA is taking a single rulemaking action today upon the December 18, 2002, the April 2, 2003, and the June 18, 2007 SIP revisions.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for

voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998

opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

Other specific requirements for an enhanced I/M program, and the rationale for EPA’s proposed action, are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving three SIP revisions formally submitted to EPA by the Commonwealth on December 18, 2002, April 2, 2003, and June 18, 2007 as revisions to the Virginia SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action 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).

C. Petitions for Judicial Review

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 23, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Virginia’s enhanced I/M program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 9, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended under Chapter 91 as follows:

- a. Revising Part I, section 5–91–20.
- b. Revising Part II, sections 5–91–30, 5–91–50, 5–91–70, and 5–91–120.
- c. Revising Part III, sections 5–91–160 through 5–91–210.
- d. Revising Part IV, sections 5–91–220, 5–91–230, 5–91–260, 5–91–270, 5–91–290 through 5–91–340, 5–91–360 and 5–91–370.
- e. Revising Part V, section 5–91–380.
- f. Removing Part VI, sections 5–91–460 and 5–91–470.
- g. Revising Part VI, sections 5–91–410 through 5–91–450, 5–91–480, and 5–91–490.
- h. Revising Part VII, sections 5–91–500 through 5–91–540.
- i. Revising Part VIII, sections 5–91–550 through 5–91–580.
- j. Revising Part IX, sections 5–91–590 through 5–91–620.
- k. Revising Part X, sections 5–91–650 through 5–91–710.
- l. Revising Part XI, section 5–91–720.
- m. Revising Part XII, sections 5–91–740 through 5–91–760.

■ n. Removing Part XIII in its entirety.
 ■ o. Revising Part XIV, sections 5-91-790 and 5-91-800.

§ 52.2420 Identification of plan.

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
Chapter 91 Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area				
Part I Definitions				
5-91-20	Terms defined	6/29/05	4/22/08 [Insert page number where the document begins].	*
Part II General Provisions				
5-91-30	Applicability and authority of the department	10/1/02	4/22/08 [Insert page number where the document begins].	*
5-91-50	Documents incorporated by reference	10/1/02	4/22/08 [Insert page number where the document begins].	*
5-91-70	Appeal of case decisions	10/1/02	4/22/08 [Insert page number where the document begins].	*
5-91-120	Export and import of motor vehicles	10/1/02	4/22/08 [Insert page number where the document begins].	*
Part III Emission Standards for Motor Vehicle Air Pollution				
5-91-160	Exhaust emission standards for two-speed idle testing in enhanced emissions inspection programs.	6/29/05	4/22/08 [Insert page number where the document begins].	*
5-91-170	Exhaust emission standards for ASM testing in enhanced emissions inspection programs.	10/1/02	4/22/08 [Insert page number where the document begins].	*
5-91-180	Exhaust emission standards for on-road testing through remote sensing.	6/29/05	4/22/08 [Insert page number where the document begins].	*
5-91-190	Emissions control system standards	10/1/02	4/22/08 [Insert page number where the document begins].	*
5-91-200	Evaporative emissions standards	10/1/02	4/22/08 [Insert page number where the document begins].	*
5-91-210	Visible emissions standards	10/1/02	4/22/08 [Insert page number where the document begins].	*
Part IV Permitting and Operation of Emissions Inspection Stations				
5-91-220	General provisions	10/1/02	4/22/08 [Insert page number where the document begins].	*
5-91-230	Applications	10/1/02	4/22/08 [Insert page number where the document begins].	*

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5-91-260	Emissions inspection station permits, categories ...	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-270	Permit renewals	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-290	Emissions inspection station operations	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-300	Emissions inspection station records	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-310	Sign and permit posting	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-320	Equipment and facility requirements	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-330	Analyzer system operation	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-340	Motor vehicle inspection report; certificate of emissions inspection.	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-360	Inspector identification number and access code usage.	10/1/02	4/22/08 [Insert page number where the document begins].	Retitled and amended.
5-91-370	Fleet emissions inspection stations; mobile fleet inspection stations.	10/1/02	4/22/08 [Insert page number where the document begins].	

Part V Emissions Inspector Testing and Licensing

5-91-380	Emissions inspector licenses and renewals	10/21/02	4/22/08 [Insert page number where the document begins].	
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Part VI Inspection Procedures

5-91-410	General	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-420	Inspection procedure; rejection, pass, fail, waiver	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-430	ASM test procedure	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-440	Two-speed idle test procedure	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-450	Evaporative system pressure test and gas cap pressure test procedure.	10/1/02	4/22/08 [Insert page number where the document begins].	Retitled and amended.
5-91-480	Emissions related repairs	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-490	Engine and fuel changes	10/1/02	4/22/08 [Insert page number where the document begins].	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
Part VII Vehicle Emissions Repair Facility Certification				
5-91-500	Applicability and authority	10/1/02	4/22/08 [Insert page number where the document begins].	
5-90-510	Certification qualifications	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-520	Expiration, reinstatement, renewal, and requalifica- tion.	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-530	Emissions and repair facility operations	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-540	Sign and certificate posting	10/1/02	4/22/08 [Insert page number where the document begins].	Retitled and amended.
Part VIII Emissions Repair Technician Certification and Responsibilities				
5-91-550	Applicability and authority	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-560	Certification qualifications for emissions repair technicians.	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-570	Expiration, reinstatement, renewal and requalifica- tion.	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-580	Certified emissions repair technician responsibil- ities.	10/1/02	4/22/08 [Insert page number where the document begins].	
Part IX Enforcement Procedures				
5-91-590	Enforcement of regulations, permits, licenses, cer- tifications and orders.	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-600	General enforcement process	10/1/02	04/22/08 [Insert page number where the document begins].	
5-91-610	Consent orders and penalties for violations	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-620	Major violations	10/1/02	4/22/08 [Insert page number where the document begins].	
*	*	*	*	*
Part X Analyzer System Certification and Specifications for Enhanced Emissions Inspection Programs				
*	*	*	*	*
5-91-650	Design goals	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-660	Warranty; service contract	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-670	Owner-provided services	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-680	Certification of analyzer systems	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-690	Span gases; gases for calibration purposes	10/1/02	4/22/08 [Insert page number where the document begins].	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5-91-700	Calibration of exhaust gas analyzers	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-710	Upgrade of analyzer system	10/1/02	4/22/08 [Insert page number where the document begins].	
Part XI Manufacturer Recall				
5-91-720	Vehicle manufacturers recall	10/1/02	4/22/08 [Insert page number where the document begins].	
*	*	*	*	*
Part XII On-road Testing				
5-91-740	General requirements	6/29/05	4/22/08 [Insert page number where the document begins].	
5-91-750	Operating procedures; violation of standards	6/29/05	4/22/08 [Insert page number where the document begins].	
5-91-760	Schedule of civil charges	6/29/05	4/22/08 [Insert page number where the document begins].	
Part XIV ASM Exhaust Emission Standards				
5-91-790	ASM start-up standards	10/1/02	4/22/08 [Insert page number where the document begins].	
5-91-800	ASM final standards	10/1/02	4/22/08 [Insert page number where the document begins].	
*	*	*	*	*

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 [FR Doc. E8-8394 Filed 4-21-08; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA-R02-OAR-2008-0011, FRL-8554-8]

Approval and Promulgation of Implementation Plans; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating an amendment to its rulemaking action taken on November 27, 1998, which removed Part 211.2 of Title 6 of the New York Code of Rules and Regulations (NYCRR) from the State Implementation Plan (SIP) for the State of New York. Part 211.2 is a general prohibition

against air pollution. As stated in the November 27, 1998 notice, EPA intended to remove all such general duty provisions from the New York SIP, which do not reasonably relate to the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), and other air quality goals of the Clean Air Act. General duty provisions in Title 6 of the NYCRR include those pertaining to nuisance odors. In this action, EPA is amending its previous rulemaking to include a mistakenly omitted citation to Part 200.1(d) of Title 6 of the NYCRR. Part 200.1(d) provides the definition of “air contaminant or air pollutant,” which includes the word “odor.” It has recently been brought to EPA’s attention that the word “odor” in the definition of “air contaminant or air pollutant” was erroneously retained in the SIP. By amending the previous rulemaking, EPA is removing the word “odor” from the federally-approved definition of “air contaminant or air pollutant,” because the definition as currently written, in part, does not have a reasonable

connection to the NAAQS and related air quality goals of the Clean Air Act. The intended effect of this amendment is to make the previous rulemaking on New York SIP submittals for national primary and secondary ambient air quality standards consistent with the requirements of the Clean Air Act.

DATES: This correction is effective on April 22, 2008.

FOR FURTHER INFORMATION CONTACT: Steven Riva, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4074.

SUPPLEMENTARY INFORMATION:

I. Amendment to SIP Correction Action

On November 27, 1998 (63 FR 65557), EPA published notice of a direct final rulemaking action under section 110(k)(6) of the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* (the Act), to correct the federally-approved New York State Implementation Plan (SIP). This notice took effect on January 26, 1999, after a 60 day public comment period in which EPA received no

comments on the rule. The intended effect of that rulemaking was to remove all general duty provisions from the SIP, which EPA determined were erroneously approved because those provisions do not have a reasonable connection to the national ambient air quality standards (NAAQS) such that EPA could rely on them as NAAQS attainment and maintenance strategies. Accordingly, the November 27, 1998 rulemaking removed Part 211.2 of Title 6 of the New York Code of Rules and Regulations (NYCRR) from the SIP. Part 211.2 is a general prohibition against air pollution. General duty provisions in Title 6 of the NYCRR include those pertaining to nuisance odors. It has recently been brought to EPA's attention that Part 200.1(d) of Title 6 of the NYCRR contains an odor provision that was erroneously omitted from EPA's prior action to remove such provisions from the SIP. Moreover, EPA has determined that the Act does not provide EPA with any specific authority to regulate odor. Therefore, EPA's prior SIP correction notice is now being amended to include the omitted odor provision, so that all odor provisions are effectively removed from the SIP, consistent with the purpose of the Act and as originally intended by EPA.

EPA has determined that today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are "impracticable, unnecessary or contrary to the public interest." EPA has determined that public notice and comment for today's action is unnecessary because the intended result of EPA's November 27, 1998 rulemaking, which is encompassed by today's action, has previously been subject to a 60-day public notice and comment period, during which EPA did not receive any comments. Today's action merely amends the prior rulemaking to include a mistakenly omitted citation, ensuring that EPA's publicly noticed intention to remove all general duty provisions from the SIP is realized. In addition, EPA has determined that public notice and comment is unnecessary because, in light of the fact that EPA lacks any specific authority to regulate odor under the Act, no comments EPA might receive would result in any change in the outcome of today's action.

EPA also finds that there is good cause under APA section 553(d)(3) for this amendment to become effective on the date of publication of this action.

Section 553(d)(3) of the APA allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is, among other things, to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule merely corrects an error. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

II. New York SIP Correction

On November 27, 1998 (63 FR 65557), EPA published a direct final rulemaking to remove all general duty provisions from the federally-approved New York SIP that do not reasonably relate to attainment and maintenance of the NAAQS, including those pertaining to nuisance odors. Specifically, EPA removed part 211.2 of Title 6 of the New York Code of Rules and Regulations (NYCRR), entitled "Air Pollution Prohibited," from the federally-approved New York SIP. Part 211.2 prohibits, among other things, odors that "unreasonably interfere with the comfortable enjoyment of life or property." It has recently been brought to EPA's attention that 6 NYCRR Part 200.1(d) contains an odor provision that EPA erroneously did not remove from the New York SIP. EPA has determined that the definition of "air contaminant or air pollutant" at 6 NYCRR 200.1(d), as it relates to "odor," does not have a reasonable connection to the NAAQS and related air quality goals of the Clean Air Act (Act) and is not properly part of the SIP.

EPA last approved 6 NYCRR 200.1(d) as part of the New York SIP on May 22, 2001. Part 200.1(d) provides the definition of "air contaminant or air pollutant," which is defined as "A chemical, dust, compound, fume, gas, mist, odor, smoke, vapor, pollen, or any combination thereof." Such a definition, as it specifically relates to "odor," is not designed to control or impact NAAQS pollutants such that EPA could rely on it as a NAAQS attainment and maintenance strategy. After it came to the attention of EPA that the definition of "air contaminant or air pollutant" contained in Part 200.1(d) was not properly removed from the federally-approved New York SIP, EPA in turn brought the matter to the attention of the

New York State Department of Environmental Conservation (NYSDEC). In a February 6, 2008 e-mail from NYSDEC to EPA, NYSDEC confirmed EPA's understanding that the definition as it relates to odor was not properly removed from the federally-approved New York SIP in the November 27, 1998 EPA rulemaking action.

EPA is now amending the November 27, 1998 SIP action. That action was done pursuant to section 110(k)(6) of the Act, to correct the New York SIP by removing general duty provision part 211.2 from the SIP, which includes a provision pertaining to odor. In today's action, EPA is reaffirming that such general duty provisions are not reasonably related to the NAAQS or other air quality goals of the Act, and were erroneously approved into the SIP. In addition, EPA has determined that it lacks any specific authority to regulate odor under the Act. Section 110(k)(6) of the amended Act provides: "Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise any such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public." It should be noted that section 110(k)(6) has also been used by EPA to delete an improperly approved odor provision from the Wyoming SIP. 61 FR 47058 (1996).

Since the State of New York's Part 200.1(d) definition of "air contaminant or air pollutant" has no reasonable connection to the NAAQS-related air quality goals of the Act as it specifically relates to "odor," EPA is amending its original action to include the removal of the word "odor" from the federally-approved definition. This amendment's effect is to complete the intended removal of all general duty provisions from the New York SIP, specifically those pertaining to odor.

Nothing in this action should be construed as establishing a precedent for any future action related to corrections or revisions of SIPs. Each SIP correction or revision shall be considered separately in light of specific technical, economic and environmental factors, and in relation to relevant statutory and regulatory requirements.

III. Summary of EPA's Action

EPA is taking action to amend its November 27, 1998 (63 FR 65557)

rulemaking action to correct the federally-approved New York SIP. Specifically, this action has the effect of removing the word “odor” from the definition of “air contaminant or air pollutant” at 6 NYCRR Part 200.1(d), so that “odor” is no longer part of the federally-approved New York SIP.

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 is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

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 corrects an error, it does not impose any new requirements on sources or allow a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the 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.*).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of this rule in today’s **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 4, 2008.

Alan J. Steinberg,
Regional Administrator, Region 2.

PART 52—[AMENDED]

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

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

Subpart HH—New York

- 2. Section 52.1679, is amended by revising the entry for part 200 to read as follows:

§ 52.1679 EPA-approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
* * * Part 200, General Provisions Sections 200.1, 200.6, 200.7 and 200.9.	2/25/00	4/22/08. [FR page citation].	* * * The word odor is removed from the Subpart 200.1(d) definition of “air contaminant or air pollutant”. Redesignation of non-attainment areas to attainment areas (200.1(av)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC. Changes in definitions are acceptable to EPA unless a previously approved definition is necessary for implementation of an existing SIP regulation.

New York State regulation	State effective date	Latest EPA approval date	Comments
*	*	*	*
<p>EPA is including the definition of “federally enforceable” with the understanding that (1) the definition applies to provisions of a Title V permit that are correctly identified as federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to “avoid” applicable requirements.</p> <p>EPA is approving incorporation by reference of those documents that are not already federally enforceable.</p>	*	*	

[FR Doc. E8-8657 Filed 4-21-08; 8:45 am]
BILLING CODE 6560-50-P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 615

RIN 3145-AA49

Testimony and Production of Records

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: The National Science Foundation (NSF) is amending part 615 on testimony and the production of records in title 45 of the Code of Federal Regulations (CFR). This technical amendment clarifies that, in connection with a legal proceeding between private litigants, NSF’s Inspector General has the same discretion to permit an Office of Inspector General (OIG) employee to testify or produce official records and information in response to a request as NSF’s General Counsel has when such a request is made to any other NSF employee. This final rule is an administrative simplification that makes no substantive change in NSF policy or procedures for providing testimony or producing official records and information in connection with a legal proceeding.

DATES: *Effective Date:* April 22, 2008.

FOR FURTHER INFORMATION CONTACT: Eric S. Gold, Assistant General Counsel, Office of the General Counsel, National Science Foundation, telephone (703) 292-8060 and e-mail egold@nsf.gov.

SUPPLEMENTARY INFORMATION: NSF promulgated part 615 of title 45 of the Code of Federal Regulations, entitled, “Testimony and Production of Records,” to establish policies and procedures to be followed when a request is made of an NSF employee to provide testimony or produce official records and information in connection with a legal proceeding. The provisions

of this part are intended to: (1) Promote economy and efficiency in NSF’s operations; (2) minimize the possibility of involving NSF in controversial issues not related to its functions; (3) maintain the impartiality of NSF among private litigants; and (4) protect sensitive, confidential information and the deliberative process.

To this end, in any legal proceeding between private litigants, an NSF employee (other than an OIG employee) is precluded from giving testimony or producing official records or information in response to a formal demand or informal request unless NSF’s General Counsel authorizes him or her to do so. The current regulation is silent on what authority, if any, the Inspector General has when information or testimony is sought from an OIG employee via a request. To dispel any confusion, NSF is amending its regulation to clarify that the Inspector General has the discretion to approve the production of official information, as well as the giving of testimony, in response to both a formal demand and an informal request made to an OIG employee.

Executive Order 12866

OMB has determined this rule to be nonsignificant.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This proposed regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104-4)

This proposed regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of \$100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This proposed regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects in 45 CFR Part 615

Testimony and production of records.

■ Accordingly, under the authority of 42 U.S.C. 1870, NSF amends the Code of Federal Regulations, Title 45, Chapter VI, as follows:

Title 45—Public Welfare—Chapter VI—National Science Foundation

PART 615—[AMENDED]

■ 1. The authority citation for part 615 continues to read as follows:

Authority: 42 U.S.C. 1870(a).

■ 2. Section 615.7 is revised to read as follows:

§ 615.7 Legal proceedings between private litigants: Office of Inspector General employees.

Notwithstanding the requirements set forth in §§ 615.1 through 615.6, when an employee of the Office of Inspector General is issued a demand or receives a request to provide testimony or produce official records and information, the Inspector General or his or her designee shall be responsible for performing the functions assigned to the General Counsel with respect to such demand or request pursuant to the provisions of this part.

Dated: April 16, 2008.

Lawrence Rudolph,

General Counsel.

[FR Doc. E8-8668 Filed 4-21-08; 8:45 am]

BILLING CODE 7555-01-P

Proposed Rules

Federal Register

Vol. 73, No. 78

Tuesday, April 22, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. AMS-FV-07-0117; FV07-989-4 PR]

Raisins Produced From Grapes Grown in California; Revisions to Requirements Regarding Off-Grade Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revising the requirements regarding off-grade raisins under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This proposed rule would revise the requirement that notification handlers must provide to the inspection service and the Committee when they perform certain functions on off-grade raisins be in writing, thereby allowing them to use other means of communication, including e-mail. This proposed rule would also remove the requirement that handlers submit reports to the Committee regarding transfers of off-grade and other failing raisins. This action would bring the order's administrative rules and regulations in line with current industry practices.

DATES: Comments must be received by May 22, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the docket

number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Rose.Aguayo@usda.gov or Kurt.Kimmel@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing

on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revising the requirements regarding off-grade raisins under the order. This rule would revise the requirement that notification handlers must provide to the Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), USDA (hereinafter referred to as the inspection service) and the Committee when they perform certain functions on off-grade raisins be in writing, thereby allowing them to use other means of communication, including e-mail. This rule would also remove the requirement that handlers submit reports to the Committee regarding transfers of off-grade and other failing raisins. This action would bring the order's administrative rules and regulations in line with current industry practices and was unanimously recommended by the Committee at a meeting on July 11, 2007.

The order provides authority for quality control whereby handlers must have their raisins inspected upon receipt from producers and prior to shipment. Handlers may receive raisins that do not meet minimum standards. Section 989.24(b) specifies that off-grade raisins are raisins which do not meet the then effective minimum grade and condition standards for natural condition raisins (or raisins that have not been processed). Off-grade raisins that cannot be successfully reconditioned to meet the applicable minimum grade standards for processed raisins become other failing raisins.

Section 989.58(e) provides requirements for off-grade raisins. Paragraph (1) of that section specifies that off-grade raisins may be received or acquired by the handler, without further inspection, in eligible non-normal outlets (such as animal feed); be returned unstemmed to the person tendering the raisins (usually the producer); or be received by the handler for reconditioning. Off-grade raisins received by handlers under any one of

these three categories may be changed to any of the other categories under such rules and procedures recommended by the Committee and approved by the Secretary of Agriculture (Secretary). Paragraph (2) of that section specifies that off-grade raisins may be transferred from a receiving handler's plant to another plant of his/hers or to that of another handler within the State of California.

Section 989.158(c) specifies rules and procedures for off-grade raisins. Paragraph (2) of that section requires that handlers notify the inspection service in writing prior to making any changes in off-grade raisin categories as described above. Paragraph (3) of that section requires handlers to notify the inspection service in advance and in writing on a form provided by the Committee, of the time they plan to transfer lots of off-grade raisins for reconditioning. They must also provide the Committee this form. Paragraph (4) of that section specifies that handlers must notify the inspection service in writing prior to reconditioning off-grade raisins. Paragraph (6) of that section requires handlers to notify the inspection service in writing before transferring stemmed raisins to another handler for reconditioning, and to obtain from the receiving handler a statement that he or she will receive such raisins for reconditioning. Copies of the inspection notification and receiving handler statement must be forwarded by the transferring handler to the Committee.

Section 989.73(d) of the order provides authority for the Committee, with approval of the Secretary, to request other information from handlers that may be necessary for the Committee to perform its duties. Section 989.173(d)(2) specifies that handlers must report to the Committee information regarding transfers of off-grade raisins and other failing raisins, including the date of the transfer, the name and address of the receiving handler and location of his or her plant, the name and address of the tenderer of each lot included in the transfer and the inspection certificate numbers applicable to the lot, and the varietal type, net weight, and condition of the raisins.

In the early 1990's, the inspection service began computerizing much of the information regarding raisin inspections, including data regarding off-grade raisins. This computerized data is shared with Committee staff. The inspection service generates reports from this database as needed and provides the information to handlers. Handlers now notify the inspection

service verbally or by other means of communication, including e-mail, before they change off-grade raisin categories, transfer off-grade raisins for reconditioning, recondition off-grade raisins, or transfer off-grade raisins that have been stemmed to another handler for reconditioning. Thus, it is no longer necessary for handlers to provide such notification in writing, too.

Likewise, it is not necessary for handlers to submit reports to the Committee on transfers of off-grade or other failing raisins. As stated above, the computerized data regarding off-grade raisins generated by the inspection service is shared with Committee staff. Additionally, handlers submit other weekly and monthly reports to the Committee regarding off-grade and other failing raisins that allows Committee staff to track such raisins. These include the RAC-28, Processor's Report of Acquisition of Off-Grade Raisins; RAC-28A, Processor's Report of Disposition of Off-Grade Raisins and Raisin Residual Material; the RAC-30, Weekly Off-Grade Summary; the RAC-32, Monthly Report of Dispositions of Off-Grade Raisins, Other Failing Raisins and Raisin Residual Material; the RAC-33, Weekly Report of Disposition of Standard Raisins Recovered from Reconditioning of Off-Grade Raisins, and the RAC-51 CO, Inventory of Off-Grade Raisins on Hand (for organically produced raisins). These forms will continue to be used and are currently approved by the Office of Management and Budget (OMB) under OMB No. 0581-0178, Vegetable and Specialty Crops.

Thus, the Committee recommended revising the order's administrative rules and regulations to remove these requirements and reflect current industry practices. Accordingly, this rule would revise paragraphs (2), (3), (4)(i), and (6)(ii) in § 989.158(c) and remove paragraph (d)(2) in § 989.173.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf.

There are approximately 23 handlers of California raisins who are subject to regulation under the order and approximately 4,000 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$6,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. No more than 10 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule would revise § 989.158(c) regarding the requirement that notification handlers must provide to the inspection service and the Committee when they perform certain functions on off-grade raisins be in writing, therefore, allowing them to use other means of communication, including e-mail. Handlers now provide such notification verbally or by other means of communication; written notification is no longer necessary. This rule would also revise § 989.173(d) to remove the requirement that handlers must submit reports to the Committee on transfers of off-grade and other failing raisins. Handlers submit other weekly and monthly reports to the Committee regarding off-grade and other failing raisins that allows Committee staff to track such raisins. These changes would bring the order's administrative rules and regulations in line with current industry practices. Authority for these changes is provided in §§ 989.58(e) and 989.73(d) of the order, respectively.

Regarding the impact of this action on producers and handlers, these changes would not impact producers, and would remove requirements on handlers that are not necessary. It would bring the administrative rules and regulations in line with current industry practices.

An alternative to this action would be to maintain the status quo. However, this would not be practical since the requirements are no longer necessary. Handlers now notify the inspection service and the Committee verbally or by other means of communication before they perform certain functions on off-grade raisins. Additionally, handlers submit other weekly and monthly reports to the Committee regarding off-grade and other failing raisins that allows Committee staff to track such raisins. Thus, the Committee recommended revising the regulations to bring them in line with current industry practices.

This action would revise the reporting and recordkeeping requirements specified in the order's administrative rules and regulations for all California raisin handlers. These requirements were approved under OMB No. 0581-0178, Vegetable and Specialty Crops. No change to this approval is warranted as a result of this action. This action would bring the regulations in line with current industry practices. Data regarding off-grade raisins has been computerized since the early 1990's. It is no longer necessary for handlers to advise the inspection service nor the Committee in writing when they perform certain functions regarding off-grade raisins. Handlers provide such notification verbally or by other means of communication, including e-mail. The time it takes to provide such information is minimal. Likewise, it is no longer necessary for handlers to submit reports to the Committee regarding transfers of off-grade for reconditioning or other failing raisins. Handlers submit other weekly and monthly reports to the Committee regarding off-grade and other failing raisins that allows Committee staff to track such raisins.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's July 11, 2007, meeting and the Administrative Issues Subcommittee meeting held earlier that day were widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, both were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab/html>. Any questions about the compliance guide should be sent to Jay

Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this action removes requirements upon handlers that are no longer necessary. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 989.158 is amended as follows:

a. In paragraph (c)(2), the second sentence is revised, and a new sentence is added after it;

b. In paragraph (c)(3), the fourth sentence is revised, and a new sentence is added after it;

c. In paragraph (c)(4)(i), the first sentence is revised, and a new sentence is added after it; and

d. Paragraph (C)(6)(ii) is revised.

The revised and added text reads as follows:

§ 989.158 Natural condition raisins.

* * * * *

(c) * * *

(2) * * * Prior to making such change, the handler shall notify the inspection service at least one business day in advance of the time such handler plans to begin such change. Such notification shall be provided verbally or by other means of communication, including e-mail. * * *

(3) * * * The handler shall notify the inspection service in advance of the time such handler plans to transfer each lot. Such notification shall be provided verbally or by other means of communication, including e-mail. * * *

(4) * * *

(i) The handler shall notify the inspection service at least one business day in advance of the time such handler plans to begin reconditioning each lot of raisins, unless a shorter period is acceptable to the inspection service. Such notification shall be provided

verbally or by other means of communication, including e-mail.

* * *

* * * * *

(6) * * *

(ii) Any packer may arrange for or permit the tenderer to remove the stemmed raisins (described in paragraph (c)(6)(i) of this section), but not the residual, directly to the premises, within California, of another packer for further reconditioning of the raisins at the latter's premises. Such removal and transfer shall be made under the surveillance of the inspection service. The packer shall notify the inspection service as required in paragraph (c)(3) of this section. Such raisins may be received by the other packer without inspection. On and after such receipt of the raisins for further reconditioning, all applicable provisions of this part shall apply with respect to such raisins and the packer so receiving them.

* * * * *

§ 989.173 [Amended]

3. In § 989.173, paragraph (d)(2) is removed and reserved.

Dated: April 16, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8-8639 Filed 4-21-08; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0430; Directorate Identifier 2007-SW-42-AD]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model AS332 C, L, L1, and L2 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The aviation authority of France, with which we have a bilateral agreement, states in the MCAI:

This Airworthiness Directive (AD) is issued following two cases of LH hydraulic power system loss on two AS332 helicopters. In both cases, the pilot received the "low level" hydraulic failure alarm. The investigations conducted on the two helicopters revealed a hydraulic fluid leak from the hydraulic pump casing.

In both cases, incorrect position of the liner of the compensating piston had caused the seals to deteriorate. This incorrect positioning of the liner is due to non-compliant application of the repair process by a repair station.

Deterioration of hydraulic pumps causes:

- The loss of the RH and LH hydraulic power systems in the event of a substantial hydraulic fluid leak from both hydraulic pumps during a given flight.
- The loss of the hydraulic system concerned, in the event of a substantial hydraulic fluid leak from only one pump.

The proposed AD would require actions that are intended to address this unsafe condition.

DATES: We must receive comments on this proposed AD by May 22, 2008.

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

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

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

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0110, telephone (817) 222-5123, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of

ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decisionmaking responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

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-2008-0430; Directorate Identifier 2007-SW-42-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 Direction Generale de L'Aviation Civile (DGAC), the aviation authority for France, has issued French Airworthiness Directive No. F-2007-010, dated September 12, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for this French-certificated product. The MCAI states:

This Airworthiness Directive (AD) is issued following two cases of LH hydraulic power system loss on two AS332 helicopters. In both cases, the pilot received the "low level" hydraulic failure alarm. The investigations conducted on the two helicopters revealed a hydraulic fluid leak from the hydraulic pump casing.

In both cases, incorrect position of the liner of the compensating piston had caused the seals to deteriorate. This incorrect positioning of the liner is due to non-compliant application of the repair process by a repair station.

Deterioration of hydraulic pumps causes:

- The loss of the RH and LH hydraulic power systems in the event of a substantial hydraulic fluid leak from both hydraulic pumps during a given flight.
- The loss of the hydraulic system concerned, in the event of a substantial hydraulic fluid leak from only one pump.

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

Relevant Service Information

Eurocopter France has issued Alert Service Bulletin No. 01.00.73, dated August 23, 2007 (ASB). The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the ASB.

FAA's Determination and Proposed Requirements

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

Differences Between This AD and the MCAI

We have reviewed the MCAI and related service information and, in general, agree with their substance. However, we have made the following changes:

- We do not require the operator to return the hydraulic pump to the manufacturer nor any action on non-installed hydraulic pumps.
- We changed "flying hours" to "hours time-in-service."

In making these changes, we do not intend to differ substantively from the information provided in the MCAI. These differences are highlighted in the "Differences Between the FAA and the MCAI" section in the proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 4 helicopters of U.S. registry. We also estimate that it would take 2.5 work-hours to inspect and replace one hydraulic pump. The average labor rate is \$80 per work-hour. Each pump would cost about \$26,000 and require two hydraulic pumps per helicopter. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$209,600 to replace all the hydraulic pumps on the U.S. fleet.

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 an economic 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:

Eurocopter France: Docket No. FAA-2008-0430; Directorate Identifier 2007-SW-42-AD.

Comments Due Date

(a) We must receive comments by May 22, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Models AS332C, L, L1, and L2 helicopters, with a hydraulic pump made by Messier-Bugatti, part number C24160-X, C24160-XXX, C241600XX, C241600XX-X, and C241600XX-XXX, with a serial number without the suffix letter "V", listed in paragraph 1.A.1., of Eurocopter France Emergency Alert Service Bulletin 01.00.73, dated August 23, 2007 (ASB) installed, certificated in any category.

Note: The letter "V" is a suffix marked after the serial number on the pump's identification plate to signify that the pump has been determined to conform to the approved design data.

Reason

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

This Airworthiness Directive (AD) is issued following two cases of LH hydraulic power system loss on two AS332 helicopters. In both cases, the pilot received the "low level" hydraulic failure alarm. The investigations conducted on the two helicopters revealed a hydraulic fluid leak from the hydraulic pump casing.

In both cases, incorrect position of the liner of the compensating piston had caused the seals to deteriorate. This incorrect positioning of the liner is due to non-compliant application of the repair process by a repair station.

Deterioration of hydraulic pumps causes:

- The loss of the RH and LH hydraulic power systems in the event of a substantial hydraulic fluid leak from both hydraulic pumps during a given flight.
- The loss of the hydraulic system concerned, in the event of a substantial hydraulic fluid leak from only one pump.

Actions and Compliance

(e) Unless already done, do the following actions:

(1) Within 15 hours time-in-service (TIS), determine the part number and serial number of the installed hydraulic pumps. If the serial numbers of both the hydraulic pumps are listed in paragraph 1.A.1. of the ASB, before further flight, replace at least one of the pumps with an airworthy pump with a serial number other than one listed in paragraph 1.A.1. of the ASB or one with a serial number containing the letter "V". Replace the pump by following the Accomplishment Instructions, paragraph 2.B. of the ASB, except this AD does not require you to return the hydraulic pump to the manufacturer.

(2) Within the next 12 months, replace all remaining hydraulic pumps having a serial

number listed in paragraph 1.A.1. of the ASB by following the Accomplishment Instructions, paragraph 2.B. of the ASB, except this AD does not require you to return the hydraulic pump to the manufacturer.

Differences Between the FAA AD and the MCAI

(f) We do not require the operator to return the hydraulic pump to the manufacturer nor do we require any action on non-installed hydraulic pumps. Also, we changed "flying hours" to "hours time-in-service."

Subject

(g) Air Transport Association of America (ATA) Code: 2913 Hydraulic Pump.

Other Information

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Safety Management Group, FAA, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19. Send information to ATTN: Uday Garadi, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0110, telephone (817) 222-5123, fax (817) 222-5961.

(2) *Airworthy Product:* Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. You are required to assure the product is airworthy before it is returned to service.

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

Related Information

(i) MCAI Airworthiness Directive No. F-2007-010, dated September 12, 2007, contains related information.

Issued in Fort Worth, Texas, on April 3, 2008.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8-8641 Filed 4-21-08; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2008-0442, Directorate Identifier 2007-SW-24-AD]

RIN 2120-AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S-61A, D, E, L, N, NM, R, and V; Croman Corporation Model SH-3H, Carson Helicopters, Inc. Model S-61L; Glacier Helicopter Model CH-3E; Robinson AirCrane, Inc. Model CH-3E, CH-3C, HH-3C and HH-3E; and Siller Helicopters Model CH-3E and SH-3A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This amendment proposes superseding an existing airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S-61A, D, E, L, N, NM, R, and V helicopters. The existing AD currently requires determining whether the main rotor shaft (MRS) was used in repetitive external lift (REL) operations. The existing AD also requires a nondestructive inspection (NDI) for cracks, replacing any unairworthy MRS with an airworthy MRS, appropriately marking the MRS, making a logbook entry, and establishing retirement lives for each REL MRS. This proposed AD would contain some of the same requirements but would determine new retirement lives for each MRS. The REL retirement life would be based on hours time-in-service (TIS) or lift cycles, whichever occurs first. The Non-REL retirement life would be reduced and would only be based on hours TIS. This proposed AD would also require the operator to remove from service any MRS with oversized dowel pin bores. Also, certain restricted category models that were inadvertently omitted in the current AD would be added to the applicability. This proposed AD is prompted by the manufacturer's reevaluation of the retirement life for the MRS based on torque, ground-air-ground (GAG) cycle, and fatigue testing. The actions specified by the proposed AD are intended to prevent MRS structural failure, loss of power to the main rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 23, 2008.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

You may get the service information identified in this proposed AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386-3001, fax (203) 386-5983.

You may examine the comments to this proposed AD in the AD docket on the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Lee, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238-7161, fax (781) 238-7170.

SUPPLEMENTARY INFORMATION:**Comments Invited**

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA-2008-0442, Directorate Identifier 2007-SW-24-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the

Federal Register published on April 11, 2000 (65 FR 19477-78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647-5527) is located in Room W12-140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

In 1995 a Model S-58T helicopter lost transmission drive due to fatigue cracking on the MRS flange connection. Due to similarities between the Model S-58T and the S-61 MRS drive connection, Sikorsky conducted a review of the Model S-61 MRS cracking history. This review identified similar fatigue cracking mode origins in similar locations in both the Model S-61 and the S-58T MRS.

On December 7, 1998, the FAA issued AD 98-26-02, Amendment 39-10943 (63 FR 69177), Docket No. 96-SW-29-AD, for Sikorsky Model S-61A, D, E, L, N, NM, R, and V helicopters. AD 98-26-02 requires an NDI for cracks, replacing any unairworthy MRS with an airworthy MRS, appropriately marking the MRS by following Sikorsky Alert Service Bulletin (ASB) 61B35-68, dated July 19, 1996, and making logbook entries. AD 98-26-02 also establishes retirement lives of 1,500 hours TIS for unmodified MRS assemblies used in REL operations and 2,200 hours TIS for modified MRS assemblies used in REL operations. That action was prompted by four reports of cracks in helicopter MRSs used in REL operations. That condition, if not corrected, could result in MRS structural failure, loss of power to the main rotor, and subsequent loss of control of the helicopter.

Since issuing AD 98-26-02, an investigation of REL operations revealed the REL mission profile parameters have changed significantly from those previously used to calculate the MRS retirement lives. The original MRS was certified by analysis in shaft bending only. Due to the service history, Sikorsky performed fatigue testing with Torque GAG cycles for both REL and Non-REL spectrums. The results of the fatigue testing with torque GAG cycles prompted changes in certain life limits. This information has led to the need for new retirement criteria for MRSs used in both REL and non-REL operations.

Sikorsky has issued Customer Service Notice (CSN) No. 6135-10A and Sikorsky Service Bulletin (SB) No. 61B35-53A, both dated April 19, 2004. The CSN and the SB apply to Model S-61L, N, and NM (serial number (S/N) 61454), and R series transport category helicopters; and S-61A, D, E, and V series restricted category helicopters. The CSN specifies replacing the planetary assembly and MRS assembly attaching hardware with high strength hardware. The CSN also specifies reworking the dowel retainer to increase hole chamfer and related countersink diameters. The SB specifies replacing the existing planetary matching plates with new steel matching plates during overhaul at the operator's discretion.

Also, Sikorsky has issued ASB No. 61B35-69, dated April 19, 2004 (ASB 61B35-69), which supersedes ASB 61B35-68B. ASB 61B35-69 provides updated procedures for determining REL and Non-REL status, assigns new REL and Non-REL MRS retirement lives, and provides a method for marking the REL MRS.

We have identified an unsafe condition that is likely to exist or develop on other Sikorsky model helicopters of these same type designs. Therefore, the proposed AD would supersede AD 98-26-02 to require the following:

- Within 10 hours TIS for certain part-numbered MRSs:
 - Create a component history card or equivalent record.
 - Count and, at the end of each day's operations, record the number of external lift cycles (lift cycles) performed and the hours TIS. An external lift cycle is defined as a flight cycle in which an external load is picked up, the helicopter is repositioned (through flight or hover), and the helicopter hovers and releases the load and departs or lands and departs.
 - If you do not have records of hours TIS on an individual MRS, substitute helicopter hours TIS.
 - Determine whether the MRS is an REL or Non-REL MRS by using a 250-hour TIS moving average.
 - Upon reaching 250 hours TIS, calculate the first moving average of lift cycles. If the calculation results in more than 6 lift cycles per hour TIS, the MRS is an REL MRS. If the calculation results in 6 or less lift cycles per hour TIS, the MRS is a Non-REL MRS. If you know only a portion of the number of the lift cycles during the previous 250 hours TIS, add that known number to a number calculated by multiplying the number of hours TIS for which you do not know the lift cycles by a factor of

30 to arrive at the accumulated number of lift cycles.

- If you determine the MRS is a Non-REL MRS based on the previous calculation of the 250-hour TIS moving average for lift cycles, thereafter at intervals of 50 hour TIS, recalculate the average lift cycles per hour TIS. If the calculation results in more than 6 lift cycles per hour TIS, the MRS is an REL MRS. If the calculation results in 6 or less lift cycles per hour TIS, the MRS is a Non-REL MRS. If you know only a portion of the number of the lift cycles during the next interval of 50 hours TIS, add that known number to a number calculated by multiplying the number of hours TIS for which you do not know the lift cycles by a factor of 30 to arrive at the accumulated number of lift cycles for that interval.

- Once an MRS is determined to be an REL MRS, you no longer need to perform the 250-hour TIS moving average calculation, but you must continue to count and record the lift cycles and number of hours TIS.

- Within 5 hours TIS after determining the MRS is an REL MRS, identify it as an REL MRS by etching "REL" on the outside diameter of the MRS near the part serial number.
- If an MRS is determined to be an REL MRS, it remains an REL MRS for the rest of its service life and is subject to the retirement times for an REL MRS.

- For each REL MRS, within 1,100 hours TIS, conduct an NDI for cracks in the MRS. If a crack is found, replace it with an airworthy MRS before further flight.

- Replace each MRS with an airworthy MRS on or before reaching the revised retirement life as follows:

- For an REL MRS that is not modified (unmodified REL MRS); establish a retirement life of 30,000 lift cycles or 1,500 hours TIS, whichever occurs first. Replace it on or before accumulating 30,000 lift cycles or 1,500 hours TIS, whichever comes first. For an unmodified REL MRS installed on a helicopter on the effective date of this AD that has accumulated more than 30,000 lift cycles or 1,350 hours TIS, replace it within 150 hours TIS or upon removal, whichever occurs first.

- For an REL MRS that is modified; establish a retirement life of 30,000 lift cycles or 5,000 hours TIS, whichever occurs first. Replace it on or before accumulating 30,000 lift cycles or 5,000 hours TIS, whichever comes first. For modified REL MRS installed on a helicopter on the effective date of this AD that has accumulated more than 30,000 lift cycles or 4,500 hours TIS, replace it within 500 hours TIS or upon removal, whichever occurs first.

- For a Non-REL MRS, reduce the retirement life to 13,000 hours TIS. For a Non-REL MRS installed on a helicopter on the effective date of this AD that has accumulated more than 11,500 but less than 40,500 hours TIS, replace it within 1,500 hours TIS, or upon removal, whichever occurs first.

- Record the revised retirement life on the MRS component history card or equivalent record.

- Within 50 hours TIS, remove from service any MRS with oversized (0.8860" or greater) dowel pin bores.

Do the actions by following the specified portions of the service information described previously.

We estimate that this proposed AD would affect 60 helicopters of U.S. registry, and the NDI inspection, remarking, and replacing an MRS would take about 2.2 work hours per helicopter at an average labor rate of \$80 per work hour. Required parts would cost about \$50 for the supplies required for the NDI inspection and \$47,438 for each MRS per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be \$2,859,840, assuming, after an NDI, one MRS would be replaced on each helicopter in the fleet because of the revised life, cracks, or oversized dowel pin bores and the recordkeeping cost would be negligible.

Regulatory Findings

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

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

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

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

Authority for This Rulemaking

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

Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-10943 (63 FR 69177, December 16, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Sikorsky Aircraft Corporation; Croman Corporation; Carson Helicopters, Inc.; Glacier Helicopter; Robinson Airplane, Inc.; and Siller Helicopters: Docket No. FAA-2008-0442. Directorate Identifier 2007-SW-24-AD. Supersedes AD 98-26-02, Amendment 39-10943, Docket No. 96-SW-29-AD.

Applicability

Model S-61A, D, E, L, N, NM (serial number (S/N) 61454), R, V, CH-3C, CH-3E, HH-3C, HH-3E, SH-3A, and SH-3H helicopters with main rotor shaft (MRS), part number (P/N) S6135-20640-001, S6135-20640-002, or S6137-23040-001, installed, certificated in any category.

Compliance

Required as indicated.

To prevent MRS structural failure, loss of power to the main rotor, and subsequent loss of control of the helicopter, do the following:

(a) Within 10 hours time-in-service (TIS), unless done previously:

(1) Create a component history card or equivalent record for each MRS.

(2) Count and, at the end of each days operations, record the number of external lift cycles (lift cycles) performed and the hours TIS. An external lift cycle is defined as a flight cycle in which an external load is picked up, the helicopter is repositioned (through flight or hover), and the helicopter hovers and releases the load and departs or lands and departs.

(3) If you do not have records of the hours TIS on an individual MRS, substitute the helicopter's hours TIS.

(b) Determine whether the MRS is a repetitive external lift (REL) or Non-REL MRS operation by using a 250-hour TIS moving average.

(1) Upon reaching 250 hours TIS, calculate the first moving average of lift cycles by following the instructions in Section I of Appendix I of this AD.

(i) If the calculation results in more than 6 lift cycles per hour TIS, the MRS is an REL MRS.

(ii) If the calculation results in 6 or less lift cycles per hour TIS, the MRS is a Non-REL MRS.

(iii) If you know only a portion of the number of the lift cycles during the previous 250 hours TIS, add the known number to a number calculated by multiplying the number of hours TIS for which you do not know the lift cycles by a factor of 30 to arrive at the accumulated number of lift cycles for that interval. Then, calculate the lift cycles per hour TIS as described in paragraph (b)(1) of this AD.

(2) If you determine the MRS is a Non-REL MRS based on the previous calculation of the 250-hour TIS moving average for lift cycles, thereafter at intervals of 50 hour TIS, recalculate the average lift cycles per hour TIS. Recalculate the average lift cycles by following the instructions in Section II of Appendix 1 of this AD.

(i) If the calculation results in more than 6 lift cycles per hour TIS, the MRS is an REL MRS.

(ii) If the calculation results in 6 or less lift cycles per hour TIS, the MRS is a Non-REL MRS.

(iii) If you know only a portion of the number of the lift cycles during the next interval of 50 hours TIS, add the known number to a number calculated by multiplying the number of hours TIS for which you do not know the lift cycles by a factor of 30 to arrive at the accumulated number of lift cycles. Then, calculate the lift cycles per hour TIS as described in paragraph (b)(2) of this AD.

(3) Once an MRS is determined to be an REL MRS, you no longer need to perform the 250-hour TIS moving average calculation, but you must continue to count and record the lift cycles and number of hours TIS.

Note 1: Sikorsky Aircraft Corporation issued an All Operators Letter (AOL) CCS-61-AOL-04-0005, dated May 18, 2004, with an example and additional information about tracking cycles and the moving average procedure. You can obtain this AOL from the manufacturer at the address stated in the ADDRESSES portion of this AD.

(c) Within 5 hours TIS, after determining the MRS is an REL MRS, identify it as an REL

MRS by etching "REL" on the outside diameter of the MRS near the part S/N. Identify the REL MRS by following the Accomplishment Instructions, paragraph 3.C., of Sikorsky Alert Service Bulletin 61B35-69, dated April 19, 2004 (ASB 61B35-69).

(d) If an MRS is determined to be an REL MRS, it remains an REL MRS for the rest of its service life and is subject to the retirement times for an REL MRS.

(e) For each REL MRS, within 1,100 hours TIS, conduct a non-destructive inspection (NDI) for cracks in the MRS. If a crack is found in an MRS, replace it with an airworthy MRS before further flight.

(f) Replace each MRS with an airworthy MRS on or before reaching the revised retirement life as follows:

(1) For an REL MRS that is not modified by following Sikorsky Customer Service Notice 6135-10, dated March 18, 1987, and Sikorsky ASB No. 61B35-53, dated December 2, 1981 (unmodified REL MRS); establish a retirement life of 30,000 lift cycles or 1,500 hours TIS, whichever occurs first. Replace it on or before accumulating 30,000 lift cycles or 1,500 hours TIS, whichever comes first. For an unmodified REL MRS installed on a helicopter on the effective date of this AD that has accumulated more than 30,000 lift cycles or 1,350 hours TIS, replace it within 150 hours TIS or upon removal, whichever occurs first.

(2) For an REL MRS that is modified by following Sikorsky Customer Service Notice 6135-10, dated March 18, 1987, and Sikorsky ASB No. 61B35-53, dated December 2, 1981 (modified REL MRS); establish a retirement life of 30,000 lift cycles or 5,000 hours TIS, whichever occurs first. Replace it on or before accumulating 30,000 lift cycles or 5,000 hours TIS, whichever comes first. For a modified REL MRS installed on a helicopter on the effective date of this AD that has accumulated more than 30,000 lift cycles or 4,500 hours TIS, replace it within 500 hours TIS or upon removal, whichever occurs first.

(3) For a Non-REL MRS, reduce the retirement life to 13,000 hours TIS. For a Non-REL MRS installed on a helicopter on the effective date of this AD that has accumulated more than 11,500 but less than 40,500 hours TIS, replace it within 1,500 hours TIS, or upon removal, whichever occurs first. If the

Note: non-REL MRS has accumulated more than 40,500 hours TIS, replace it on or before it reaches 42,000 hours TIS.

(g) This AD establishes or revises the retirement lives of the MRS as indicated in paragraphs (f)(1) through (f)(3) of this AD.

(h) Record the revised retirement life on the MRS component history card or equivalent record.

(i) Within 50 hours TIS, remove from service any MRS with oversized (0.8860" or greater diameter) dowel pin bores.

Note 2: The Overhaul and Repair Instruction (ORI) Number 6135-281, Part B, Step 5, or ORI 6137-041, Section III, Oversize Dowel Pin Bore Repair and identified on the flange as TS-281 or TS-041-3, pertains to the subject of this AD.

(j) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, FAA, ATTN: Jeffrey Lee, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238-7161, fax (781) 238-7170, for information about previously approved alternative methods of compliance.

APPENDIX I

SECTION I: The first moving average of lift cycles per hour TIS

The first moving average calculation is performed on the MRS assembly when the external lift component history card record reflects that the MRS assembly has reached its first 250 hours TIS. To perform the calculation, divide the total number of lift cycles performed during the first 250 hours TIS by 250. The result will be the first moving average calculation of lift cycles per hour TIS.

SECTION II: Subsequent moving average of lift cycles per hour TIS

Subsequent moving average calculations are performed on the MRS assembly at intervals of 50 hour TIS after the first moving average calculation. Subtract the total number of lift cycles performed during the first 50-hour TIS interval used in the previous moving average calculation from the total number of lift cycles performed on the MRS assembly during the previous 300 hours TIS. Divide this result by 250. The result will be the next or subsequent moving average calculation of lift cycles per hour TIS.

SECTION III: Sample calculation for subsequent 50 hour TIS intervals

Assume the total number of lift cycles for the first 50 hour TIS interval used in the previous moving average calculation = 450 lift cycles and the total number of lift cycles for the previous 300 hours TIS = 2700 lift cycles. The subsequent moving average of lift cycles per hour TIS = (2700-450) divided by 250 = 9 lift cycles per hour TIS.

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

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8-8642 Filed 4-21-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2007-1018; FRL-8556-3]

RIN 2060-AO41

New Source Performance Standards Review for Nonmetallic Mineral Processing Plants; and Amendment to Subpart UUU Applicability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to the Standards of Performance for Nonmetallic Mineral Processing Plant(s) (NMPP). These proposed amendments include proposed revisions to the emission limits for NMPP affected facilities which commence construction, modification, or reconstruction after today's date (referred to as "future" affected facilities in this preamble). These proposed amendments for NMPP also include additional testing and monitoring requirements for future affected facilities; exemption of affected facilities that process wet material from this proposed rule; changes to simplify the notification requirements for all affected facilities; and changes to definitions and various clarifications. EPA is also proposing an amendment to the Standards of Performance for Calciners and Dryers in Mineral Industries to address applicability of this proposed rule to thermal sand reclamation processes at metal foundries.

DATES: Comments must be received on or before June 23, 2008, unless a public hearing is requested by May 2, 2008. If a hearing is requested on this proposed rule, written comments must be received by June 6, 2008. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before May 22, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-1018, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* a-and-r-docket@epa.gov.
- *Fax:* (202) 566-1741.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center (6102T), New Source Performance Standards for Nonmetallic Mineral Processing Plants Docket, 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:* In person or by courier, deliver comments to: EPA Docket Center (6102T), New Source Performance Standards for Nonmetallic Mineral Processing Plants Docket, EPA

West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2007-1018. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the EPA Docket Center, Standards of Performance for Nonmetallic Mineral Processing Plants Docket, 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 Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Neuffer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243-02), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541-5435; fax number: (919) 541-3207; e-mail address: neuffer.bill@epa.gov.

SUPPLEMENTARY INFORMATION: The supplementary information presented 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 on Subpart OOO
 - A. What is the statutory authority for these proposed amendments to subpart OOO?
 - B. What are the current NMPP NSPS?

- III. Summary of these Proposed Amendments to Subpart OOO
- IV. Rationale for These Proposed Amendments to Subpart OOO
 - A. How is EPA proposing to change the emission limits for future affected facilities?
 - B. How is EPA proposing to amend subpart OOO applicability and definitions?
 - C. How is EPA proposing to amend the testing requirements?
 - D. How is EPA proposing to amend the monitoring requirements?
 - E. How is EPA proposing to amend the notification, reporting and recordkeeping requirements?
- V. Modification and Reconstruction Provisions
- VI. Clarifications on Subpart OOO
- VII. Summary of Cost, Environmental, Energy, and Economic Impacts of These Proposed Amendments to Subpart OOO
 - A. What are the impacts for NMPP?
 - B. What are the secondary impacts?
 - C. What are the economic impacts?
- VIII. Proposed Amendment to Subpart UUU Applicability
- IX. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions 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?

Categories and entities potentially regulated by these proposed amendments include:

Category	NAICS code ¹	Examples of regulated entities
Industry	212311	Dimension Stone Mining and Quarrying.
	212312	Crushed and Broken Limestone Mining and Quarrying.
	212313	Crushed and Broken Granite Mining and Quarrying.
	212319	Other Crushed and Broken Stone Mining and Quarrying.
	212321	Construction Sand and Gravel Mining.
	212322	Industrial Sand Mining.
	212324	Kaolin and Ball Clay Mining.
	212325	Clay and Ceramic and Refractory Minerals Mining.
	212391	Potash, Soda, and Borate Mineral Mining.
	212393	Other Chemical and Fertilizer Mineral Mining.
	212399	All Other Nonmetallic Mineral Mining.
	221112	Fossil-Fuel Electric Power Generation.
	324121	Asphalt Paving Mixture and Block Manufacturing.
	327121	Brick and Structural Clay Tile Manufacturing.
	327122	Ceramic Wall and Floor Tile Manufacturing.
	327123	Other Structural Clay Product Manufacturing.
	327124	Clay Refractory Manufacturing.
	327310	Cement Manufacturing.
	327410	Lime Manufacturing (Dolomite, Dead-burned, Manufacturing).
	327420	Gypsum Product Manufacturing.
327992	Ground or Treated Mineral and Earth Manufacturing.	
331111	Steel Mills.	
331511-513, 331521-522, 331524-525, and 331528.	Various metal foundries (e.g., iron, steel, aluminum, and copper)	
Federal government .....	.....	Not affected.
State/local/tribal government .....	.....	Not affected.

¹ North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 60.670 (subpart OOO) or 40 CFR 60.730 (subpart UUU). If you have any questions regarding the applicability of this proposed action to a particular entity, contact the person listed in the

preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through 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), Office of Air Quality

Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, Attention: Docket ID No. EPA-HQ-OAR-2007-1018. 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 is available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing by May 2, 2008, a public hearing will be held on May 7, 2008. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Mr. Bill Neuffer, listed in the **FOR FURTHER INFORMATION CONTACT** section, at least 2 days in advance of the hearing.

II. Background Information on Subpart OOO

A. What is the statutory authority for these proposed amendments to subpart OOO?

New source performance standards (NSPS) implement Clean Air Act (CAA) section 111(b) and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The primary purpose of the NSPS is to attain and maintain ambient air quality by ensuring that the best demonstrated emission control technologies are installed as the industrial infrastructure is modernized. Since 1970, the NSPS have been successful in achieving long-term emissions reductions in numerous industries by assuring cost-effective controls are installed on new, reconstructed, or modified sources.

Section 111 of the CAA requires that NSPS reflect the application of the best system of emission reductions which (taking into consideration the cost of achieving such emission reductions, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT).

Section 111(b)(1)(B) of the CAA requires EPA to periodically review and

revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions.

B. What are the current NMPP NSPS?

Standards of performance for NMPP (40 CFR part 60, subpart OOO) were promulgated in the **Federal Register** on August 1, 1985 (50 FR 31328). The first review of the NMPP NSPS was completed on June 9, 1997 (62 FR 31351).

The NMPP NSPS applies to new, modified, and reconstructed affected facilities at plants that process any of the following 18 nonmetallic minerals: crushed and broken stone, sand and gravel, clay, rock salt, gypsum, sodium compounds, pumice, gilsonite, talc and pyrophyllite, boron, barite, fluorospar, feldspar, diatomite, perlite, vermiculite, mica, and kyanite. The affected facilities are each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. Unless otherwise noted, the terms "new" or "future" as used in this preamble include modified or reconstructed units.

III. Summary of These Proposed Amendments to Subpart OOO

The proposed amendments to subpart OOO of 40 CFR part 60 are summarized in Table 1 of this preamble.

TABLE 1.—SUMMARY OF THESE PROPOSED AMENDMENTS

Citation	Change
60.670(a)(2)	Exempt wet material processing operations; clarify rule does not apply to plants with no crushers or grinding mills.
60.670(d)(1)	Revise to clarify that like-for-like replacements that have no emissions increase are exempt from certain provisions.
60.670(f)	Revise to conform with amended Table 1 to subpart OOO.
60.671	Add definitions of: Crush or crushing, saturated material, seasonal shut down, and wet material processing operations. Amend definition of "screening operation" to exempt static grizzlies.
60.672(a) and (b)	Revise to reference Tables 2 and 3 to subpart OOO and to better match General Provisions language regarding compliance dates. Tables 2 and 3 to subpart OOO contain revised emission limits and testing/monitoring requirements for future affected facilities.
60.672(c)	Reserve because superseded by Table 3 to subpart OOO.
60.672(e)	Revise cross-references. Replace Method 22 (40 CFR part 60, Appendix A-7) no visible emissions limit for building openings with 7 percent fugitive opacity limit.
60.672(f) and (g)	Consolidate paragraphs to refer to Table 2 to subpart OOO. Specify exemption from stack PM concentration limit and that 7 percent opacity limit applies for future individual enclosed storage bins.
60.672(h) and 60.675(h)	Remove 60.672(h) and reserve 60.675(h) because wet material processing exempted.
60.674	Renumber (a) and (b) as (a)(1) and (2). Add periodic inspections for future wet suppression systems and future baghouse monitoring requirements (Method 22 visible emission inspections or use of bag leak detection systems).
60.675 and various other sections referencing test methods.	Add text to clarify that the required EPA test methods are located in Appendices A-1 through A-7 of 40 CFR part 60 (formerly Appendix A of 60 CFR part 60).
60.675(b)(1)	Cross reference exceptions to Method 5 (40 CFR part 60, Appendix A-3) or Method 17 (40 CFR part 60, Appendix A-6).
60.675(c)	Correct cross reference to amended paragraph in (c)(1). Expand (c)(2) into subparagraphs (i) and (ii) to reduce the duration of Method 9 (40 CFR part 60, Appendix A-4) stack opacity observations for storage bins or enclosed truck or railcar loading stations operating for less than 1 hour at a time.

TABLE 1.—SUMMARY OF THESE PROPOSED AMENDMENTS—Continued

Citation	Change
60.675(d)	Revise (c)(3) and delete (c)(4) to make the fugitive Method 9 testing duration 30 minutes and specify averaging time for all affected facilities.
60.675(e)	Specify performance testing requirements for the building fugitive emission limit. Allow prior Method 22 tests showing compliance with the former no VE limit. Add paragraph (e)(2) to allow Method 9 readings to be conducted on three emission points at one time if specified criteria are met. Add paragraph (e)(3) to allow Method 51 (40 CFR part 60, Appendix A–3) as an option for determining PM concentration from affected facilities that operate for less than 1 hour at a time. Add paragraph (e)(4) to address flow measurement from building vents with low exhaust gas velocity.
60.675(f)	Correct cross references.
60.675(g)	Revise to reduce 30-day advance notification time for Method 9 fugitive performance test to 7 days.
60.675(i)	Add section to state that initial performance test dates that fall during seasonal shut downs may be postponed no later than 60 days after resuming operation (with permitting authority approval).
60.676(b)	Add requirement to previously reserved paragraph (b) for recording periodic inspections of water sprays and baghouse monitoring for future affected facilities.
60.676(d)	Remove reference to upper limits on scrubber pressure and liquid flow rate.
60.676(f) and (g)	Edit to conform to wet material processing exemption and/or relevant opacity limits.
60.676(h)	Delete reference to now reserved 60.7(a)(2). Waive requirement to submit 60.7(a)(1) notification of the date construction or reconstruction commenced.
60.676(k)	Add section to state that notifications and reports need only be sent to the delegated authority (or the EPA Region when there is no delegated authority).
Table 1 to subpart OOO	Move to end of subpart OOO, shorten to include only exceptions to the General Provisions, and update comments.
Table 2 to subpart OOO	Add table to specify the stack PM limits and testing/monitoring requirements for current and future affected facilities.
Table 3 to subpart OOO	Add table to specify the fugitive opacity limits and testing/monitoring requirements for current and future affected facilities.

IV. Rationale for These Proposed Amendments to Subpart OOO

A. How is EPA proposing to change the emission limits for future affected facilities?

For “future” affected facilities constructed, modified, or reconstructed after today’s date, we are proposing:

- To reduce the PM emission limits from 0.05 grams per dry standard cubic meter (g/dscm) (0.022 grains per dry standard cubic foot (gr/dscf)) to 0.02 g/dscm (0.014 gr/dscf) for affected facilities with capture systems (i.e., affected facilities that vent through stacks), and to eliminate the stack opacity limit for dry control devices; and

- To reduce the fugitive visible emission limits from 15 percent to 12 percent for crushers, and from 10 percent to 7 percent for grinding mills, screening operations, bucket elevators, belt conveyors, bagging operations, storage bins, and enclosed truck or railcar loading stations.

The emission limits for affected facilities constructed, modified, or reconstructed before today’s date remain unchanged.

The 1985 promulgated NMPP NSPS are based on emission levels achieved using baghouse control or wet dust suppression techniques (see 50 FR 31329, August 1, 1985). Both systems were determined to be BDT for reasons discussed in the preamble to the 1983

proposed rule (see 48 FR 339569–39571, August 31, 1983). It was also noted in the 1983 proposal preamble that certain wet scrubbers could perform comparably to BDT. As part of our review of subpart OOO, we collected information through site visits, trade associations, and state agencies. The information and comments these stakeholders provided us on the current NSPS are contained in the docket. We reviewed numerous NMPP permits to identify emissions limits more stringent than subpart OOO (and to understand if limits more stringent than subpart OOO are commonplace or rare) and emissions test data from a number of sources (trade associations and state agencies). A summary of state permits and emissions test data are in the docket. Our review of permits and other available information in the record did not reveal any new or emerging pollution prevention measures or particulate matter (PM) control technologies in the non-metallic minerals industries for consideration as BDT. Consistent with the prior BDT determination, the vast majority of subpart OOO affected facilities subject to stack emission limits have baghouse controls. A number of wet scrubber controls were observed as well. The subpart OOO fugitive emission limits are most commonly met through use of wet suppression (as needed), water carryover, or with a partial enclosure. Wet dust suppression remains the

method of choice for the vast majority of crushed stone and sand & gravel facilities. These BDT control systems achieve a reduction in PM₁₀ and PM_{2.5} along with reduction in larger PM particle sizes.

The stack emissions data we reviewed included over 300 PM stack tests from 1990 and later for a variety of subpart OOO affected facilities and industries. A memorandum summarizing this test data is in the docket. Ninety-one percent of the PM stack test results achieved 0.014 gr/dscf. Consistent with our prior BDT determination, the control technologies used for the affected facilities tested included primarily baghouses and wet scrubbers designed to meet subpart OOO. The high percentage of affected facilities currently able to meet 0.014 gr/dscf using either baghouses or wet scrubbers supports our conclusion that an emission limit of 0.014 gr/dscf can be achieved by well-maintained and operated control systems. Further, the available information suggests that establishing emission limits below 0.014 gr/dscf would result in a level of control that may be difficult for some NMPP control systems to achieve on a continuous basis.

Some test results were above the limits under consideration but below the current NSPS limit of 0.022 gr/dscf. These units were considered as having marginal performance. The effect of reducing the stack PM limit would be to

ensure that the typical performance of BDT control systems today is achieved for future affected facilities and that controls with marginal performance are not installed in the future.

Using the available information, we considered the incremental costs and emissions reductions for different levels of control to determine the appropriate stack emission limit representative of BDT for new, modified, and reconstructed affected facilities. The control systems that would be installed to meet the proposed limit of 0.014 would be the same as those installed to meet the current NSPS limit of 0.022 gr/dscf. Because there would be no change in control technology, we expect that the incremental costs would be very low or zero. However, limits below 0.014 gr/dscf may result in additional cost with little incremental emission reduction beyond that achieved by reducing the current limit (0.022 gr/dscf) to 0.014 gr/dscf. Therefore, we are proposing a PM limit of 0.014 gr/dscf as BDT for new, modified, and reconstructed affected facilities.

The purpose of the current 7 percent stack opacity limit in subpart OOO is to provide inspectors and plant personnel a measure of ongoing compliance for dry control devices (namely baghouses). We are proposing to replace the 7 percent stack opacity limit with quarterly monitoring of baghouses for future affected facilities. The monitoring requirements for baghouses would occur at specified intervals (as discussed below) and ensure proper operation and maintenance of future baghouses on an ongoing basis. Therefore, a stack opacity limit would no longer be needed for future affected facilities.

With respect to fugitive emissions, we looked at over 700 fugitive emissions test data points (maximum 6-minute opacity averages) for a variety of subpart OOO affected facilities and industries that do not vent through stacks. A memorandum summarizing this test data is in the docket. These data revealed that the vast majority of affected facilities perform better than the current fugitive emission limits of 15 percent opacity for crushers and 10 percent opacity for other affected facilities. For crushers, 93 percent of the data points were at or below 12 percent opacity. Ninety-five percent of the data points for other types of affected facilities were at or below 7 percent opacity. Therefore, we are proposing revised fugitive emissions limits of 12 percent for crushers and 7 percent for all other affected facilities, which can be met by future affected facilities employing the same control measures as are used on today's affected facilities

(e.g., wet suppression, water carryover, and/or partial enclosures). The emission reduction associated with lowering the fugitive opacity limit is not quantifiable based on available information. Because the same control measures needed to meet the current NSPS would be employed to meet the revised NSPS, there would be no incremental cost associated with this proposed reduction in the fugitive opacity limits. The effect of lowering the opacity limits would be to ensure that any wet suppression or enclosure systems with marginal performance (compared to the current NSPS) would no longer be acceptable for future affected facilities.

Given the addition of revised limits to subpart OOO for affected facilities installed after today's date, we are proposing to revise § 60.672 to include two tables that present the subpart OOO emission limits. The proposed Table 2 to subpart OOO would present the stack emission limits for affected facilities with capture systems. Capture systems are defined in subpart OOO as equipment (e.g., enclosures, ducts, etc.) used to capture and transport PM emissions to a control device. The proposed Table 3 to subpart OOO would present the fugitive emission limits for affected facilities without capture systems (i.e., affected facilities that do not vent through stacks). We request comment on whether these tables improve the readability of subpart OOO and help to distinguish between the stack and fugitive emission limits.

Aside from the tables proposed to be added to subpart OOO, exemptions from selected emission limits would remain in the text of § 60.672. A footnote to the proposed Table 2 would direct readers to § 60.672 to review these exemptions. We are proposing to combine and revise former § 60.672 paragraphs (f) and (g) into one paragraph § 60.672(f) to clarify applicability of the PM emission limits to storage bins. Baghouses controlling individual enclosed storage bins are exempt from the stack PM concentration limit (but must meet the 7 percent stack opacity limit). However, baghouses controlling multiple storage bins are required to meet both the stack PM and opacity limits. We are retaining the 7 percent stack opacity limit for future baghouses controlling individual enclosed storage bins. In addition, we are also proposing to clarify in a footnote to Table 2 that the subpart OOO opacity limits do not apply for affected facilities controlled by wet scrubbers. Wet scrubbers are required to monitor scrubber pressure loss and scrubber liquid flow rate instead of opacity. Therefore, no initial opacity

test is required by subpart OOO for wet scrubbers.

B. How is EPA proposing to amend subpart OOO applicability and definitions?

Wet material processing. We are proposing to add two definitions and to make other changes to exempt from subpart OOO wet material processing operations that have no potential for PM emissions. These types of operations were already exempted from the testing requirements of subpart OOO but remained subject to notification requirements and a no visible emissions (VE) limit (although no testing was required to demonstrate compliance with the no VE limit). Exempting wet material processing operations from this proposed rule altogether will reduce the burden associated with notifications and tracking of these operations as subpart OOO affected facilities with no requirements. We are proposing to define "wet material processing operations" similarly to how they were referred to before in subpart OOO. Wet material processing operations include: (a) Wet screening operations and subsequent screening operations, bucket elevators and belt conveyors in the production line that process saturated materials up to the first crusher, grinding mill or storage bin in the production line; or (b) screening operations, bucket elevators and belt conveyors in the production line downstream of wet mining operations that process saturated materials up to the first crusher, grinding mill or storage bin in the production line. Stakeholders have expressed concern that the term "saturated" is ambiguous and requested that we define that term. Therefore, we are also proposing to add a definition of "saturated material" to subpart OOO to describe the type of material intended to be exempted from this proposed rule. Through the definitions of "wet material processing operation" and "saturated material" (as well as other existing definitions of "wet mining operation" and "wet screening operation"), we intend to exempt from coverage under subpart OOO mineral material that is wet enough on its surface to remove the possibility of PM emissions being generated from processing of the material through screening operations, bucket elevators and belt conveyors. Material that is wetted solely by wet suppression systems designed to add surface moisture for dust control is not considered to be "saturated material" for purposes of this exemption. Examples of saturated material include slurries of water and mineral material, material that is wet as it enters the

processing plant from the mine, material that is wet from washing, material with a high percentage of moisture (considering mineral type), etc. This exemption for wet material processing operations is limited to screening operations, bucket elevators and belt conveyors (i.e., belt conveyor transfer points) because crushing or grinding of mineral material can expose new dry surfaces that pose a potential for PM emissions and other affected facilities (bagging operations, storage bins, and enclosed truck or railcar loading stations) usually process only dry material.

Crushers. Industry representatives requested that we clarify the meaning of “crusher” and “grinding mill” by adding a definition of “crushing.” The new definition of “crushing” would help to clarify that crushers and grinding mills do not include equipment that simply breaks up clumps of material (e.g., certain deagglomerators or shredders processing material that has become stuck together during processing) but does not further reduce the size of the material. The current definition of “crusher” employs the word “crush” and the current definition of grinding mill uses the word “crushing.” To capture both terms, we are proposing to add a new definition: “Crush or crushing” which means to reduce the size of nonmetallic mineral material by means of physical impaction of the crusher or grinding mill upon the material.

Grizzlies. We are proposing to clarify that all grizzlies associated with truck dumping and static (non-agitating) grizzlies are not subpart OOO affected sources. Grizzlies can sometimes be confused with screening operations because they are used to separate larger material from smaller material. Grizzlies range from simple metal grates to equipment that agitates or vibrates material similarly to screening operations. Grizzlies are often associated with truck dumping, where a truck dumps material from the mine into the grizzly feeder. The grizzly feeder separates fines and smaller pieces of rock from larger material (e.g., boulders) that require initial crushing. Grizzly feeders associated with truck dumping are not subject to subpart OOO because § 60.672(d) states that, “Truck dumping of nonmetallic minerals into any screening operation, feed hopper, or crusher is exempt from the requirements of this section.” However, applicability of subpart OOO to grizzlies used elsewhere in NMPP has been less clear. Certain types of grizzlies (specifically metal grate grizzlies that do not mechanically agitate or vibrate the

mineral material) are clearly different from screening operations. Therefore, we are proposing to amend the definition of screening operation to state that “Grizzly feeders associated with truck dumping and static (non-moving) grizzlies used anywhere in the nonmetallic mineral processing plant are not considered to be screening operations.”

C. How is EPA proposing to amend the testing requirements?

Repeat testing for future affected facilities. Subpart OOO currently requires NMPP to conduct an initial performance test to demonstrate compliance with the relevant stack or fugitive emission limits. Stack PM emissions are to be measured with EPA Method 5 (40 CFR part 60, Appendix A-3) or Method 17 (40 CFR part 60, Appendix A-6) and stack opacity must be measured with EPA Method 9 (40 CFR part 60, Appendix A-4). The opacity from affected facilities not venting through stacks must be measured with EPA Method 9 (though the duration of Method 9 readings is reduced in some cases as discussed below). Repeat performance tests currently are not required by subpart OOO, but may be required by permitting authorities for some NMPP. As part of an ongoing effort to improve compliance with various Federal air emission regulations, we are proposing to require repeat performance testing once every 5 years for future subpart OOO affected facilities that do not have ongoing monitoring requirements. Specifically, a repeat Method 9 test is proposed to be required for future affected facility fugitive emissions controlled by water carryover or other means. Repeat Method 9 tests are not being proposed for fugitive affected facilities with wet suppression water sprays because, (as discussed below) periodic inspections of the water spray nozzles are being proposed for these emission points.

The proposed repeat testing requirements appear in the proposed Table 3 to subpart OOO. We considered annual repeat testing and repeat testing every 5 years for stacks, but concluded that this would be overly burdensome given the number of affected facilities (including numerous small stacks) to be tested at NMPP. As discussed later, we are proposing ongoing monitoring requirements for future affected facilities that do not have repeat testing requirements to ensure that future control systems are properly operated and maintained over their useful life.

Fugitive Method 9 test duration. Subpart OOO currently requires initial Method 9 observations for affected

facilities with fugitive emissions. As currently written, the duration of the Method 9 observations may be reduced from 3 hours to 1 hour if there are no individual readings greater than the applicable limit and if there are no more than three readings at the applicable limit during the 1-hour period. Stakeholders have expressed concern regarding the amount of time required to complete the initial Method 9 tests given the number of affected facilities at NMPP that require readings (e.g., numerous conveyor transfer points throughout the NMPP). The stakeholders also noted that in many cases the readings being recorded are all zeros. We have considered the Method 9 observation time in the context of the numerous fugitive affected facilities that require observations at NMPP and the other changes to testing requirements we are proposing today (i.e., addition of repeat testing requirements). We are proposing three amendments to the fugitive Method 9 testing provisions for all affected facilities to reduce the amount of time required for testing without sacrificing enforceability of the rule or air quality. First, we are removing the stipulations that could trigger a 3-hour test. Second, we are proposing to require a 30-minute fugitive Method 9 test duration (five 6-minute averages) for all affected facilities. Compliance with the applicable fugitive emissions limit would be based on the average of the five 6-minute averages recorded during the 30 minutes. Third, considering the number of affected facilities to be tested and the close proximity of some of these affected facilities to one another at NMPP plants, we are proposing to allow a single visible emission observer to conduct observations for up to three subpart OOO emission points at a time (including stack and vent emission points) provided that certain criteria are met (as proposed in § 60.675(e)(2)).

Storage bins and loading stations operating less than 1 hour at a time. Based on comments from stakeholders and our own review of emission test reports, we recognize that affected facilities such as storage bins (including silos) and loading stations may operate intermittently such that emissions testing for three 1 hour periods can be impractical in some instances. For example, storage bins may be filled for a time period of less than an hour and then filling stops for some time. Likewise, loading operations may operate for a short time and then cease operation. Some facilities have addressed these challenges during testing by filling and then emptying a

storage bin, only to re-route the same material back into the bin. To provide some relief from this situation, we are proposing to add EPA Method 5I (40 CFR part 60, Appendix A-3)—“Determination of Low Level Particulate Matter Emissions from Stationary Sources” to subpart OOO as an optional test method that can be used instead of Methods 5 or 17. Method 5I is useful for low PM concentration applications, where the total PM catch is 50 milligrams or less. With Method 5I, the sample rate and total gas volume is adjusted based on the estimated grain loading of the emission point and the total sampling time is a function of the estimated mass of PM to be collected for the run. Thus, Method 5I can be used in situations where the minimum sampling volume of 60 dscf (required for Methods 5 and 17) cannot be obtained (e.g., for affected facilities that operate for less than 1 hour at a time). We are also proposing to reduce the Method 9 stack opacity test duration from 3 hours to the duration that the affected facility operates (but not less than 30 minutes) for baghouses that control storage bins or enclosed truck or railcar loading stations that operate for less than 1 hour at a time.

Buildings. Subpart OOO contains an optional compliance method for affected facilities inside of buildings. Rather than measuring the emissions from each affected facility within a building (which is sometimes difficult due to close equipment spacing and lighting), NMPP can opt to measure emissions from the building. Subpart OOO currently requires buildings to meet a zero VE limit (measured with EPA Method 22), and additionally requires the building vents to meet the stack PM concentration and opacity limits. During the NSPS review, stakeholders requested changes to the optional emission limits and testing procedures for buildings. Some stakeholders pointed out that noise barriers are very similar to buildings in that they enclose affected facilities and reduce or prevent fugitive emissions. We agree. Subpart OOO defines “building” as “any frame structure with a roof.” According to the definition of building, noise barriers resembling buildings with a roof would be considered as buildings. Stakeholders also requested that buildings housing affected facilities be subject to the same emission limits as the affected facilities in the buildings. The stakeholders believe that, as written now, subpart OOO is more stringent for affected facilities inside of buildings than for those located outside. Last, stakeholders noted difficulties with

performing Method 5 emissions testing on building vents because building vents often have no stacks and/or low gas flow rates that are insufficient to meet isokinetic measurement requirements.

We have reviewed the current provisions relating to buildings and are proposing to apply a fugitive emission limit of 7 percent opacity (measured with EPA Method 9) at the inlet and outlet of buildings (or at other building openings except powered vents). Compliance with the 7 percent opacity limit would be demonstrated through initial testing. A repeat opacity test would be required (within 5 years from the previous test) for buildings housing any future affected facility. Buildings that demonstrated compliance with the Method 22 no VE limit through performance testing would not be required to be retested to show compliance with today’s proposed Method 9 opacity limit unless a future affected facility is installed in the building. The applicable stack emission limits and testing/monitoring requirements from the proposed Table 2 to subpart OOO would continue to apply to powered building vents. We are proposing to add § 60.675(e) to provide an alternative procedure for determining building vent flow rate for building vents with flow too low to measure. We believe these changes will simplify the methodology used to demonstrate compliance with subpart OOO for buildings while ensuring that PM emissions from affected facilities remain adequately controlled.

Seasonal shut downs. Stakeholders representing the construction aggregate (i.e., crushed stone and construction sand and gravel) sector indicated that the initial performance test dates sometimes fall during seasonal plant closures. Consistent with the NSPS General Provisions, initial performance tests are required 60 calendar days after achieving maximum production but no later than 180 calendar days after initial startup of an affected facility. The stakeholders noted that aggregate plants often cease production during winter months when demand for construction aggregate is low. The current initial performance test dates based on calendar days can fall during these periods of seasonal shut down. Therefore, we are proposing to add § 60.675(j) to subpart OOO to allow plants to postpone initial performance testing until 60 calendar days after resuming operation following a seasonal shut down of an affected facility. Approval from the permitting authority would be required for postponing the initial compliance test (e.g., there

should be some form of communication with the permitting authority to indicate the duration of the seasonal shut down of the affected facility) and to specify the revised deadline for the performance test. We consider a seasonal shut down to be at least 45 consecutive days of shut down of the affected facility and are proposing a definition to that effect. We are limiting the proposed postponing of performance tests to initial performance tests because repeat performance tests can be scheduled at a time the NMPP chooses within 5 years of the prior performance test.

D. How is EPA proposing to amend the monitoring requirements?

Monitoring for fugitive emissions limits. Fugitive emissions from subpart OOO affected facilities are often controlled by wet suppression. In wet suppression systems, water (and surfactant) is sprayed on nonmetallic minerals at various locations in the process line but not necessarily at every affected facility. Carryover of water sprayed at affected facilities upstream in the process line is often sufficient to control fugitive emissions from affected facilities downstream in the process. Partial enclosures or other means may also be used to reduce fugitive emissions in addition to water sprays or water carryover. We are proposing separate requirements to demonstrate ongoing compliance with the fugitive emission limits for future affected facilities where water is sprayed and for other future affected facilities (i.e., those controlled by water carryover or other means). As mentioned above, we are proposing a repeat Method 9 test (within 5 years from the previous performance test) for future affected facility fugitive emissions controlled by water carryover or other means. A repeat Method 9 test is not being proposed for fugitive affected facilities with water sprays. Instead we are proposing monthly periodic inspections of water sprays to ensure that water is flowing to the discharge water spray nozzles in the wet suppression system. If, during an inspection, you find that water is not flowing properly then you would be required to initiate corrective action within 24 hours. We are proposing the periodic inspections of water sprays as part of our ongoing effort to improve compliance with Federal air emission regulations such as subpart OOO. We believe that monthly inspections would ensure that subpart OOO wet suppression systems remain in good working order and provide the required control of fugitive emissions.

Baghouse monitoring. As mentioned previously, we are replacing the 7

percent stack opacity limit with ongoing monitoring for future baghouses. We believe the monitoring requirements of this proposed rule would be more effective in ensuring ongoing compliance with the PM limit than the current stack opacity limit (which has no associated repeat testing requirements) because this proposed monitoring would occur at regular intervals.

We are proposing two options for monitoring of future baghouses: (1) Quarterly visible emissions inspections, or (2) use of a bag leak detection system. The quarterly visible emissions inspections would be conducted using EPA Method 22 for 30 minutes. The visible emissions inspections would be successful if no visible emissions are observed. If any visible emissions are observed, then you would be required to initiate corrective action within 24 hours to restore the baghouse to normal operation. We believe it is unlikely, but if your baghouse normally displays some visible emissions, then you would be allowed to establish a different baghouse-specific success level for the visible emissions inspections (other than no visible emissions) by conducting a PM test simultaneously with a Method 22 test to determine what constitutes normal visible emissions from your baghouse when it is in compliance with the subpart OOO PM concentration limit. The revised visible emissions success level must be incorporated into your permit.

We are proposing to allow use of a bag leak detection system as an alternative to the periodic Method 22 visible emission inspections for baghouses controlling future affected facilities. The bag leak detection system must be installed and operated according to the proposed § 60.674(d).

Wet scrubber monitoring. Stakeholders requested that we remove the upper limits for wet scrubber operating parameters (pressure drop and liquid flow) referred to in § 60.676(d). Increases in these parameters would only increase scrubber PM removal efficiency. Therefore, we are proposing to revise § 60.676(d) to delete reference to scrubber pressure gain and the upper limit for scrubber liquid flow.

We are not proposing any further changes to the wet scrubber monitoring requirements at this time. However, the Agency is drafting Performance Specification 17 (PS-17) and Procedure 4 for continuous parameter monitoring systems (which include pressure and liquid flow measurements). Following proposal and public comment of PS-17 and Procedure 4, the procedures and requirements in PS-17 and Procedure 4

would supersede the wet scrubber monitoring language in subpart OOO for affected facilities with wet scrubbers installed after the proposal date of PS-17 and Procedure 4.

E. How is EPA proposing to amend the notification, reporting, and recordkeeping requirements?

Notifications and reports. We are proposing to simplify the notification requirements in subpart OOO in several ways. There are thousands of NMPP dispersed throughout the U.S. Given the number of affected facilities at each NMPP (e.g., individual crushers, screens, belt conveyor transfer points, etc.), notifications relating to every new affected facility result in volumes of paperwork for both NMPP and regulatory agencies. We believe these proposed changes to the notification requirements in subpart OOO would reduce the paperwork required for the numerous affected NMPP and regulatory personnel without sacrificing air quality.

First, § 60.676(h) of subpart OOO waived the former requirement in § 60.7(a)(2) of subpart A for notification of the anticipated date of initial startup. Section 60.7(a)(2) was reserved in a 1999 amendment to subpart A to reduce paperwork burden. We are proposing to delete reference to § 60.7(a)(2) in § 60.676(h) to be consistent with subpart A. We are also proposing new rule language for § 60.676(h) to waive the § 60.7(a)(1) (subpart A) requirement to submit a notification of commencement of construction/reconstruction for NMPP affected facilities. Non-metallic mineral processing plants are already required under State or Federal permit programs to obtain permits to construct and/or operate. In efforts to streamline the permitting process, many States have set up general permits for NMPP (e.g., crushed stone facilities) due to the large number of these facilities in most States. We believe the purpose of the § 60.7(a)(1) notification of commencement of construction/reconstruction for NMPP can be adequately served through the NMPP permitting process and the § 60.7(a)(3) (subpart A) notification of the actual date of initial startup. The § 60.7(a)(3) notification is needed and has been retained in subpart OOO because it is tied directly to the initial performance test date.

Second, due to the large number of affected facilities and associated notifications and reports, we are proposing to add a new § 60.676(k) to subpart OOO stating that notifications generated under subpart OOO are only to be sent to either the State (if the State

is delegated authority to administer NSPS) or to the EPA Region (if the State has not been delegated authority), but not to both the State and EPA Region.

Third, we are proposing in § 60.675(g) to change the 30-day advance notification deadline (required in § 60.7(a)(6)) for performance tests involving only Method 9 to a 7-day advance notification. We are proposing this change because of the large number of NMPP that are required to conduct only Method 9 testing for fugitive emissions from affected facilities, because plans for NMPP Method 9 opacity readings require little review (if any), and because Method 9 tests are affected by weather (visibility) and subject to rescheduling such that a 30-day advanced notification can be impractical for NMPP. We are also proposing to remove the language in § 60.675(g) which specified when plants are to notify the Administrator of rescheduled test dates because the same language now appears in § 60.8(d) of subpart A following an amendment to § 60.8(d) promulgated in 1999.

Recordkeeping for future affected facilities. We are proposing to require NMPP to keep records of periodic inspections performed on water sprays (monthly checks that water is flowing) or baghouses (quarterly Method 22 readings) controlling future affected facilities. Each periodic inspection would be required to be recorded in a logbook which may be maintained in written or electronic format. The logbook entries would include inspection dates and any corrective actions taken. The logbook would be kept onsite and made available to the EPA or delegated authority upon request. Plants opting to use bag leak detection systems in lieu of periodic visible emissions inspections for baghouses would be required to keep the records specified in the proposed § 60.676(b)(2). According to § 60.7(f), records are required to be retained for a period of two years.

V. Modification and Reconstruction Provisions

Existing affected facilities that are modified or reconstructed would be subject to these proposed amendments for future affected facilities. Under CAA section 111(a)(4), "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. Changes to an existing facility that do not result in an increase in emissions are not considered modifications.

Rebuilt affected facilities would become subject to the proposed standards under the reconstruction provisions, regardless of changes in emission rate. Reconstruction means the replacement of components of an existing facility such that (1) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and (2) it is technologically and economically feasible to meet the applicable standards (40 CFR 60.15).

VI. Clarifications on Subpart OOO

Today we are clarifying some common questions about the applicability of subpart OOO to synthetic gypsum, sodium carbonate, lime, and activated carbon. Synthetic gypsum is a by-product of flue gas desulfurization (FGD). Synthetic gypsum has the same chemical composition as natural gypsum and is used in many of the same products as natural gypsum (e.g., gypsum wallboard). We have concluded in prior applicability determinations, and wish to clarify today, that synthetic gypsum is considered to be a "nonmetallic mineral" as defined in subpart OOO and plants that crush or grind synthetic gypsum meet the subpart OOO definition of "nonmetallic mineral processing plant." Electric utilities operating FGD systems use limestone or lime in the FGD systems to capture sulfur dioxide emissions and convert the mineral material into synthetic gypsum. Some utilities may use sodium carbonate as an additive in FGD systems. Limestone and sodium carbonate are included in the subpart OOO definition of "nonmetallic mineral." Lime, however, is not included in the definition of "nonmetallic mineral" because processing of lime (which is manufactured by the high temperature calcination of limestone) is subject to a separate NSPS (NSPS subpart HH for Lime Manufacturing). Therefore, we wish to clarify that crushing or grinding of lime does not subject plants to subpart OOO. However, electric utilities (or other types of plants) that crush or grind limestone or sodium carbonate meet the subpart OOO definition of "nonmetallic mineral processing plant." Electric utilities (or other types of plants) that handle, but do not crush or grind, the nonmetallic minerals limestone, sodium carbonate, or synthetic gypsum do not meet the

definition of "nonmetallic mineral processing plant."

Activated carbon is also used by some utilities for emissions control applications. Activated carbon is not included in the definition of "nonmetallic mineral" under subpart OOO. Thus, we are clarifying that processing of activated carbon is not subject to subpart OOO.

VII. Summary of Cost, Environmental, Energy, and Economic Impacts of Proposed Amendments to Subpart OOO

In setting standards, the CAA requires us to consider alternative emission control approaches, taking into account the estimated costs as well as impacts on energy, solid waste, and other effects. We request comment on whether we have identified the appropriate alternatives and whether these proposed standards adequately take into consideration the incremental effects in terms of emission reductions, energy, and other effects of these alternatives. We will consider the available information in developing the final rule.

A. What are the impacts for NMPP?

We are presenting estimates of the impacts for these proposed amendments to 40 CFR part 60, subpart OOO that change the performance standards. The cost, environmental, and economic impacts presented in this section are expressed as incremental differences between the impacts of NMPP complying with the proposed subpart OOO revisions and the current NSPS requirements of subpart OOO (i.e., baseline). The impacts are presented for future NMPP affected facilities that commence construction, reconstruction, or modification over the 5 years following promulgation of the revised NSPS. The analyses and the documents referenced below can be found in Docket ID No. EPA-HQ-OAR-2007-1018.

In order to determine the incremental impacts of this proposed rule, we first estimated that 332 new NMPP would comply with subpart OOO in the 5 years following promulgation. For further detail on the methodology of these calculations, see Docket ID No. EPA-HQ-OAR-2007-1018.

The proposed revisions to the subpart OOO emission limits for future affected facilities do not reflect use of any new or different control technologies, but are an adjustment of the limits to better reflect the performance of current (baseline) control technologies. There is

no difference in the control systems used to meet baseline and those that would be used to meet these proposed revised emission limits for future affected facilities. Therefore, there would be no difference in control costs, water or solid waste impacts, or actual emission reductions achieved as a result of these proposed revisions to the emission limits for future affected facilities. As stated previously, the effect of reducing the emission limits would be to ensure that the typical performance of today's control systems is achieved for future affected facilities and that controls with marginal performance are not installed in the future. The potential nationwide emission reduction (the nationwide emission reduction associated with lowering the PM limit from 0.022 to 0.014 gr/dscf) could be as much as 120 megagrams per year (Mg/yr) (130 tpy) PM. These potential emission reductions are overestimated because the majority of control systems installed on future affected facilities would likely have resulted in emissions at or below the proposed emission limits even in the absence of these proposed revisions.

Unlike for control costs and emissions reductions, there are differences in notification, testing, monitoring, reporting, and recordkeeping (MRR) costs between baseline and these proposed revisions to subpart OOO. We are proposing some amendments to subpart OOO that would reduce costs and other amendments that would increase costs for future affected facilities. We estimate that the increase in nationwide annual cost associated with these proposed revisions, including annualized capital costs associated with performance testing, is about \$630,000. The potential emissions reductions associated with these proposed MRR revisions are estimated to be 330 Mg/yr (370 tpy) due to the shortened duration that excess emissions could occur before being corrected under these proposed testing and monitoring revisions.

The estimated nationwide 5-year incremental emissions reductions and cost impacts for these proposed amendments are summarized in Table 2 of this preamble. The overall cost-effectiveness is about \$1,300 per ton of PM potentially removed. We estimate that 6 percent (or 28 Mg/yr (25 tpy)) of the potential reduction in PM shown in Table 2 is PM less than 2.5 microns in diameter (PM_{2.5}).

TABLE 2.—NATIONAL INCREMENTAL EMISSION REDUCTIONS AND COST IMPACTS FOR NMPP SUBJECT TO PROPOSED STANDARDS UNDER 40 CFR PART 60, SUBPART OOO (FIFTH YEAR AFTER PROMULGATION)

Proposed revisions for future affected facilities	Total capital cost (\$1,000)	Total annual cost (\$1,000/yr)	Potential annual emission reductions (tons/yr)	Potential cost-effectiveness (\$/ton)
Revisions to emission limits	0	0	130	0
Revisions to MRR requirements	(1,800)	630	370	1,700
Total	(1,800)	630	500	1,300

(Negative numbers appear in parentheses. There is a negative capital cost because we are proposing to reduce the costs of initial testing requirements by (a) allowing a 30-minute Method 9 test instead of a 1-hour test for fugitive affected facilities; and (b) by omitting the 7 percent stack opacity limit and associated initial testing from subpart OOO.)

B. What are the secondary impacts?

Indirect or secondary air quality impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (i.e., increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment that would be required under this proposed rule. These proposed revisions would not result in any secondary air impacts or increase in overall energy demand because there would be no incremental difference in the control systems used to comply with these revisions.

C. What are the economic impacts?

We performed an economic impact analysis that estimates changes in prices and output for nonmetallic minerals nationally using the annual compliance costs estimated for this proposed rule. All estimates are for the fifth year after promulgation since this is the year for which the compliance cost impacts are estimated. The impacts to producers and consumers affected by this proposed rule are very slightly higher product prices and outputs. Prices for products (processed minerals) from affected plants should increase by less than 0.1 percent for the fifth year. The output of processed minerals should be affected by less than 0.1 percent for the fifth year. Hence, the overall economic impact of this proposed NSPS on the affected industries and their consumers should be negligible. For more information, please refer to the economic impact analysis for this proposed rulemaking that is in the public docket.

VIII. Proposed Amendment to Subpart UUU Applicability

As part of this **Federal Register** notice, we are requesting comments on the applicability of subpart UUU to sand reclamation processes at metal foundries. Metal foundries use

industrial sand (containing organic binders and/or clay) to form the molds and cores used to shape metal parts. Some metal foundries operate thermal foundry sand reclamation units that are used to remove and destroy the solid remains of core/mold binder materials from the sand grains. These thermal sand reclamation units are processing industrial sand, a mineral listed in the definition of “mineral processing plant” in subpart UUU.

To date, Subpart UUU has applied to iron and steel foundries as supported by multiple applicability determinations issued by the Agency beginning in 1993.¹ Most recently, the Agency has issued applicability determinations in 2003 and 2004.² Abstracts of these determinations were published in the **Federal Register** on July 8, 2004 (69 FR 41256) and October 31, 2005 (70 FR 62304). We concluded that calciners and dryers used in sand reclamation process at foundries were affected sources subject to subpart UUU.

Some State permitting authorities have referred to our applicability determinations in deciding applicability of subpart UUU to thermal reclamation units in their states, while other States may not have considered the possibility of subpart UUU applying to thermal sand reclamation units. We believe the result has been inconsistent application of subpart UUU to equipment at foundries across the U.S. with only a few foundries having equipment that are currently subject to the requirements of subpart UUU. Most states for which we

reviewed thermal foundry sand reclamation unit permits have not considered subpart UUU to be applicable to thermal sand reclamation units.

The preambles to the proposed and promulgated rules for subpart UUU provided detailed descriptions of the mineral industries to be regulated by subpart UUU. The preamble to the proposed rule identified the six source categories listed in the NSPS priority list that are covered by subpart UUU. The proposal preamble also explicitly listed two industries (roofing granules and magnesium compounds) that are covered by subpart UUU but not included in the Nonmetallic Mineral Processing or Metallic Mineral Processing source categories, Numbers 13 and 14 on the NSPS priority list, respectively. Foundries, Number 17 on the priority list, was not listed for inclusion in subpart UUU. An identical listing of the subpart UUU source categories was also contained in the promulgation preamble. The foundry industry is not discussed in Background Information Documents or in the enabling document for subpart UUU. Equipment at metal foundries was not the subject of our regulatory analyses when subpart UUU was developed. Thus, there was no economic impact evaluation of subpart UUU on the foundry sand industry.

Recently, we evaluated the types of equipment used to reclaim industrial sand at metal foundries. There are over 2,000 foundries in the U.S. Only a small number of these foundries find it economical to use thermal sand reclamation units to remove the binder from the spent industrial sand.

We reviewed the types of foundry sand thermal reclamation units commercially available today and permits for some foundries operating thermal reclamation units. Thermal foundry sand reclamation units differ from equipment used at subpart UUU industrial sand processing facilities in a number of ways. Differences between

¹ See Letter from John Rasnic, Director, Stationary Source Compliance Branch, Office of Air Quality Planning and Standards, U.S. EPA to Dieter Liedel, Tanoak Enterprises Inc., March 25, 1993.

² See Letter from Michael Alushin, Director, Compliance Assessment and Media Programs Division, Office of Compliance, U.S. EPA to Gary Mosher, Vice President of Environmental Health and Safety, American Foundry Society, October 28, 2003, and Letter from Michael Alushin, Director, Compliance Assessment and Media Programs Division, Office of Compliance, U.S. EPA to Gary Mosher, Vice President of Environmental Health and Safety, American Foundry Society, April 24, 2004.

thermal sand reclamation units and industrial sand dryers include: equipment size, throughput, operating temperature, emissions potential, and overall emissions control strategy.

Based on the preceding discussion, we are proposing to amend § 60.730(b) to state that “processes for thermal reclamation of industrial sand at metal foundries” are not subject to the provisions of subpart UUU. Today’s request for comments on subpart UUU is not an NSPS review pursuant to section 111(b)(1)(B) of the CAA.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is a “significant regulatory action” because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1084.09.

These proposed amendments to the existing standards of performance for Nonmetallic Mineral Processing Plants would add repeat testing and monitoring requirements for future affected facilities while eliminating other requirements. We have revised the information collection request (ICR) for the existing rule.

These proposed amendments to the standards of performance for NMPP for existing and future affected facilities include a reduction in Method 9 test duration for fugitive emissions, exemption of wet material processing operations, and changes to simplify the notification requirements. Additional proposed revisions for future affected facilities include changes to emission limits, elimination of the stack opacity limit, and addition of repeat testing and periodic monitoring requirements. These proposed repeat testing requirements require repeat tests within 5 years from the previous performance test for selected affected facilities (e.g., fugitive affected facilities without water

sprays). The monitoring requirements include periodic inspections of water sprays and baghouse visible emissions. We have minimized the burden associated with these repeat testing and monitoring requirements by selecting longer frequencies for the requirements (e.g., repeats tests every 5 years as opposed to annually; monthly inspections of water sprays as opposed to daily, etc.); minimizing duplication of ongoing compliance measures (e.g., no repeat tests for affected facilities which have periodic monitoring); and by not specifying additional reporting requirements for the periodic inspection provisions. These requirements are based on recordkeeping and reporting requirements in the NSPS General Provisions in 40 CFR part 60, subpart A, and on specific requirements in subpart OOO which are mandatory for all operators subject to NSPS. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 11,330 labor-hours per year at a cost of \$1,025,966 per year. The annualized capital costs are estimated at \$154,577 per year. There are no estimated annual operation and maintenance costs. We note that information collection costs to industry are also included in the incremental cost impacts presented in section VII of this preamble. Therefore, the burden costs presented in the ICR are not additional costs incurred by sources subject to subpart OOO. 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. OMB control numbers for EPA’s regulations 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, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2007–1018. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this document 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 Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 22, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by May 22, 2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of these proposed revisions to subpart OOO on small entities, small entity is defined as: (1) A small business whose parent company has no more than 500 employees, depending on the size definition for the affected NAICS code (as defined by Small Business Administration (SBA) size standards found at http://www.sba.gov/idc/groups/public/documents/sba_homepage/servsstd_tablepdf.pdf); (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 impact of these proposed revisions to subpart OOO on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We estimate that up to 96 percent (318) of the 332 entities with projected new NMPP could potentially be classified as small entities according to the SBA small business size standards for industries identified as affected by these proposed revisions. No small entities are expected to incur an annualized compliance cost of more than 0.09 percent to comply with this proposed action. For more information, please refer to the economic impact analysis that is in the public docket for this proposed rulemaking.

Although this proposed rule would not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed action on future small entities by reducing the test duration for fugitive emissions, exempting wet material processing operations, simplifying certain notification requirements, eliminating the stack opacity limit, and selecting relatively low-cost repeat testing and monitoring provisions. In addition, certain plants operating at small capacities were exempted from subpart OOO due to economic considerations when the standards were originally developed. These proposed revisions to subpart OOO do not affect these exempted small plants; that is, they continue to be exempted from the standards.

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 (UMRA) of 1995, 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 to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially

affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed action 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. As discussed earlier in this preamble, the estimated expenditures for the private sector in the fifth year after promulgation are \$630 thousand. Thus, this proposed action is not subject to the requirements of section 202 and 205 of the UMRA. EPA has determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed action contains no requirements that apply to such governments, imposes no obligations upon them, and would not result in expenditures by them of \$100 million or more in any one year or any disproportionate impacts on them. Therefore, this proposed action is not subject to the requirements of 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 action 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. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to this proposed action.

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 action from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule imposes requirements on owners and operators of specified industrial facilities and not tribal governments. Thus, Executive Order 13175 does not apply to this proposed action. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

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

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards 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 (VCS).

This proposed rulemaking involves technical standards. EPA proposes to use EPA Methods 5, 5I, 9, 17, and 22, of 40 CFR 60, Appendix A. The Agency conducted a search to identify potentially applicable voluntary consensus standards. We identified no standards for Methods 9 and 22, and none were brought to our attention in comments from stakeholders during this proposed rule development. While the Agency identified five VCS as being potentially applicable to EPA Methods 5, 5I, or 17, we do not propose to use these standards in this proposed rulemaking. The use of these VCS would be impractical for the purposes of this proposed rule. See the docket for this proposed rule for the reasons for these determinations for the standards.

EPA welcomes comments on this aspect of this 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.

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

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

EPA has determined that this proposed rule would 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. This proposed rule would reduce emissions of PM from all new, reconstructed, or modified affected facilities at NMPP, decreasing the amount of such emissions to which all affected populations are exposed.

List of Subjects in 40 CFR Part 60

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

Dated: April 16, 2008.

Stephen L. Johnson,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is proposed to be 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 000—[Amended]

2. Revise subpart 000 to read as follows:

Subpart 000—Standards of Performance for Nonmetallic Mineral Processing Plants

Sec.

- 60.670 Applicability and designation of affected facility.
- 60.671 Definitions.
- 60.672 Standard for particulate matter (PM).
- 60.673 Reconstruction.
- 60.674 Monitoring of operations.
- 60.675 Test methods and procedures.
- 60.676 Reporting and recordkeeping.

Tables to Subpart 000 of Part 60

- Table 1 to Subpart 000—Exceptions to Applicability of Subpart A to Subpart 000
- Table 2 to Subpart 000—Stack emission limits for affected facilities with capture systems
- Table 3 to Subpart 000—Fugitive emission limits for affected facilities without capture systems

Subpart 000—Standards of Performance for Nonmetallic Mineral Processing Plants

§ 60.670 Applicability and designation of affected facility.

(a)(1) Except as provided in paragraphs (a)(2), (b), (c), and (d) of this section, the provisions of this subpart are applicable to the following affected facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station. Also, crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including, the first storage silo or bin are subject to the provisions of this subpart.

(2) The provisions of this subpart do not apply to the following operations: All facilities located in underground mines; plants without crushers or grinding mills; and wet material processing operations (as defined in § 60.671).

(b) An affected facility that is subject to the provisions of subpart F or I of this part or that follows in the plant process any facility subject to the provisions of subparts F or I of this part is not subject to the provisions of this subpart.

(c) Facilities at the following plants are not subject to the provisions of this subpart:

(1) Fixed sand and gravel plants and crushed stone plants with capacities, as defined in § 60.671, of 23 megagrams per hour (25 tons per hour) or less;

(2) Portable sand and gravel plants and crushed stone plants with capacities, as defined in § 60.671, of 136 megagrams per hour (150 tons per hour) or less; and

(3) Common clay plants and pumice plants with capacities, as defined in § 60.671, of 9 megagrams per hour (10 tons per hour) or less.

(d)(1) When an existing facility is replaced by a piece of equipment of equal or smaller size, as defined in § 60.671, having the same function as the existing facility, and there is no increase in the amount of emissions, the new facility is exempt from the provisions of §§ 60.672, 60.674, and 60.675 except as provided for in paragraph (d)(3) of this section.

(2) An owner or operator complying with paragraph (d)(1) of this section shall submit the information required in § 60.676(a).

(3) An owner or operator replacing all existing facilities in a production line

with new facilities does not qualify for the exemption described in paragraph (d)(1) of this section and must comply with the provisions of §§ 60.672, 60.674 and 60.675.

(e) An affected facility under paragraph (a) of this section that commences construction, reconstruction, or modification after August 31, 1983 is subject to the requirements of this part.

(f) Table 1 of this subpart specifies the provisions of subpart A of this part 60 that do not apply to owners and operators of affected facilities subject to this subpart or that apply with certain exceptions.

§ 60.671 Definitions.

All terms used in this subpart, but not specifically defined in this section, shall have the meaning given them in the Act and in subpart A of this part.

Bagging operation means the mechanical process by which bags are filled with nonmetallic minerals.

Belt conveyor means a conveying device that transports material from one location to another by means of an endless belt that is carried on a series of idlers and routed around a pulley at each end.

Bucket elevator means a conveying device of nonmetallic minerals consisting of a head and foot assembly which supports and drives an endless single or double strand chain or belt to which buckets are attached.

Building means any frame structure with a roof.

Capacity means the cumulative rated capacity of all initial crushers that are part of the plant.

Capture system means the equipment (including enclosures, hoods, ducts, fans, dampers, etc.) used to capture and transport particulate matter generated by one or more process operations to a control device.

Control device means the air pollution control equipment used to reduce particulate matter emissions released to the atmosphere from one or more process operations at a nonmetallic mineral processing plant.

Conveying system means a device for transporting materials from one piece of equipment or location to another location within a plant. Conveying systems include but are not limited to the following: Feeders, belt conveyors, bucket elevators and pneumatic systems.

Crush or Crushing means to reduce the size of nonmetallic mineral material by means of physical impaction of the crusher or grinding mill upon the material.

Crusher means a machine used to crush any nonmetallic minerals, and

includes, but is not limited to, the following types: jaw, gyratory, cone, roll, rod mill, hammermill, and impactor.

Enclosed truck or railcar loading station means that portion of a nonmetallic mineral processing plant where nonmetallic minerals are loaded by an enclosed conveying system into enclosed trucks or railcars.

Fixed plant means any nonmetallic mineral processing plant at which the processing equipment specified in § 60.670(a) is attached by a cable, chain, turnbuckle, bolt or other means (except electrical connections) to any anchor, slab, or structure including bedrock.

Fugitive emission means particulate matter that is not collected by a capture system and is released to the atmosphere at the point of generation.

Grinding mill means a machine used for the wet or dry fine crushing of any nonmetallic mineral. Grinding mills include, but are not limited to, the following types: hammer, roller, rod, pebble and ball, and fluid energy. The grinding mill includes the air conveying system, air separator, or air classifier, where such systems are used.

Initial crusher means any crusher into which nonmetallic minerals can be fed without prior crushing in the plant.

Nonmetallic mineral means any of the following minerals or any mixture of which the majority is any of the following minerals:

(1) Crushed and Broken Stone, including Limestone, Dolomite, Granite, Traprock, Sandstone, Quartz, Quartzite, Marl, Marble, Slate, Shale, Oil Shale, and Shell.

(2) Sand and Gravel.

(3) Clay including Kaolin, Fireclay, Bentonite, Fuller's Earth, Ball Clay, and Common Clay.

(4) Rock Salt.

(5) Gypsum.

(6) Sodium Compounds, including Sodium Carbonate, Sodium Chloride, and Sodium Sulfate.

(7) Pumice.

(8) Gilsonite.

(9) Talc and Pyrophyllite.

(10) Boron, including Borax, Kernite, and Colemanite.

(11) Barite.

(12) Fluorospar.

(13) Feldspar.

(14) Diatomite.

(15) Perlite.

(16) Vermiculite.

(17) Mica.

(18) Kyanite, including Andalusite, Sillimanite, Topaz, and Dumortierite.

Nonmetallic mineral processing plant means any combination of equipment that is used to crush or grind any nonmetallic mineral wherever located,

including lime plants, power plants, steel mills, asphalt concrete plants, portland cement plants, or any other facility processing nonmetallic minerals except as provided in § 60.670(b) and (c).

Portable plant means any nonmetallic mineral processing plant that is mounted on any chassis or skids and may be moved by the application of a lifting or pulling force. In addition, there shall be no cable, chain, turnbuckle, bolt or other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor, slab, or structure, including bedrock that must be removed prior to the application of a lifting or pulling force for the purpose of transporting the unit.

Production line means all affected facilities (crushers, grinding mills, screening operations, bucket elevators, belt conveyors, bagging operations, storage bins, and enclosed truck and railcar loading stations) which are directly connected or are connected together by a conveying system.

Saturated material means, for purposes of this subpart, mineral material with sufficient surface moisture such that particulate matter emissions are not generated from processing of the material through screening operations, bucket elevators and belt conveyors. Material that is wetted solely by wet suppression systems is not considered to be "saturated" for purposes of this definition.

Seasonal shut down means shut down of an affected facility for a period of at least 45 consecutive days due to seasonal market conditions.

Screening operation means a device for separating material according to size by passing undersize material through one or more mesh surfaces (screens) in series, and retaining oversize material on the mesh surfaces (screens). Grizzly feeders associated with truck dumping and static (non-moving) grizzlies used anywhere in the nonmetallic mineral processing plant are not considered to be screening operations.

Size means the rated capacity in tons per hour of a crusher, grinding mill, bucket elevator, bagging operation, or enclosed truck or railcar loading station; the total surface area of the top screen of a screening operation; the width of a conveyor belt; and the rated capacity in tons of a storage bin.

Stack emission means the particulate matter that is released to the atmosphere from a capture system.

Storage bin means a facility for storage (including surge bins) or nonmetallic minerals prior to further processing or loading.

Transfer point means a point in a conveying operation where the nonmetallic mineral is transferred to or from a belt conveyor except where the nonmetallic mineral is being transferred to a stockpile.

Truck dumping means the unloading of nonmetallic minerals from movable vehicles designed to transport nonmetallic minerals from one location to another. Movable vehicles include but are not limited to: trucks, front end loaders, skip hoists, and railcars.

Vent means an opening through which there is mechanically induced air flow for the purpose of exhausting from a building air carrying particulate matter emissions from one or more affected facilities.

Wet material processing operation(s) means any of the following:

(1) Wet screening operations (as defined in this section) and subsequent screening operations, bucket elevators and belt conveyors in the production line that process saturated materials (as defined in this section) up to the first crusher, grinding mill or storage bin in the production line; or

(2) Screening operations, bucket elevators and belt conveyors in the production line downstream of wet mining operations (as defined in this section) that process saturated materials (as defined in this section) up to the first crusher, grinding mill or storage bin in the production line.

Wet mining operation means a mining or dredging operation designed and operated to extract any nonmetallic mineral regulated under this subpart from deposits existing at or below the water table, where the nonmetallic mineral is saturated with water.

Wet screening operation means a screening operation at a nonmetallic mineral processing plant which removes unwanted material or which separates marketable fines from the product by a washing process which is designed and operated at all times such that the product is saturated with water.

§ 60.672 Standard for particulate matter (PM).

(a) You must meet the stack emission limits and compliance requirements in Table 2 of this subpart within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup as required under § 60.8. The requirements in Table 2 apply for affected facilities with capture systems.

(b) You must meet the fugitive emission limits and compliance requirements in Table 3 of this subpart within 60 days after achieving the

maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup as required under § 60.11. The requirements in Table 3 apply for fugitive emissions from affected facilities without capture systems.

(c) [RESERVED]

(d) Truck dumping of nonmetallic minerals into any screening operation, feed hopper, or crusher is exempt from the requirements of this section.

(e) If any transfer point on a conveyor belt or any other affected facility is enclosed in a building, then each enclosed affected facility must comply with the emission limits in paragraphs (a) and (b) of this section, or the building enclosing the affected facility or facilities must comply with the following emission limits:

(1) Fugitive emissions from the building openings (except for vents as defined in § 60.671) must not exceed 7 percent opacity; and

(2) Vents (as defined in § 60.671) in the building must meet the applicable stack emission limits and compliance requirements in Table 2 of this subpart.

(f) Any baghouse that controls emissions from only an individual, enclosed storage bin is exempt from the applicable stack PM concentration limit (and associated performance testing) in Table 2 of this subpart but must meet the applicable stack opacity limit and compliance requirements in Table 2 of this subpart. Owners or operators of multiple storage bins with combined stack emissions must meet both the applicable PM concentration and opacity limits (and associated compliance requirements) in Table 2 of this subpart.

§ 60.673 Reconstruction.

(a) The cost of replacement of ore-contact surfaces on processing equipment shall not be considered in calculating either the "fixed capital cost of the new components" or the "fixed capital cost that would be required to construct a comparable new facility" under § 60.15. Ore-contact surfaces are crushing surfaces; screen meshes, bars, and plates; conveyor belts; and elevator buckets.

(b) Under § 60.15, the "fixed capital cost of the new components" includes the fixed capital cost of all depreciable components (except components specified in paragraph (a) of this section) which are or will be replaced pursuant to all continuous programs of component replacement commenced within any 2-year period following August 31, 1983.

§ 60.674 Monitoring of operations.

(a) The owner or operator of any affected facility subject to the provisions of this subpart which uses a wet scrubber to control emissions shall install, calibrate, maintain and operate the following monitoring devices:

(1) A device for the continuous measurement of the pressure loss of the gas stream through the scrubber. The monitoring device must be certified by the manufacturer to be accurate within ± 250 pascals ± 1 inch water gauge pressure and must be calibrated on an annual basis in accordance with manufacturer's instructions.

(2) A device for the continuous measurement of the scrubbing liquid flow rate to the wet scrubber. The monitoring device must be certified by the manufacturer to be accurate within ± 5 percent of design scrubbing liquid flow rate and must be calibrated on an annual basis in accordance with manufacturer's instructions.

(b) The owner or operator of any affected facility installed after April 22, 2008 that uses wet suppression to control emissions from an affected facility must perform monthly periodic inspections to check that water is flowing to discharge spray nozzles in the wet suppression system. You must initiate corrective action within 24 hours if you find that water is not flowing properly during an inspection of the water spray nozzles. You must record each inspection of the water spray nozzles, including the date of each inspection and any corrective actions taken, in the logbook required under § 60.676(b).

(c) Except as specified in paragraph (d) of this section, the owner or operator of any affected facility installed after April 22, 2008 that uses a baghouse to control emissions must conduct a quarterly 30-minute visible emissions inspection using EPA Method 22 (40 CFR part 60, Appendix A-7). The Method 22 (40 CFR part 60, Appendix A-7) test shall be conducted while the baghouse is operating. The test is successful if no visible emissions are observed. If any visible emissions are observed, you must initiate corrective action within 24 hours to return the baghouse to normal operation. You must record each Method 22 (40 CFR part 60, Appendix A-7) test, including the date and any corrective actions taken, in the logbook required under § 60.676(b). If necessary, you may establish a different baghouse-specific success level for the visible emissions test (other than no visible emissions) by conducting a PM performance test according to § 60.675(b) simultaneously with a Method 22 (40 CFR part 60, Appendix

A-7) test to determine what constitutes normal visible emissions from your baghouse when it is in compliance with the applicable PM concentration limit in Table 2 of this subpart. The revised visible emissions success level must be incorporated into your permit.

(d) As an alternative to the periodic Method 22 (40 CFR part 60, Appendix A-7) visible emissions inspections specified in paragraph (c) of this section, the owner or operator of any affected facility installed after April 22, 2008 that uses a baghouse to control emissions may use a bag leak detection system. You must install, operate, and maintain the bag leak detection system according to paragraphs (d)(1) through (3) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (d)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per dry standard cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (d)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (d)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (d)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (d)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (d)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (d)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective fabric filter compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the PM emissions.

§ 60.675 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use as reference methods and procedures the test methods in appendices A-1 through A-7 of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b). Acceptable alternative methods and procedures are given in paragraph (e) of this section.

(b) The owner or operator shall determine compliance with the PM standards in § 60.672(a) as follows:

(1) Except as specified in paragraphs (e)(3) and (4) of this section, Method 5 of Appendix A-3 of this part or Method 17 of Appendix A-6 of this part shall be used to determine the particulate matter concentration. The sample volume shall be at least 1.70 dscm (60 dscf). For Method 5 (40 CFR part 60, Appendix A-3), if the gas stream being sampled is at ambient temperature, the sampling probe and filter may be operated without heaters. If the gas stream is above ambient temperature, the sampling probe and filter may be operated at a temperature high enough, but no higher than 121 °C (250 °F), to prevent water condensation on the filter.

(2) Method 9 of Appendix A-4 of this part and the procedures in § 60.11 shall be used to determine opacity.

(c)(1) In determining compliance with the particulate matter standards in § 60.672(b) or § 60.672(e)(1), the owner or operator shall use Method 9 of Appendix A-4 of this part and the procedures in § 60.11, with the following additions:

(i) The minimum distance between the observer and the emission source shall be 4.57 meters (15 feet).

(ii) The observer shall, when possible, select a position that minimizes interference from other fugitive emission sources (e.g., road dust). The required observer position relative to the sun (Method 9 of Appendix A-4 of this part, Section 2.1) must be followed.

(iii) For affected facilities using wet dust suppression for particulate matter control, a visible mist is sometimes generated by the spray. The water mist must not be confused with particulate matter emissions and is not to be considered a visible emission. When a water mist of this nature is present, the observation of emissions is to be made

at a point in the plume where the mist is no longer visible.

(2)(i) In determining compliance with the opacity of stack emissions from any baghouse that controls emissions only from an individual enclosed storage bin under § 60.672(f) of this subpart, using Method 9 (40 CFR part 60, Appendix A–4), the duration of the Method 9 (40 CFR part 60, Appendix A–4) observations shall be 1 hour (ten 6-minute averages).

(ii) The duration of the Method 9 (40 CFR part 60, Appendix A–4) observations may be reduced to the duration the affected facility operates (but not less than 30 minutes) for baghouses that control storage bins or enclosed truck or railcar loading stations that operate for less than 1 hour at a time.

(3) When determining compliance with the fugitive emissions standard for any affected facility described under § 60.672(b) or § 60.672(e)(1) of this subpart, the duration of the Method 9 (40 CFR part 60, Appendix A–4) observations must be 30 minutes (five 6-minute averages). Compliance with the applicable fugitive emission limits in Table 3 of this subpart must be based on the average of the five 6-minute averages.

(d) To demonstrate compliance with the fugitive emission limits for buildings specified in § 60.672(e)(1), you must complete the testing specified in paragraph (d)(1) and (2) of this section. Performance tests must be conducted while all affected facilities inside the building are operating.

(1) If your building encloses any affected facility that commences construction, modification, or reconstruction on or after April 22, 2008, you must conduct an initial Method 9 (40 CFR part 60, Appendix A–4) performance test according to this section and § 60.11. You must conduct a repeat Method 9 (40 CFR part 60, Appendix A–4) performance test to demonstrate compliance with the opacity limit within 5 years from the previous performance test.

(2) If your building encloses only affected facilities that commenced construction, modification, or reconstruction before April 22, 2008 and you have previously conducted an initial Method 9 (40 CFR part 60, Appendix A–7) performance test showing zero visible emissions, then you have demonstrated compliance with the opacity limit in § 60.672(e)(1). If you have not conducted an initial performance test for your building before April 22, 2008, then you must conduct an initial Method 9 (40 CFR part 60, Appendix A–4) performance test according to this section and § 60.11

to show compliance with the opacity limit in § 60.672(e)(1).

(e) The owner or operator may use the following as alternatives to the reference methods and procedures specified in this section:

(1) For the method and procedure of paragraph (c) of this section, if emissions from two or more facilities continuously interfere so that the opacity of fugitive emissions from an individual affected facility cannot be read, either of the following procedures may be used:

(i) Use for the combined emissions stream the highest fugitive opacity standard applicable to any of the individual affected facilities contributing to the emissions stream.

(ii) Separate the emissions so that the opacity of emissions from each affected facility can be read.

(2) A single visible emission observer may conduct visible emission observations for up to three fugitive, stack, or vent emission points within a 15-second interval if the following conditions are met:

(i) No more than three emission points may be read concurrently.

(ii) All three emission points must be within a 70 degree viewing sector or angle in front of the observer such that the proper sun position can be maintained for all three points.

(iii) If an opacity reading for any one of the three emission points is within 5 percent opacity from the applicable standard (excluding readings of zero opacity), then the observer must stop taking readings for the other two points and continue reading just that single point.

(3) Method 5I of Appendix A–3 of this part may be used to determine the PM concentration as an alternative to the methods specified in paragraph (b)(1) of this section. Method 5I (40 CFR part 60, Appendix A–3) may be useful for affected facilities that operate for less than 1 hour at a time such as (but not limited to) storage bins or enclosed truck or railcar loading stations.

(4) In some cases, velocities of exhaust gases from building vents may be too low to measure accurately with the type S pitot tube specified in EPA Method 2 of Appendix A–1 of this part [i.e., velocity head <1.3 mm H₂O (0.05 in. H₂O)] and referred to in EPA Method 5 of Appendix A–3 of this part. For these conditions, you may determine the average gas flow rate produced by the power fans (e.g., from vendor-supplied fan curves) to the building vent. You may calculate the average gas velocity at the building vent measurement site using Equation 1 of this section and use this average

velocity in determining and maintaining isokinetic sampling rates.

$$v_c = \frac{Q_f}{A_c} \quad (\text{Eq. 1})$$

Where:

v_c = average building vent velocity (feet per minute)

Q_f = average fan flow rate (cubic feet per minute)

A_c = area of building vent and measurement location (square feet)

(f) To comply with § 60.676(d), the owner or operator shall record the measurements as required in § 60.676(c) using the monitoring devices in § 60.674(a)(1) and (2) during each particulate matter run and shall determine the averages.

(g) For performance tests involving only Method 9 (40 CFR part 60 Appendix A–4) testing, you may reduce the 30-day advance notification of performance test in § 60.7(a)(6) and 60.8(d) to a 7-day advance notification.

(h) [Reserved]

(i) If the initial performance test date for an affected facility falls during a seasonal shut down (as defined in § 60.671 of this subpart) of the affected facility, then with approval from your permitting authority, you may postpone the initial performance test until no later than 60 calendar days after resuming operation of the affected facility.

§ 60.676 Reporting and recordkeeping.

(a) Each owner or operator seeking to comply with § 60.670(d) shall submit to the Administrator the following information about the existing facility being replaced and the replacement piece of equipment.

(1) For a crusher, grinding mill, bucket elevator, bagging operation, or enclosed truck or railcar loading station:

(i) The rated capacity in megagrams or tons per hour of the existing facility being replaced and

(ii) The rated capacity in tons per hour of the replacement equipment.

(2) For a screening operation:

(i) The total surface area of the top screen of the existing screening operation being replaced and

(ii) The total surface area of the top screen of the replacement screening operation.

(3) For a conveyor belt:

(i) The width of the existing belt being replaced and

(ii) The width of the replacement conveyor belt.

(4) For a storage bin:

(i) The rated capacity in megagrams or tons of the existing storage bin being replaced and

(ii) The rated capacity in megagrams or tons of replacement storage bins.

(b)(1) Affected facilities (as defined in §§ 60.670 and 60.671) installed after April 22, 2008 must record each periodic inspection required under § 60.674(b) or (c), including dates and any corrective actions taken, in a logbook (in written or electronic format). You must keep the logbook onsite and make the logbook available to the Administrator upon request.

(2) For each bag leak detection system installed and operated according to § 60.674(d), you must keep the records specified in paragraphs (b)(2)(i) through (iii) of this section.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the alarm was alleviated within 3 hours of the alarm.

(c) During the initial performance test of a wet scrubber, and daily thereafter, the owner or operator shall record the measurements of both the change in pressure of the gas stream across the scrubber and the scrubbing liquid flow rate.

(d) After the initial performance test of a wet scrubber, the owner or operator shall submit semiannual reports to the Administrator of occurrences when the measurements of the scrubber pressure loss and liquid flow rate decrease by more than 30 percent from the average determined during the most recent performance test.

(e) The reports required under paragraph (d) of this section shall be postmarked within 30 days following end of the second and fourth calendar quarters.

(f) The owner or operator of any affected facility shall submit written reports of the results of all performance tests conducted to demonstrate compliance with the standards set forth in § 60.672 of this subpart, including reports of opacity observations made using Method 9 (40 CFR part 60, Appendix A-4) to demonstrate compliance with § 60.672(b), (e) and (f).

(g) The owner or operator of any wet material processing operation that processes saturated and subsequently processes unsaturated materials, shall submit a report of this change within 30 days following such change. This screening operation, bucket elevator, or belt conveyor is then subject to the applicable opacity limit in § 60.672(b) and the emission test requirements of § 60.11.

(h) The subpart A requirement under § 60.7(a)(1) for notification of the date construction or reconstruction commenced is waived for affected facilities under this subpart.

(i) A notification of the actual date of initial startup of each affected facility shall be submitted to the Administrator.

(1) For a combination of affected facilities in a production line that begin actual initial startup on the same day, a single notification of startup may be submitted by the owner or operator to the Administrator. The notification shall be postmarked within 15 days after such date and shall include a description of each affected facility, equipment manufacturer, and serial number of the equipment, if available.

(2) For portable aggregate processing plants, the notification of the actual date of initial startup shall include both the home office and the current address or location of the portable plant.

(j) The requirements of this section remain in force until and unless the Agency, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected facilities within the State will be relieved of the obligation to comply with the reporting requirements of this section, provided that they comply with requirements established by the State.

(k) Notifications and reports required under this subpart and under subpart A of this part to demonstrate compliance with this subpart need only to be sent to the EPA Region or the State which has been delegated authority according to § 60.4(b).

TABLE 1 TO SUBPART 000.—EXCEPTIONS TO APPLICABILITY OF SUBPART A TO SUBPART 000

Subpart A reference	Applies to subpart 000	Comment
60.4, Address	Yes	Except in § 60.4 (a) and (b) submittals need not be submitted to both the EPA Region and delegated State authority (§ 60.676(k)).
60.7, Notification and recordkeeping	Yes	Except in (a)(1) notification of the date construction or reconstruction commenced (§ 60.676(h)). Also, except in (a)(6) performance tests involving only Method 9 (40 CFR part 60, Appendix A-4) require a 7-day advance notification instead of 30 days (§ 60.675(g)).
60.8, Performance tests	Yes	Except in (d) performance tests involving only Method 9 (40 CFR part 60, Appendix A-4) require a 7-day advance notification instead of 30 days (§ 60.675(g)).
60.11, Compliance with standards and maintenance requirements.	Yes	Except in (b) under certain conditions (§§ 60.675(c)), Method 9 (40 CFR part 60, Appendix A-4) observation is reduced from 3 hours to 30 minutes for fugitive affected facilities.
60.18, General control device	No	Flares will not be used to comply with the emission limits.

TABLE 2 TO SUBPART OOO.—STACK EMISSION LIMITS FOR AFFECTED FACILITIES WITH CAPTURE SYSTEMS

For . . .	You must meet a PM limit of . . .	And you must meet an opacity limit of . . . ,	You must demonstrate compliance with these limits by conducting . . .
Affected facilities (as defined in §§ 60.670 and 60.671) that commence construction, reconstruction, or modification after August 31, 1983 but before April 22, 2008.	0.05 g/dscm (0.022 gr/dscf) ^a	7 percent for dry control devices ^b	An initial performance test according to § 60.8 of this part and § 60.675 of this subpart; and Monitoring of wet scrubber parameters according to § 60.674(a) and § 60.676 (c), (d), and (e).
Affected facilities (as defined in §§ 60.670 and 60.671) that commence construction, reconstruction, or modification on or after April 22, 2008.	0.032 g/dscm (0.014 gr/dscf) ^a	Not applicable (except for individual enclosed storage bins); 7 percent for dry control devices on individual enclosed storage bins;.	An initial performance test according to § 60.8 of this part and § 60.675 of this subpart; and Monitoring of wet scrubber parameters according to § 60.674(a) and § 60.676(c), (d), and (e); and Monitoring of baghouses according to § 60.674(c) or (d) and § 60.676(b).

^a Exceptions to the PM limit apply for individual enclosed storage bins and other equipment. See § 60.672 (d) through (h).
^b The stack opacity limit and associated opacity testing requirements do not apply for affected facilities using wet scrubbers.

TABLE 3 TO SUBPART OOO.—FUGITIVE EMISSION LIMITS FOR AFFECTED FACILITIES WITHOUT CAPTURE SYSTEMS

For . . .	You must meet the following fugitive emissions limit for grinding mills, screening operations, bucket elevators, transfer points on belt conveyors, bagging operations, storage bins, and enclosed truck or railcar loading stations . . .	You must meet the following fugitive emissions limit for crushers . . .	You must demonstrate compliance with these limits by conducting . . .
Affected facilities (as defined in §§ 60.670 and 60.671) that commence construction, reconstruction, or modification after August 31, 1983 but before April 22, 2008.	10 percent opacity	15 percent opacity	An initial performance test according to § 60.11 of this part and § 60.675 of this subpart.
Affected facilities (as defined in §§ 60.670 and 60.671) that commence construction, reconstruction, or modification on or after April 22, 2008.	7 percent opacity	12 percent opacity	An initial performance test according to § 60.11 of this part and § 60.675 of this subpart; and Periodic inspections of water sprays according to § 60.674(b) and § 60.676(b); and A repeat performance test within 5 years from the previous performance test for fugitive affected facilities without water sprays according to § 60.11 of this part and § 60.675 of this subpart.

Subpart UUU—[Amended]

3. Section 60.730 is amended by revising paragraph (b) to read as follows:

§ 60.730 Applicability and designation of affected facility.

* * * * *

(b) An affected facility that is subject to the provisions of subpart LL of this part, Metallic Mineral Processing Plants, is not subject to the provisions of this subpart. Also, the following are not subject to the provisions of this subpart:

(1) The following processes and process units used at mineral processing

plants: vertical shaft kilns in the magnesium compounds industry; the chlorination-oxidation process in the titanium dioxide industry; coating kilns, mixers, and aerators in the roofing granules industry; tunnel kilns, tunnel dryers, apron dryers, and grinding equipment that also dries the process material used in any of the 17 mineral industries (as defined in § 60.731, “Mineral processing plant”); and

(2) Processes for thermal reclamation of industrial sand at metal foundries.

* * * * *

[FR Doc. E8–8677 Filed 4–21–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 224**

[Docket No. 080401502-8537-01]

RIN 0648-XG94

Endangered And Threatened Species; Endangered Status for the Cook Inlet Beluga Whale

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

ACTION: Final determination regarding petitioned action; 6-month extension.

SUMMARY: We, NMFS, are extending the date by which a final determination will be made regarding the April 20, 2007, proposed rule to list a Distinct Population Segment (DPS) of beluga whale, *Delphinapterus leucas*, found in Cook Inlet, Alaska, as endangered under the Endangered Species Act of 1973, as amended (ESA). We believe that substantial disagreement exists regarding the population trend, and that allowing an additional 6 months to obtain the 2008 abundance estimate would better inform our final determination as to whether the Cook Inlet beluga whale should be listed as endangered under the ESA.

DATES: A final determination on this listing action will be made no later than October 20, 2008.

ADDRESSES: The proposed rule, maps, and other materials relating to this proposal can be found on the NMFS Alaska Region website at <http://www.fakr.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, Alaska 99517, (907) 271-5006, fax (907) 271-3030; Kaja Brix, NMFS, (907) 586-7235, fax (907) 586-7012; or Marta Nammack, NMFS, (301)713-1401.

SUPPLEMENTARY INFORMATION:**Background**

We initiated a Status Review for the Cook Inlet beluga whale on March 24, 2006 (71 FR 14836). Subsequently, we received a petition from The Trustees for Alaska to list the Cook Inlet beluga whale as an endangered species on April 20, 2006. In response to the 2006 petition, we published a 90-day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (71 FR 44614; August 7, 2006). After completion of the Status Review, we re-affirmed that the Cook Inlet beluga whale constitutes a Distinct Population Segment under the ESA, and proposed this population be listed as an endangered species (72 FR 19854; April 20, 2007). We received public comment in response to the proposed rule, and held public hearings in Anchorage, Homer, and Soldotna, Alaska, and in Silver Spring, Maryland. We received approximately 180,000 responses to the proposed listing.

The majority of comments supported listing the Cook Inlet beluga whale as endangered under the ESA. However, several commenters, including Alaska Department of Fish and Game, questioned the sufficiency or accuracy of the available data used in the rulemaking. We have considered these comments, and we find that substantial disagreement exists over a certain aspect of the data presented in the proposed rule. In particular, there remains disagreement over the population trend of belugas in Cook Inlet, and whether the population is now demonstrating a positive response to the restrictions on subsistence harvest imposed in 1999.

Extension of Final Listing Determination

The ESA, section 4(b)(6), requires that we take one of three actions within 1 year of a proposed listing: (1) finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final

determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data.

The State of Alaska sent a letter to us outlining its disagreement with the abundance and population trend. The State's letter noted that the June 2007 count of beluga whales was the largest since 2001, indicating, in their estimation, that the population is beginning to recover from the unsustainable harvests in the early 1990s, as had been predicted by State and Federal biologists. An additional 6 months will allow us to complete an additional abundance survey in June 2008, which will provide additional information bearing on the dispute and may be sufficient to resolve it. The annual aerial survey for beluga whales in Cook Inlet will be conducted in June 2008, with the analyses that produce an annual abundance estimate that can be factored into a trend analysis expected to be completed by the end of September 2008. We will, therefore, extend the deadline for the final listing determination to allow for the collection of these data and the completion of the analysis that forms part of the trend in abundance to better inform our final decision and potentially resolve the disagreement over the scientific information upon which it will be based.

In consideration of the disagreement surrounding the population trend, we extend the timeline for the final determination for an additional 6 months (until October 20, 2008) to resolve the scientific disagreement.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 16, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E8-8689 Filed 4-21-08; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 73, No. 78

Tuesday, April 22, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 16, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Scrapie in Sheep and Goats; Interstate Movement Restrictions and Indemnity Program.

OMB Control Number: 0579-0101.

Summary Of Collection: Under the Farm Security and Rural Investment Act of 2002, Pub. L. 107-71, subtitle E, Animal Health Protection, Section 10401-10418, the Secretary of Agriculture, in order to protect the agriculture, environment, economy, and health and welfare of the people of the United States by preventing, detecting, controlling, and eradicating diseases and pests of animal, is authorized to cooperate with foreign countries, States, and other jurisdictions, or other person, to prevent and eliminate burdens on interstate commerce and foreign commerce, and to regulate effectively interstate commerce and foreign commerce. Scrapie is a progressive, degenerative and eventually fatal disease affecting the central nervous system of sheep and goats. Its control is complicated because the disease has an extremely long incubation period without clinical signs of disease, and there is no test for the disease and or known treatment. The Animal and Plant Health Inspection Service (APHIS) restricts the interstate movement of certain sheep and goats to help prevent the spread of scrapie. APHIS has regulations at 9 CFR part 54 for an indemnity program to compensate owners of sheep and goats destroyed because of scrapie.

Need and Use of the Information: APHIS will collect information using cooperative agreements; applications from owners to participate in the Scrapie Flock Certification Program; post-exposure management and monitoring plans; scrapie test records; application for indemnity payments; certificates, permits, and owner statements for the interstate movement of certain sheep and goats; application for premises identification numbers; and applications for APHIS-approved eartags, backtags, or tattoos, etc. Without this information APHIS' efforts to more aggressively prevent the spread of scrapie would be severely hindered.

Description of Respondents: Farms; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 131,911.

Frequency of Responses:

Recordkeeping; Reporting; On occasion.

Total Burden Hours: 670,455.

Animal and Plant Health Inspection Service

Title: Customer/Stakeholder Satisfaction Surveys.

OMB Control Number: 0579-NEW.

Summary of Collection: Collection and dissemination of animal health data and information is mandated by 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service (APHIS), Veterinary Services, the Bureau of Animal Industry. The collection, analysis and dissemination of livestock and poultry health information on a national basis are consistent with the APHIS mission of protecting and improving American agriculture's productivity and competitiveness. The National Animal Health Monitoring System (NAHMS) program relies heavily on producer and industry support. The NAHMS Program is committed to improving the value of studies for producers and industry, reducing the burden of these studies on respondents, and developing timely information of value to the American public. As part of this commitment, the NAHMS is seeking approval to perform customer/stakeholder satisfaction surveys for participants of NAHMS studies, user of NAHMS information as well as recipients of the U.S. Animal Health Report. Therefore, NAHMS needs to collect this type of feedback from producer and other to enhance future studies and ensure that the informational products are meeting their needs.

Need and Use of the Information: The information collected through the surveys will be analyzed and used for internal program adjustments and to tailor future NAHMS studies and reports. The potential benefit to the industry from these surveys is feedback to improve the program, laboratory services and informational products by gathering relevant and timely information and opinion on the content and method of program or service delivery.

Description of Respondents: Business or other for-profit.

Number of Respondents: 35,700.
Frequency of Responses: Reporting;
 On occasion.
Total Burden Hours: 2,471.

Ruth Brown,

*Departmental Information Collection
 Clearance Officer.*

[FR Doc. E8-8644 Filed 4-21-08; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-894]

**Certain Tissue Paper Products From
 the People's Republic of China:
 Affirmative Preliminary Determination
 of Circumvention of the Antidumping
 Duty Order and Extension of Final
 Determination**

AGENCY: Import Administration,
 International Trade Administration,
 Department of Commerce.

Preliminary Determination

We preliminarily determine that certain tissue paper products ("tissue paper") produced by Vietnam Quijiang Paper Co., Ltd. ("Quijiang") are circumventing the antidumping duty order on tissue paper from the People's Republic of China ("PRC"), as provided in section 781(b) of the Tariff Act of 1930, as amended ("the Act"). See *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 16223 (March 30, 2005) ("Order").

DATES: *Effective Date:* April 22, 2008.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482-1394.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 2006, the Seaman Paper Company of Massachusetts, Inc. ("Petitioner") requested that the Department of Commerce ("the Department") initiate a circumvention inquiry pursuant to section 781(b) of the Act, and 19 CFR 351.225(h), to determine whether imports of tissue paper from Vietnam made from PRC-origin jumbo rolls are circumventing the antidumping duty order on tissue paper from the PRC. See Petitioner's Request for a Circumvention Inquiry, (July 19, 2006) ("Circumvention Petition");

Order. Petitioner alleged that sending PRC-origin jumbo rolls of tissue paper to Vietnam for completion or assembly into tissue paper products covered by the *Order* constitutes circumvention pursuant to section 781(b) of the Act.

On July 21, 2006, Petitioner amended the Circumvention Petition to include certain business proprietary information. On August 11, 2006, Quijiang submitted comments regarding Petitioner's July 21, 2006, request for an anti-circumvention inquiry. On August 14, 2006, the Department requested that the Petitioner submit documentation referenced, but not included, in its July 21, 2006, request. On August 18, 2006, Petitioner submitted a response to the Department's August 14, 2006, request. On August 21, 2006, Petitioner submitted comments on Quijiang's August 11, 2006, submission.

On September 5, 2006, the Department initiated a circumvention inquiry on certain imports of tissue paper from Vietnam. See *Certain Tissue Paper Products from the People's Republic of China: Initiation of Circumvention Inquiry*, 71 FR 53662 (September 12, 2006) ("Initiation"). In the *Initiation* notice, the Department stated that it would focus its analysis on the significance of the production process in Vietnam by Quijiang, the company the Petitioner identified in its circumvention request.

However, in the *Initiation* notice, the Department also stated that Quijiang had admitted on the record of the first administrative review of the *Order* that it received jumbo rolls of tissue paper produced by its PRC parent company, Guilin Qifeng Paper Co., Ltd. ("Guilin Qifeng"). Guilin Qifeng is the sole owner of Quijiang. According to Quijiang, Guilin Qifeng, which is a tissue paper processor and exporter located in Guangxi, PRC, established Quijiang in June 2004. Additionally, Quijiang stated that Guilin Qifeng was the sole supplier of the PRC-origin jumbo rolls, which Quijiang converted to cut-to-length tissue paper that was exported to the United States. See Quijiang's First Questionnaire Response, (December 11, 2006) at 4-8. Accordingly, for purposes of this circumvention inquiry, the Department has focused its analysis on whether PRC-origin jumbo rolls supplied by Guilin Qifeng that were converted to cut-to-length tissue paper products by Quijiang are circumventing the *Order*, as provided in section 781(b) of the Act.

Questionnaires

On September 27, 2006, Petitioner submitted comments concerning the initial questionnaire to be issued to

Quijiang. On October 6, 2006, Cleo Inc. ("Cleo"), a U.S. importer, submitted rebuttal comments to Petitioner's September 27, 2006, submission. On October 26, 2006, Petitioner submitted surrebuttal comments to Cleo's October 6, 2006, submission.

Between November 2, 2006, and December 3, 2007, the Department issued six questionnaires to Quijiang soliciting information regarding Quijiang's tissue paper production and exports to the United States to which Quijiang responded. Between January 8, 2007, and April 3, 2008, Petitioner and Cleo submitted comments on Quijiang's questionnaire responses and whether the Department should suspend liquidation and collect cash deposits on all entries of tissue paper from Quijiang.

Surrogate Country Comments

In this case, both the country that produced the jumbo rolls and the country that produced the tissue paper products from the jumbo rolls are considered non-market economy ("NME") countries.¹ Therefore, because the production of jumbo rolls and the cut-to-length tissue paper are performed in NME countries, we used surrogate values to determine whether the value of processing performed in Vietnam represents a small portion of the value of the merchandise sold in the United States. Accordingly, pursuant to section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of factors of production ("FOPs") in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise.

On November 5, 2007, the Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC and also determined that Bangladesh, Pakistan, India, Sri Lanka, and Indonesia are countries comparable to

¹ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007); *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative*, 72 FR 13242 (March 21, 2007) ("FFF2 Final Results"). No party has challenged the designation of the PRC or Vietnam as an NME country in this investigation. Therefore, we continue to treat the PRC and Vietnam as NME countries for purposes of the preliminary determination of this circumvention inquiry.

Vietnam in terms of economic development. See Memorandum from Ron Lorentzen, Director, Office of Policy, to Alex Villanueva, Program Manager, China/NME Group, Office 9: Circumvention Inquiry of the Antidumping Duty Order of Certain Tissue Paper Products from the People's Republic of China (PRC): Request for a List of Surrogate Countries, (November 5, 2007) ("Surrogate Country List").

On November 8, 2007, the Department requested comments on the selection of a surrogate country from the interested parties in this circumvention inquiry. On November 29, 2007, Petitioner submitted surrogate country comments requesting that India be selected as the appropriate surrogate country for valuing factors of production for both the PRC and Vietnam. No other interested party commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, see "Surrogate Country" section below.

Surrogate Value Comments

On December 20, 2008, Petitioner submitted surrogate factor valuation comments. No other interested party submitted surrogate factor valuation comments. For a detailed discussion of the selection of the surrogate values, see "Calculation of Value-Added" section below.

Verification

On January 10, 2008, the Department issued the verification outline to Guilin Qifeng and Quijiang notifying them that the Department would verify Guilin Qifeng from February 19 to February 22, 2008, and would verify Quijiang from February 25 to February 27, 2008.

On February 14, 2008, Quijiang submitted a letter requesting that the Department postpone the scheduled verification by one month because neither Quijiang nor Guilin Qifeng would be prepared when verification was scheduled to commence. On February 15, 2008, Petitioner submitted a letter opposing Quijiang's request to delay the scheduled verification. On February 15, 2008, the Department notified Quijiang and Petitioner that it was not going to conduct the verification scheduled for February 19, 2008.

Extension of Determination

On June 29, 2007, August 14, 2007, and January 4, 2008, the Department extended the determination deadline of this circumvention inquiry. The preliminary determination of this circumvention inquiry is currently due April 14, 2008.

Scope of the Antidumping Duty Order

The tissue paper products subject to this order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States ("HTSUS"). Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4804.39; 4805.91.1090; 4805.91.5000; 4805.91.7000; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.²

Excluded from the scope of this order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

² On January 30, 2007, at the direction of U.S. Customs and Border Protection ("CBP"), the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

Scope of the Circumvention Inquiry

The products covered by this inquiry are jumbo rolls of tissue paper that are exported from the PRC to Vietnam where they are converted, possibly dyed and/or printed, into tissue paper products, as described above in the "Scope of the Antidumping Duty Order" section. This inquiry only covers such products that are exported to the United States by Quijiang.

Statutory Provisions Regarding Circumvention

Section 781(b) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting circumvention inquiries under section 781(b) of the Act, the Department relies upon the following criteria: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in (B) is minor or insignificant; and (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States.

The Department's questionnaires issued to Quijiang and its PRC parent company, Guilin Qifeng, were designed to elicit information for purposes of conducting both qualitative and quantitative analyses in accordance with the criteria enumerated in section 781(b) of the Act, as outlined above. This approach is consistent with our analyses in prior circumvention inquiries. See *Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608 (July 7, 2006) ("*FFF Circumvention Final*"); *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty*

Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders, 68 FR 54888 (September 19, 2003) (“*Pasta Circumvention Final*”); *Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany and the United Kingdom: Negative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 64 FR 40336 (July 26, 1999). To ascertain the value of the completed merchandise exported to the United States we requested PRC production data of jumbo rolls produced by Guilin Qifeng and Vietnam production data of the processing and packaging operations performed by Quijiang.

Statutory Analysis

(A) Whether Merchandise Sold in the United States Is of the Same Class or Kind as Other Merchandise That Is Subject to the Order

The *Order* covers cut-to-length sheets of tissue paper equal to or greater than 0.5 inches in width, with a *basis* weight not exceeding 29 grams per square meter and other specified characteristics of the scope. The merchandise subject to this inquiry is tissue paper products exported to the United States by Quijiang produced from PRC-origin jumbo rolls. The information provided by Quijiang in its questionnaire responses indicates that the tissue paper products produced from PRC-origin jumbo rolls it exported to the United States meet the written description of the products subject to the *Order*. See Quijiang’s First Questionnaire Response, (December 11, 2006) at Appendix 7. Quijiang submitted a product list showing that all the tissue paper products it produced and exported to the United States were below the basis weight of 29 grams per square meter, which is the weight that merchandise subject to the *Order* is not to exceed. See Quijiang’s Second Questionnaire Response, (April 3, 2007) at Exhibit S1–2. A review of the product list also shows that Quijiang’s tissue paper products meet other criteria identified in the *Order* such as dyed, printed, etc. Finally, we note that Quijiang has not argued that its exports of tissue paper products to the United States are not of the same class or kind of merchandise as that subject to the *Order*. Accordingly, we find that the merchandise subject to this inquiry is the same class or kind of merchandise as that subject to the *Order*.

(B) Whether Merchandise Sold in the United States Is Completed or Assembled in Another Foreign Country From Merchandise Which Is Subject to the Order or Produced in the Foreign Country That Is Subject to the Order

In this proceeding, the merchandise exported to the United States is tissue paper products processed in Vietnam from PRC-origin jumbo rolls of tissue paper. Quijiang has reported that it exported tissue paper that was processed in Vietnam using PRC-origin jumbo rolls of tissue paper as the input. See Quijiang’s First Questionnaire Response, at 6. Specifically, Quijiang stated that it imported PRC-origin jumbo rolls of tissue paper produced by its parent company, Guilin Qifeng, which were then converted, possibly dyed and/or printed, into cut-to-length tissue paper. See *id.* at 6 and Appendix 1. Additionally, Quijiang reported that it exported tissue paper that was processed in Vietnam using PRC-origin jumbo rolls between July 2004 and July 2006. See Quijiang’s Sixth Questionnaire Response, (January 4, 2008) at 22. Accordingly, we find that the merchandise subject to this circumvention inquiry was completed in Vietnam from PRC-origin jumbo rolls that were produced in the country to which this *Order* applies.

(C) Whether the Process of Assembly or Completion in the Foreign Country Is Minor or Insignificant

Section 781(b)(2) of the Act provides the criteria for determining whether the process of assembly or completion is minor or insignificant. These criteria are:

- (a) The level of investment in the foreign country;
- (b) the level of research and development in the foreign country;
- (c) the nature of the production process in the foreign country;
- (d) the extent of the production facilities in the foreign country; and
- (e) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

The Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act, H. Doc. No. 103–316, at 893 (1994), provides some guidance with respect to these criteria. It explains that no single factor listed in section 781(b)(2) of the Act will be controlling. Accordingly, it is the Department’s practice to evaluate each of the factors as they exist in the United States or foreign country depending on the particular

circumvention scenario. Therefore, the importance of any one of the factors listed under section 781(b)(2) of the Act can vary from case to case depending on the particular circumstances unique to each circumvention inquiry.

In this circumvention inquiry, we based our analysis on both qualitative and quantitative factors in determining whether the process of converting the jumbo rolls in Vietnam was minor or insignificant, in accordance with the criteria of section 781(b)(2) of the Act. This approach is consistent with our analysis in prior circumvention inquiries. See *Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 46571 (August 6, 2003) (“*Pasta Circumvention Prelim*”) (unchanged in *Pasta Circumvention Final*, 68 FR 54888).

(a) The Level of Investment in Vietnam

For purposes of this circumvention inquiry, we analyzed the level of investment in Quijiang that is associated with converting the PRC-origin jumbo rolls into finished cut-to-length tissue paper. Specifically, we reviewed the level of investment in Quijiang for the conversion process by Quijiang’s parent company, Guilin Qifeng, and Quijiang’s investment on its own behalf.

Quijiang reported that its operations in Vietnam for converting jumbo rolls into cut-to-length tissue paper are comprised of equipment sourced in three ways: (1) Assets identified as “purchase from China,” which consist of equipment that Quijiang purchased from its parent company, Guilin Qifeng; (2) assets identified as “Guilin Qifeng Investment,” which are assets that Guilin Qifeng physically moved to Quijiang but nevertheless retained ownership; and (3) assets identified as “Vietnam domestic purchase,” which are assets or equipment that Quijiang purchased in Vietnam. See Quijiang’s Second Questionnaire Response, at 7. Additionally, Quijiang identified the types of equipment and where that equipment was used in the production of cut-to-length tissue paper products, (*i.e.*, Quijiang identified what type of equipment, such as cutting machines, was used in the processing workshop where the jumbo rolls were converted). *Id.*, at Exhibit S2–5. Moreover, Quijiang stated that for the assets that were sourced in these three ways, the first method, which is identified as “purchases from China,” is Guilin Qifeng’s investment and that the second

and third method, which are identified as “purchases from China” and “Vietnamese domestic purchases,” is Quijiang’s investment. *Id.*

With respect to Guilin Qifeng’s investment in Quijiang for the conversion of the jumbo rolls, Quijiang stated that these assets were in use by Guilin Qifeng immediately prior to their physical transfer to Quijiang. *See* Quijiang’s Second Questionnaire Response, at 7. Specifically, Quijiang stated that these assets were transferred to Quijiang from Guilin Qifeng in the following manner: (1) Disassembling, packing, and loading the assets or equipment onto a truck; (2) transporting the assets or equipment across the border from China to Quijiang in Vietnam; and (3) unloading, assembling, and testing the assets or equipment. *See* Quijiang’s Sixth Questionnaire Response, at 25 and Appendix S6–29. The facts show that the vast majority of the equipment or assets that were transferred from Guilin Qifeng to Quijiang to be used in converting the PRC-origin jumbo rolls to cut-to-length tissue paper were not new assets as nearly all of this equipment had been in use by Guilin Qifeng prior to their transfer. Therefore, we find that Guilin Qifeng’s investment in Quijiang that was used for converting the PRC-origin jumbo rolls to cut-to-length tissue paper was not new investment because almost all of the assets that consist of this investment were in prior use by Guilin Qifeng. However, we will use Guilin Qifeng’s investment in Quijiang for the conversion process in determining whether Quijiang’s own investment was minor or insignificant because the assets or equipment representing Guilin Qifeng’s investment were used in the conversion process and there were some expenses incurred for moving the equipment and getting it situated in Vietnam.

We calculated the total level of investment in Quijiang for converting PRC-origin jumbo rolls into cut-length tissue paper and find that the Guilin Qifeng’s investment (*i.e.*, assets transferred from Guilin Qifeng) is significant as compared to the level of investment, (*i.e.*, purchases from China and Vietnamese domestic purchases), provided by Quijiang. *See* Memorandum to the File from Julia Hancock, Senior Case Analyst, through Alex Villanueva, Program Manager, AD/CVD Operations, Office 9: Circumvention Inquiry on Certain Tissue Paper Products from the People’s Republic of China: Proprietary Analysis of Certain Statutory Factors for Vietnam Quijiang for the Preliminary Determination, (April 14, 2008)

(“Analysis Memorandum”). Specifically, Guilin Qifeng’s overall investment in the conversion of the PRC-origin jumbo rolls accounts for approximately 75 percent of total investment whereas Quijiang’s total investment accounts for approximately only 25 percent of the total investment for equipment used in converting PRC-origin jumbo rolls.³ *Id.* Accordingly, we find that the level of investment by Quijiang for equipment used in converting the PRC-origin jumbo rolls is minor or insignificant compared to the level of investment provided by Guilin Qifeng.

(b) The Level of Research and Development (“R&D”) in Vietnam

We find that the record evidence for this circumvention inquiry demonstrates that Quijiang has not undertaken a significant level of R&D in order to process tissue paper products. In describing the level of R&D in the tissue paper industry in Vietnam, Quijiang reported that the tissue paper industry is a mature, traditional and labor intensive industry and that there is not much research and development involved in this industry. *See* Quijiang’s First Questionnaire Response, at 10. Additionally, the limited role of R&D in the tissue paper industry in Vietnam is further supported by the fact that Quijiang confirmed that it did not undertake any R&D initiatives and expenditures involved with tissue paper processing. *See* Quijiang’s Sixth Questionnaire Response, at 25. Accordingly, based on facts on the record of this circumvention inquiry and because the conversion of jumbo rolls to tissue paper products is a technically mature process, we find that R&D into the process of producing tissue paper products is not a significant factor in the Vietnamese tissue paper industry.

(c) The Nature of the Production Process in Vietnam

As discussed above, the element of the tissue paper production process performed by Quijiang in Vietnam is the conversion of the PRC-origin jumbo rolls to cut-to-length tissue paper. According to Quijiang, the entire process to produce cut-to-length tissue paper from the raw input, paper pulp, occurs in six stages. *See* Quijiang’s First Questionnaire Response, at Exhibit 1. However, according to Quijiang’s questionnaire responses, Quijiang’s conversion of the PRC-origin jumbo

rolls covers only the last two stages of the overall production process.⁴ *Id.* According to Quijiang, seasonal workers were used in the conversion of the PRC-origin jumbo rolls to cut-to-length tissue paper during the final stage of the overall production process, which is primarily a manual operation. In contrast to the production process of converting PRC-origin jumbo rolls to cut-to-length tissue, Quijiang stated that Guilin Qifeng’s production of the PRC-origin jumbo rolls involved the first four stages of the overall production process required to produce cut-to-length tissue paper.⁵ According to Quijiang, the fourth stage of the overall production process requires three shifts of workers and is labor intensive. *Id.*

Based on the above descriptions, we find that, in contrast to the first four stages of the overall production process that involved the production of jumbo rolls, which require significant equipment involved in the process and labor, the final two stages of the overall production process that involved the conversion of PRC-origin jumbo rolls are limited to cutting, dyeing, printing, and packaging/packing the cut-to-length tissue paper. Moreover, the facts on the record show that there is limited equipment and labor involved in these two stages of the production process. Accordingly, we find that the

⁴ The first of the final two stages of the overall production process that involve the conversion of the jumbo rolls involves the following: (1) Workers unrolling and re-rolling the jumbo roll during the surface coloring, decorating, or embossing process; (2) preparing the dye and dip-dyeing the jumbo rolls; (3) multi-color printing the jumbo rolls on the printing machines; and (4) cutting the jumbo rolls to length on the cutting machines. The second of the final two stages of the overall production process that involve the conversion of the jumbo rolls involves the following: (1) Counting and folding the sheets prior to packaging; (2) packaging the sheets in polyethylene bags, sealing, and labeling the bags; and (3) packing the bags of tissue paper in cartons, which are tied in plastic strip and then shipped to the customer.

⁵ The first of the first four stages of the overall production process that involve the production of the jumbo rolls is the blending stage (*i.e.*, this involves water and paper pulp being blended in a tank into a pulp mixture, which is pumped into crude stock storage). The second of the first four stages of the overall production process that involves the production of the jumbo rolls is the stock grinding stage (*i.e.*, this involves refining the crude stock by grinding the fibers into shorter lengths and then cleaning). The third of the first four stages of the overall production process that involve the production of the jumbo rolls is the stock preparation stage (*i.e.*, this involves the refined stock being pumped from a storage vat into a preparation tank where whiteners, dyes, or other fixatives may be added). The fourth of the first four stages of the overall production process that involve the production of the jumbo rolls is the paper-making stage (*i.e.*, this involves the prepared stock being moved onto a porous cylinder where the wet paper is then transferred to a second spinning cylinder and is wrapped onto and passes over a heated drum as it rotates).

³ Because this information is business proprietary, the values have been ranged by plus or minus 10 percent.

production process conducted by Quijiang in converting the PRC-origin jumbo rolls to cut-to-length tissue paper is limited and minor when compared to the production process of the jumbo rolls.

(d) The Extent of Production Facilities in Vietnam

In analyzing the extent of the production facilities, we have considered the capital equipment used in the production process, the types of employees, and whether the facilities used by Quijiang in the conversion process were permanent facilities.

Quijiang states that when it began operations in July 2004, the facility had four conversion lines and dip-dyeing machines that were used to convert PRC-origin jumbo rolls to cut-to-length tissue paper. See Quijiang's First Questionnaire Response, at 8. A review of the records of the equipment at this facility shows that the capital equipment used to convert PRC-origin jumbo rolls to cut-to-length tissue paper consisted of paper-cutting machines, electronic scales, trolleys, and bed-plate. See Quijiang's Second Questionnaire Response, at Exhibit S1-5. Additionally, Quijiang also reports that it leased two facilities to conduct the printing and packaging processes. A review of the records of the equipment at these facilities shows that the capital equipment used to print and package the cut-to-length tissue paper consisted of packaging working tables and printing machines. *Id.*, at Exhibits S1-4 and S1-5.

In comparison, Quijiang states that Guilin Qifeng produced the PRC-origin jumbo rolls at one location in Guilin, PRC. See Quijiang's Fifth Questionnaire Response, at 6. A review of Guilin Qifeng's production process shows that the capital equipment used to produce the stock for the paper mixture consisted of numerous blending lines that have stock storage, storage vats, and numerous stock preparation tanks. See Quijiang's Fourth Questionnaire Response, at Appendix S4-5. Additionally, Guilin Qifeng's production process shows that the capital equipment used to produce the jumbo roll from the paper mixture consisted of two facilities that had numerous long net machines and numerous round net machines. *Id.* The facts on the record show that the capital equipment used by Guilin Qifeng to produce the PRC-origin jumbo rolls requires sophisticated machinery, such as blending lines and long net machines. In contrast, the capital equipment used by Quijiang to convert the PRC-origin jumbo rolls to cut-to-

length tissue paper did not require sophisticated capital equipment since the machinery only consisted of paper-cutting machines, packaging tables, etc. Therefore, based on the facts on the record, we find that Quijiang has not made substantial purchases of sophisticated machinery to convert PRC-origin jumbo rolls to cut-to-length tissue paper.

With regard to the level of employees involved in the conversion of PRC-origin jumbo rolls to cut-to-length tissue paper, Quijiang reported that skilled labor is involved in the first of the final two stages of the overall production process, cutting, dyeing, and printing of the jumbo rolls, is a semi-automatic operation. However, according to Quijiang, the last of the final two stages of the overall production process for converting the PRC-origin jumbo rolls to cut-to-length tissue paper is a manual operation, which involves unskilled labor folding and packaging the tissue paper. See Quijiang's First Questionnaire Response, at 12. Additionally, Quijiang reported that the workers involved in the packaging and packing of the cut-to-length tissue paper are seasonal workers. *Id.*, at Exhibit S1-5. Moreover, according to Quijiang, there are more workers involved during the last of the final two stages. *Id.* Based on a review of the labor involved in the conversion of PRC-origin jumbo rolls to cut-to-length tissue paper, we find that most of Quijiang's labor force consists of unskilled workers that are employed on a temporary basis.

Quijiang reports that the headquarters facility, which housed the conversion lines, and the two facilities which conducted the printing and packaging, were all leased by Quijiang from other, unaffiliated parties between July 2004 and July 2006. See Quijiang's Second Questionnaire Response, at Exhibit S1-3. Because the three facilities where Quijiang converted the PRC-origin jumbo rolls to cut-to-length tissue paper were leased rather than owned, we find that Quijiang's production facilities were temporary, rather than permanent. Accordingly, based on the fact that Quijiang's capital equipment was not substantial, Quijiang's labor force primarily consisted of unskilled temporary workers, and the facilities were leased, we find that the extent of Quijiang's production facilities to convert PRC-origin jumbo rolls to cut-to-length tissue paper was minimal.

(e) Whether the Value of the Processing Performed in Vietnam Represents a Small Portion of the Value of the Merchandise Sold in the United States

In prior circumvention cases pursuant to section 781(a) and section 781(b) of the Act, where the Department must determine whether the value of processing either in the United States or in a third country is minor, we used the U.S. sales and cost of production data because the countries at issue were market economy countries. See *Pasta Circumvention Prelim*, 68 FR at 46575 (unchanged in *Pasta Circumvention Final*, 68 FR 54888); *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Affirmative Final Determination of Circumvention of Antidumping Duty Order*, 59 FR 15155, 15156 (March 31, 1994). However, in this case, both the country that produced the jumbo rolls and the country that produced the tissue paper products from the jumbo rolls are considered NME countries. Therefore, because the production of jumbo rolls and the cut-to-length tissue paper is performed in NME countries, we used surrogate values to determine whether the value of processing performed in Vietnam represents a small portion of the value of the merchandise sold in the United States.

In accordance with section 773(c)(4) of the Act, in valuing the factors of production ("FOPs"), the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The Department selected India as the surrogate country for both the PRC and Vietnam on the basis that: (1) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India. See Memorandum to the File from Julia Hancock, through Alex Villanueva, Program Manager, AD/CVD Operations, Office 9, and James C. Doyle, Director, AD/CVD Operations, Office 9: Circumvention Inquiry on Certain Tissue Paper Products from the People's Republic of China: Surrogate Country and Surrogate Values for the Preliminary Determination (April 14, 2008) ("Surrogate Country and Value Memorandum"). Thus, we have calculated the value of processing performed in Vietnam and the value of the PRC-origin jumbo rolls using surrogate prices from India. The sources

of the surrogate values we have used in this circumvention inquiry are discussed in the Surrogate Country and Value Memorandum.

To calculate the value of the PRC-origin jumbo rolls, we used publicly available Indian import prices for Harmonized Tariff Schedule (“HTS”) 4802.54.50, described as “Uncoated Paper in Rolls, under 40 grams, Tissue Paper,” as reported in the *Monthly Statistics of the Foreign Trade of India*.⁶ We calculated the surrogate value for PRC-origin jumbo rolls using monthly data for July 2004 to July 2006 because Quijiang reported that July 2006 was the last month that Guilin Qifeng produced jumbo rolls that were sold to Quijiang. See Quijiang’s Sixth Questionnaire Response, at 12 and Appendix S6–16. We converted the surrogate value into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect for July 1, 2004, to July 31, 2006, as certified by the Federal Reserve Bank. For further information, see Surrogate Country and Value Memorandum.

To calculate the value of Quijiang’s processing of the finished merchandise, we used Quijiang’s FOPs for each stage of converting PRC-origin jumbo rolls to tissue paper, *i.e.*, from the cutting of the jumbo rolls into cut-to-length sheets of tissue paper, dyeing (where appropriate), printing (where appropriate), and packaging of the final product. See Quijiang’s First Questionnaire Response, at Exhibit 1. We multiplied the reported per-unit factor consumption rates by the Indian surrogate values.⁷ In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data.

To derive the value added to the finished merchandise by Quijiang’s processing, we divided the total value of the finished merchandise (*i.e.*, sum of the surrogate value of the PRC-origin jumbo rolls and Quijiang’s value of

processing), by Quijiang’s value of processing. The value added to the finished merchandise by Quijiang’s processing is an average value of approximately 34 percent.⁸ Based on our analysis of the value added, we find that the value of the processing performed by Quijiang to convert the PRC-origin jumbo rolls to cut-to-length tissue paper does not represent a small proportion of the value of the finished merchandise sold in the United States. See Analysis Memorandum.

Summary of Analysis of Whether the Process of Assembly or Completion in the Foreign Country Is Minor or Insignificant

In sum, we preliminarily conclude that the record evidence of this circumvention inquiry supports a finding that the process or completion of the PRC-origin jumbo rolls to cut-to-length tissue paper in Vietnam is minor or insignificant. Pursuant to section 781(b)(2)(A) of the Act, we find that the level of investment by Quijiang in the equipment used to convert the PRC-origin jumbo rolls is minor compared to the level of investment provided by Guilin Qifeng. Pursuant to section 781(b)(2)(B) of the Act, we find that the absence of R&D initiatives by Quijiang in the production of tissue paper products shows that R&D is not a significant factor in the Vietnamese tissue paper industry. Pursuant to section 781(b)(2)(C) of the Act, we find that the portion of the overall production process of cut-to-length tissue paper conducted by Quijiang in converting the PRC-origin jumbo rolls to cut-to-length tissue paper is limited and minor when compared to Guilin Qifeng’s share of the overall production process in the production of the jumbo rolls. Pursuant to section 781(b)(2)(D) of the Act, we find that the extent of Quijiang’s production facilities is minor with respect to converting PRC-origin jumbo rolls to cut-to-length tissue paper because the capital equipment used by Quijiang in converting the PRC-origin jumbo rolls is not substantial in comparison to the capital equipment used by Guilin Qifeng to produce the jumbo rolls, the labor force used by Quijiang is composed primarily of unskilled workers, and Quijiang’s facilities were leased, not permanent. Finally, pursuant to section 781(b)(2)(E) of the Act, we find that value of the processing performed by Quijiang to convert the PRC-origin jumbo rolls to cut-to-length tissue paper does not

represent a small proportion of the value of the finished merchandise sold in the United States.

While the statutory factor, section 781(b)(2)(E) of the Act, is inconclusive, the information on the record regarding the four other statutory factors, sections 781(b)(2)(A),(B),(C), and (D) of the Act, shows that the processing operation to convert PRC-origin jumbo rolls to cut-to-length tissue paper in Vietnam is minor or insignificant. We have based our decision as to whether the processing operation to convert PRC-origin jumbo rolls to cut-to-length tissue paper is minor or insignificant based on the totality of the record evidence of this circumvention inquiry. Specifically, the legislative history to section 781(b) indicates that Congress intended the Department to make determinations regarding circumvention on a case-by-case basis in recognition that the facts of individual cases and the nature of specific industries vary widely. See *S. Rep. No. 103–412* (1994), at 81–82.

Although we find pursuant to section 781(b)(2)(E) of the Act, that the value of the processing performed by Quijiang to convert the PRC-origin jumbo rolls to cut-to-length tissue paper does not represent a small proportion of the value of the finished merchandise sold in the United States, the preponderance of the other record evidence, pursuant to sections 781(b)(2)(A),(B),(C), and (D) of the Act, shows that the value of the processing operation in Vietnam is minor or insignificant. Accordingly, based on a review of the record evidence, it is clear that the majority of the actual production process for cut-to-length tissue paper is concentrated in Guilin Qifeng’s production facilities in the PRC. Therefore, we find that the processing operation to convert PRC-origin jumbo rolls to cut-to-length tissue paper in Vietnam is minor or insignificant, pursuant to section 781(b)(1)(C) of the Act.

(D) Whether the Value of the Merchandise Produced in the Foreign Country to Which the Order Applies Is a Significant Portion of the Total Value of the Merchandise Exported to the United States

Under section 781(b)(1)(D) of the Act, the value of the merchandise produced in the foreign country to which the Order applies must be a significant portion of the total value of the merchandise sold in the United States in order to find circumvention. The major parts and components that consist of the total value of the cut-to-length tissue paper sold in the United States are: PRC-origin jumbo rolls, inks and dyes, and packaging materials. As

⁶ The same import prices are also available from the *World Trade Atlas* (“WTA”), published by Global Trade Information Services, Inc., which is a secondary electronic source based upon the publication *Monthly Statistics of the Foreign Trade of India. Volume II: Imports*.

⁷ As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit’s decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). Additionally, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

⁸ Because this information is business proprietary, we have ranged the values by plus or minus 10 percent.

discussed in the section of “*Whether Merchandise Sold in The United States is Completed or Assembled in Another Foreign Country From Merchandise Which Is Subject to the Order or Produced In the Foreign Country That Is Subject to the Order*,” in all instances the PRC-origin jumbo rolls are imported from Guilin Qifeng, which is located in the PRC. Additionally, the value of the PRC-origin jumbo rolls is approximately an average value of 66 percent of the total value of the finished merchandise.⁹ As discussed above, although the value of the processing conducted in Vietnam is not small, we find that the value of the PRC-origin jumbo rolls constitutes a great majority of the value of the finished merchandise. Based on our analysis, the value of the PRC-origin jumbo rolls taken as a whole constitutes a significant portion of the value of the finished product ultimately sold in the United States.

Other Factors To Consider

In making a determination whether to include merchandise assembled or completed in a foreign country within an order, section 781(b)(3) of the Act instructs us to take into account such factors as: (A) The pattern of trade, including sourcing patterns; (B) whether affiliation exists between the exporter of the merchandise and the person who uses the merchandise to assemble or complete in the foreign country the merchandise that is sold in the United States; and (C) whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) have increased since the initiation of the original investigation. Each of these factors is examined below.

(A) Pattern of Trade and Sourcing

The first factor to consider under section 781(b)(3) is changes in the pattern of trade, including changes in the sourcing patterns. To evaluate the pattern of trade in this case, we examined Quijiang’s source channel of jumbo rolls. According to Quijiang, it started sourcing PRC-origin jumbo rolls from Guilin Qifeng in July 2004 to produce tissue paper products that Quijiang exported to the United States. See Quijiang’s First Questionnaire Response, at 12. Additionally, the record of this circumvention inquiry shows that between July 2004 and July 2006, Quijiang did not purchase PRC-origin jumbo rolls from any other supplier. See *id.*, at Exhibit 11; Quijiang’s Sixth Questionnaire

Response, at 13 and Appendix S6–16. Based on the facts on the record, we find that the fact that Quijiang sourced jumbo rolls from a PRC supplier to produce tissue paper products, which were exported to the United States, supports a finding that circumvention was occurring during this period.¹⁰

We also examined the timing and quantities of Quijiang’s exports to the United States of tissue paper that were produced from PRC-origin jumbo rolls since the initiation of the LTFV investigation in March 2004. A review of Quijiang’s monthly total exports shows that from July 2004 to July 2006, Quijiang’s exports of tissue paper products produced from PRC-origin rolls to the United States consisted of the majority of Quijiang’s total monthly exports. See Quijiang’s Fifth Questionnaire Response, at Exhibit 6. These data indicate that the monthly volume of Quijiang’s exports of tissue paper products produced from PRC-origin jumbo rolls to the United States was significant subsequent to the initiation of the LTFV investigation. Additionally, we examined the timing and quantities of exports of tissue paper from the PRC to the United States between 2004 and 2006, and exports of tissue paper from Vietnam to the United States between 2004 and 2006. A review of the data shows that PRC exports of tissue paper to the United States decreased by 59.2 percent between 2004 and 2006, whereas Vietnam exports of tissue paper to the United States increased by 1739.11 percent between 2004 and 2006. See Analysis Memorandum. Accordingly, the data show that PRC exports have decreased significantly whereas Vietnamese exports have increased significantly since the initiation of the LTFV investigation. Therefore, based on the facts on the record, we find that the pattern of trade has changed since the

initiation of the LTFV investigation and the imposition of the *Order* and thus, supports a finding that circumvention has occurred.

(B) Affiliation

The second factor to consider under section 781(b)(3) of the Act is whether the manufacturer or exporter of the tissue paper is affiliated with the entity that assembles or completes the merchandise sold in the United States from the imported PRC-origin jumbo rolls. Generally, we consider circumvention to be more likely to occur when the manufacturer of the covered merchandise is related to the third country assembler and is a critical element in our evaluation of circumvention. See *Color Picture Tubes From Canada, Japan, Republic of Korea & Singapore: Negative Final Determinations of Circumvention of Antidumping Duty Orders*, 56 FR 9667 (March 7, 1991) and accompanying Issues and Decision Memorandum at Comment 8. The record evidence of this circumvention inquiry indicates that the Vietnamese assembler, Quijiang, which converted the PRC-origin jumbo rolls into tissue paper products, is a wholly-owned subsidiary of Guilin Qifeng. See Quijiang’s First Questionnaire Response, at 4. Accordingly, because Quijiang is 100 percent owned by Guilin Qifeng, we find that Quijiang and Guilin Qifeng are affiliated, pursuant to section 771(33) of the Act. Additionally, the record evidence shows that Guilin Qifeng was Quijiang’s sole supplier of PRC-origin jumbo rolls. See Quijiang’s Second Questionnaire Response, at 3. In sum, we find that the record evidence demonstrates that the relationship between Quijiang and Guilin Qifeng supports a finding that circumvention of the *Order* may have occurred during the period of investigation.

(C) Whether Imports Have Increased

The third factor to consider under section 781(b)(3) is whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) have increased since the initiation of the original investigation. Generally, we consider circumvention to be more likely when imports of jumbo rolls, the merchandise imported from the PRC, have increased into Vietnam. Because Quijiang was not established until June 2004, we reviewed Quijiang’s imports of PRC-origin jumbo rolls from July 2004, which was when it began importing PRC-origin jumbo rolls, to the issuance of the *Order*, and compared these imports to those after the issuance of the *Order*. See Quijiang’s First

¹⁰ The Department recognizes that Petitioner submitted comments on February 4, 2008, alleging that Quijiang, contrary to its own declarations, continued to import semi-completed tissue paper products from the PRC after July 2006. However, the Department finds Petitioner’s evidence in support of its allegations to be inconclusive. Accordingly, a factual finding that Quijiang was not truthful in its statements to the Department with respect to this issue is not warranted. Thus, the Department cannot conclude either as a factual matter or based upon an adverse inference resulting from Quijiang’s failure to cooperate to the best of its ability that all exports of subject merchandise by Quijiang were produced from Chinese-origin semi-finished tissue paper products. However, if the Department reaches a final determination of circumvention in this proceeding, the 2007/2008 administrative review will cover all of Quijiang’s entries as of the date of initiation of this circumvention inquiry, and the Department will further investigate the issue of origin of all covered entries in the context of such review.

⁹ Because this information is business proprietary, we have ranged the values by plus or minus 10 percent.

Questionnaire Response, at Exhibit 11. The Department finds that Quijiang's imports of PRC-origin jumbo rolls were at their highest levels in the months after the issuance of the *Order* through July 2006. *Id.*

Additionally, the Department obtained PRC export data of tissue paper products to Vietnam since 2004, which was the year that the LTFV investigation was initiated. The Department has obtained PRC export data of HTS 4802.54, which is defined as "Paper/Paperboard (Excluding Mechanical Fibers), Weighing <40 grams."¹¹ Although HTS 4802.54 does not necessarily provide export data specific to jumbo rolls, the Department finds that it is reasonable to assume that at least a portion of the data contains exports of jumbo rolls and thus, are the best available data in determining PRC exports of jumbo rolls.

In reviewing PRC exports of HTS 4802.54 between 2003 and 2006, the Department finds that PRC exports to Vietnam have steadily increased since the initiation of the LTFV investigation. See Analysis Memorandum. Specifically, the Department finds that the PRC total exports to Vietnam increased by 41.12 percent between 2003 and 2006. This increase corresponds with the initiation of the LTFV investigation and issuance of the *Order*. Accordingly, we find that both the increase in Quijiang's imports of PRC-origin jumbo rolls and the increase in PRC exports to Vietnam since the initiation of the LTFV investigation supports a finding that circumvention may have occurred.

Summary of Statutory Analysis

As discussed above, in order to make an affirmative determination of circumvention, all the elements under sections 781(b)(1) of the Act must be satisfied, taking into account the factors under section 781(b)(2). In addition, section 781(b)(3) of the Act instructs the Department to consider, in determining whether to include merchandise assembled or completed in a foreign country within the scope of an order, such factors as: Pattern of trade, affiliation, and whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) have increased after the initiation of the investigation. Pursuant to section 781(b)(1) of the Act, we find that the merchandise sold in the United States is within the same class or kind of

merchandise that is subject to the *Order* and was completed or assembled in a third country. Additionally, pursuant to section 781(b)(2), we find that the process or assembly of the PRC-origin jumbo rolls to cut-to-length tissue paper by Quijiang is minor and insignificant. Furthermore, in accordance with section 781(b)(1)(D) and 781(b)(1)(E) of the Act, we find that the value of the merchandise produced in the PRC is a significant portion of the total value of the merchandise exported to the United States and that action is appropriate to prevent evasion of the *Order*. Thus, we find affirmative evidence of circumvention in accordance with section 781(b)(1) and (2) of the Act. Moreover, we find the factors required by section 781(b)(3) of the Act indicate that there is circumvention of the *Order*. Consequently, our statutory analysis leads us to find that during the period of time examined there was circumvention of the *Order* as a result of Quijiang's conversion of the PRC-origin jumbo rolls to cut-to-length tissue paper in Vietnam, as discussed above.

Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department will direct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the PRC-wide rate, on all unliquidated entries of certain tissue paper products produced by Quijiang that were entered, or withdrawn from warehouse, for consumption from on or after September 5, 2006, the date of initiation of the circumvention inquiry, through the date of publication of the preliminary determination, with the exception described below.

After consideration of Petitioner's comments between January 8, 2007, and April 3, 2008, arguing that the Department should not allow Quijiang to certify that these entries of tissue paper products are not produced from PRC-origin jumbo rolls, the Department notes that no party on the record has contested that Quijiang itself now in Vietnam produces jumbo rolls suitable for conversion into the tissue paper products meeting the physical description of products subject to the scope of the *Order*. Given that some of Quijiang's tissue paper products may be made from Vietnamese-origin jumbo rolls, and given that the Department does not consider it appropriate to suspend liquidation of such non-subject merchandise, the Department finds it appropriate to follow precedent and permit certification as described below. See *Circumvention and Scope Inquiries of the Antidumping Duty Order on Certain Frozen Fish Fillets from the*

Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Determination of Circumvention Inquiry and Final Rescission of Scope Inquiry, 71 FR 38608 (July 7, 2006) and accompanying Issues and Decision Memorandum at Comment 3. However, in the event of a final determination of circumvention, the Department will expand the third administrative review period back to September 5, 2006, the date of initiation of this circumvention inquiry, to include all of Quijiang's entries covered by this determination. In addition, we hereby serve notice to Quijiang that such certified entries are subject to verification by the Department. The Department will examine any records Quijiang maintains in its normal course of business, or any information placed on the record, supporting or calling into question its certifications that no PRC-origin jumbo rolls were used in the production of its tissue paper products.

For all entries of certain tissue paper products produced by Quijiang that entered on or after the date of the publication of the *Initiation*, the Department will instruct CBP to allow Quijiang to certify that no PRC-origin jumbo rolls were used in the production of the certain tissue paper products. The Department will not request that CBP suspend liquidation, or require a cash deposit of estimated duties, at the PRC-wide rate, for any entries of certain tissue paper products accompanied by the certification in Appendix I in this notice. However, the Department will direct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the PRC-wide rate of 112.64 percent of any entries of certain tissue paper products not accompanied by the attached certification in Appendix I of this notice.

Notification to the International Trade Commission

The Department, consistent with section 781(e) of the Act, has notified the International Trade Commission ("ITC") of this preliminary determination to include the merchandise subject to this inquiry within the antidumping duty order on certain tissue paper products from the PRC. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 15 days to provide written advice to the Department.

¹¹ The Department has obtained PRC export data for jumbo rolls using 4802.54 because HTS 4802.54 includes exports for both finished tissue paper and jumbo rolls, which are classified under this HTS category.

Public Comment

Interested parties may submit publicly available information to value the FOPs within 15 days after the date of publication of the preliminary determination.¹² Case briefs from interested parties may be submitted no later than 40 days from the publication of this notice. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. Rebuttal briefs limited to issues raised in the initial comments may be filed no later than 45 days after the publication of this notice.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 25 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. We intend to hold a hearing, if requested, no later than 50 days after the publication of this notice.

Final Determination

The final determination with respect to this circumvention inquiry will be issued no later than ninety days from the publication of this notice, including the results of the Department's analysis of any written comments.

This affirmative preliminary circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

¹² In accordance with 19 CFR 351.301(c)(1), for the final determination of this circumvention inquiry, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Dated: April 15, 2008.

David M. Spooner,
Assistant Secretary for Import
Administration.

Attachment I

Certification of Vietnam Quijiang Paper Co., Ltd.

Certification to U.S. Customs and Border Protection

1. Vietnam Quijiang Paper Co., Ltd. ("Vietnam Quijiang") hereby certifies that the certain tissue paper products being exported and subject to this certification were not produced from Chinese origin jumbo rolls.

2. By signing this certificate, Vietnam Quijiang also hereby agrees to maintain sufficient documentation supporting the above statement such as country of origin certificates for all jumbo rolls used to process the exported certain tissue paper products. Further, Vietnam Quijiang agrees to submit to verification of the underlying documentation supporting the above statement. Vietnam Quijiang agrees that failure to submit to verification of the documentation supporting these statements will result in immediate revocation of certification rights and that Vietnam Quijiang will be required to post a cash deposit equal to the China-wide entity rate on all entries of certain tissue paper products. In addition, if the Department of Commerce identifies any misrepresentation or inconsistencies regarding the certifications, Vietnam Quijiang recognizes that the matter may be reported to the U.S. Customs and Border Protection by the Department for possible enforcement action.

Signature: _____

Printed Name: _____

Title: _____

[FR Doc. E8-8679 Filed 4-21-08; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-913]

Notice of Preliminary Negative Determination of Critical Circumstances: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
SUMMARY: The Department of Commerce (the Department) has preliminarily determined that critical circumstances do not exist with respect to imports of

certain pneumatic off-the-road (OTR) tires from the People's Republic of China (PRC).

EFFECTIVE DATE: April 22, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0780.

SUPPLEMENTARY INFORMATION:

Period of Investigation

The period for which we are measuring subsidies, or the period of investigation (P01), is calendar year 2006.

Scope of Investigation

The products covered by the scope of this investigation are new pneumatic tires designed for off-the-road (OTR) and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) Agricultural and forestry vehicles and equipment, including agricultural tractors,¹ combine harvesters,² agricultural high clearance sprayers,³ industrial tractors,⁴ log-skidders,⁵ agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;⁶ (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame

¹ Agricultural tractors are four-wheeled vehicles usually with large rear tires and small front tires that are used to tow farming equipment.

² Combine harvesters are used to harvest crops such as corn or wheat.

³ Agricultural sprayers are used to irrigate agricultural fields.

⁴ Industrial tractors are four-wheeled vehicles usually with large rear tires and small front tires that are used to tow industrial equipment.

⁵ A log skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

⁶ Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

haul trucks,⁷ front endloaders,⁸ dozers,⁹ lift trucks, straddle carriers,¹⁰ graders,¹¹ mobile cranes, compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.¹² The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. The foregoing descriptions are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (e.g., tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the petitions range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including

⁷ Haul trucks, which may be either rigid frame or articulated (i.e., able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

⁸ Front loaders have lift arms in front of the vehicle. It can scrape material from one location to another, carry material in its bucket or load material into a truck or trailer.

⁹ A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, etc., typically around construction sites. They can also be used to perform "rough grading" in road construction.

¹⁰ A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

¹¹ A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

¹² A counterbalanced lift truck is a rigid frame, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, etc.

passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope is dispositive.

Case History

This investigation was initiated on August 7, 2007. See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Initiation of Countervailing Duty Investigation*, 72 FR 44122 (August 7, 2007) (*Initiation Notice*). The preliminary determination was published on December 17, 2007. See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 71360 (December 17, 2007) (*Preliminary Determination*). On March 11, 2008, Titan Tire Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, AFL-CIO-CLC (Petitioners) alleged that critical circumstances exist with respect to imports of OTR tires from the PRC. See Petitioners' March 11, 2008 submission (*Allegation of Critical Circumstances*). On March 28, 2008, GPX/Hebei Starbright Tire Co., Ltd. (Starbright), Tianjin United Tire & Rubber International Co., Ltd. (TUTRIC), and Guizhou Tyre Co., Ltd. (Guizhou), the respondents, timely submitted data for the requested time period. Pursuant to the Department's supplementary request for their data in quantity of tires, Starbright and TUTRIC provided additional data on April 2, 2008.

Comments of the Parties

In their *Allegation of Critical Circumstances*, Petitioners contend there have been massive imports of subject tires since the filing of the petition, which have been exported by Starbright, TUTRIC, and Guizhou. Petitioners provide U.S. Customs and Border Protection Automated Manifest entry data of OTR tires for each of the three respondents. Petitioners argue that these data demonstrate that Starbright's,

TUTRIC's, and Guizhou's imports increased more than the fifteen percent required to be considered "massive" under section 351.206(h)(2) of the Department's regulations. See *Allegation of Critical Circumstances*, Attachment 1.

In addition, Petitioners allege that there is a reasonable basis to believe or suspect that alleged subsidies in this investigation are inconsistent with the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). See *Allegation of Critical Circumstances* at 5–6. With regard to the subsidy programs, Petitioners allege that a number of the subsidies under investigation are contingent on export performance or import substitution.¹³ Petitioners note that while none of these programs were found to provide a countervailable benefit in the preliminary determination, a critical circumstances determination need only be based on "alleged" countervailable subsidies (not necessarily preliminarily countervailable) that are inconsistent with the Subsidies Agreement. In addition, Petitioners argue that even if the Department only considers the preliminarily countervailed subsidies in making its preliminary critical circumstances determination, the Department still should consider their allegation in the final critical circumstances determination.¹⁴

Analysis

Section 703(e)(1) of the Tariff Act of 1930, as amended ("the Act"), provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether an alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the Department limits its critical circumstances findings to those

¹³ Specifically, Petitioners cite the foreign currency retention scheme, preferential tax policies for export-oriented FIEs, income tax refund for reinvestment of FIE profits in export-oriented enterprises, tax benefits for FIEs in encouraged industries that purchase domestic origin machinery, and VAT export rebates. In addition, with respect to the *Provision of Land for Less Than Adequate Remuneration to SOEs*, we noted in the *Preliminary Determination* that business proprietary information indicated that local authorities may have based their approval of Hebei Tire's asset sale in part on the export performance of Starbright (see Section B of the *Preliminary Determination*).

¹⁴ The final critical circumstances finding may be affirmative, even if the preliminary critical circumstances finding is negative. See section 705(a)(2) of the Act.

subsidies contingent on export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the Subsidies Agreement).¹⁵

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, the Department will not consider imports to be massive unless imports during the "relatively short period" ("comparison period") have increased by at least 15 percent compared to imports during an "immediately preceding period of comparable duration" ("base period"). See 19 CFR 351.206(h)(2).

Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding commences (*i.e.*, the date the petition is filed) and ending at least three months later. However, if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Department may consider a period of not less than three months from that earlier time. See 19 CFR 351.206(i).

In our preliminary determination, the subsidies found countervailable were not determined to be contingent on export performance or import substitution.¹⁶ See *Preliminary Determination*. Thus, pursuant to section 703(e)(1)(A) of the Act, the first requirement needed to affirmatively find critical circumstances has not been met, and the Department need not reach the issue of massive imports.

However, at the time of the preliminary determination, there were four programs for which additional information was required before the Department could make any finding

regarding their countervailability. These programs do not appear to be contingent on export performance or import substitution. However, if in the final determination the Department finds that any of these four programs, or any of the previously alleged subsidy programs, are countervailable and are contingent on export performance or import substitution, the Department will revisit the issue of massive imports as necessary.

In the event that the Department needs to determine whether there have been massive imports, we have collected the following information: (1) The evidence presented in the Petitioners' March 11, 2008 submission; (2) Respondents' monthly shipment data for November 2006 to November 2007; and (3) U.S. import data for the subject merchandise for 2004–2007, as reported by the International Trade Commission (ITC) (<http://dataweb.usitc.gov>). The ITC data relied on in this analysis do not necessarily exclude those products not falling within the scope of this proceeding (*i.e.*, OTR tires for light and medium trucks/buses or with a rim diameter equal to or exceeding 39 inches).

Conclusion

Given the analysis above, we preliminarily determine critical circumstances do not exist for imports of OTR tires from the PRC. We will make a final determination concerning critical circumstances for OTR tires from the PRC when we make our final countervailable subsidy determination in this investigation, no later than July 7, 2008.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: April 11, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

[FR Doc. E8–8433 Filed 4–21–08; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 070927542–8456–02]

Voting Equipment Evaluations Phase II

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Notice; Reopening of submission period.

SUMMARY: The National Institute of Standards and Technology (NIST), United States Department of Commerce, is reopening for 30 days the period for submitting requests and executed letters of understanding from voting equipment manufacturers. NIST is reopening this submission period based on requests received from the manufacturers for an extension of the submission period.

DATE: Submissions must be received no later than May 22, 2008. Submissions received between March 18, 2008 and the date of publication of this notice are deemed to be timely.

ADDRESSES: Requests to participate and executed letters of understanding must be submitted to Mr. Allan Eustis, Information Technology Laboratory, National Institute of Standards and Technology, Mail Stop 8970, Gaithersburg, MD 20899–8970; telephone number (301) 975–5099.

FOR FURTHER INFORMATION CONTACT: Mr. Allan Eustis, Information Technology Laboratory, National Institute of Standards and Technology, Mail Stop 2970, Gaithersburg, MD 20899–2970; telephone number (301) 975–5099.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of November 19, 2007 (72 FR 65012), NIST solicited interest in Phase II of the benchmark research for voting equipment certified or submitted for certification to the 2005 Voluntary Voting System Guidelines. Interested parties were given until March 18, 2007 to submit executed letters of understanding.

A manufacturer of voting systems submitted a written request for extension due to the current workload for all election manufacturers in the 2008 state primary season leading up to the Presidential election. There was not sufficient time to ascertain details of the Phase II research and respond to the request for an executed letter of understanding. To be responsive to these concerns, and to ensure that the voting system manufacturers have sufficient time to respond to the request, NIST is allowing submission for an additional 30 days.

¹⁵ See, e.g., *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55808, 55809 (August 30, 2002).

¹⁶ The programs preliminarily determined to provide a countervailable benefit are *Government Policy Lending, Provision of Land for Less Than Adequate Remuneration to SOEs, Tax Subsidies to FIEs in Specifically Designated Geographic Areas, Local Income Tax Exemption and Reduction Programs for "Productive" PIEs, VAT and Tariff Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries, the State Key Technologies Renovation Project Fund, and Provision of Natural and Synthetic Rubber by SOEs for Less Than Adequate Remuneration*.

Dated: April 16, 2008.

James M. Turner,

Deputy Director.

[FR Doc. E8-8681 Filed 4-21-08; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XH27

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for scientific research permits, permit modifications, and renewals.

SUMMARY: Notice is hereby given that NMFS has received 15 scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on May 22, 2008.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232-1274. Comments may also be sent via fax to 503-230-5441 or by e-mail to resapps.nwr@NOAA.gov.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503-231-2005, Fax: 503-230-5441, e-mail: Garth.Griffin@noaa.gov). Permit application instructions are available from the address above.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR), threatened upper Willamette River (UWR), endangered upper Columbia River (UCR), threatened Snake River (SR) spring/summer (spr/sum), threatened SR fall, threatened Puget Sound (PS).

Chum salmon (*O. keta*): threatened Columbia River (CR), threatened Hood Canal summer (HCS).

Steelhead (*O. mykiss*): threatened LCR, threatened UWR, threatened middle Columbia River (MCR), threatened SR, endangered UCR, threatened PS.

Coho salmon (*O. kisutch*): threatened LCR, threatened Southern Oregon Northern California Coasts (SONCC), threatened Oregon Coast (OC).

Sockeye salmon (*O. nerka*): endangered SR.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222-226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1114 – Renewal

The Washington Department of Fish and Wildlife (WDFW) is seeking to renew permit 1114 for a period of five years. The original permit was in place for five years (63 FR 20169) with three modifications (63 FR 43381, 65 FR 15314, 66 FR 38641); it expired on December 31, 2002. The next Permit 1114 was also in place for five years and expired on December 31, 2007. Under the new Permit, the WDFW would conduct a study that would annually take juvenile, endangered UCR spring Chinook salmon; and juvenile and adult endangered UCR steelhead in the State of Washington. Under this permit, the WDFW would capture juvenile UCR spring Chinook salmon and steelhead as part of a long-term, ongoing smolt monitoring program at Rock Island Dam on the Columbia River. Under the new permit (as with the old) the captured smolts would be held for as long as 24 hours and all would be anesthetized, sampled for data relating to their species, size, origin (hatchery or

natural), and examined for the presence of a coded wire tag (CWT) or passive integrated transponder (PIT) tag. Some of the captured fish would be examined for evidence of gas bubble trauma (GBT) and others would be implanted with a PIT tag. All captured fish would be allowed to recover before being released in the dam's tailrace. The WDFW also expects to capture a few downstream-migrating steelhead kelts during the course of the trapping operation. These fish would simply be anesthetized and immediately moved to the lower sections of the adult fishway where they could recover on their own and continue their migration. The WDFW does not intend to kill any of the fish being captured, but a small percentage may die as a result of the research activities.

The purpose of the research is to provide important information regarding what effects the annual mid- and upper (Columbia) river water allocation budget has on listed salmonids. The data being collected would be used to assess the effects of the water allocation plan and thereby improve smolt migration conditions (e.g., through releasing adequate amounts of upstream water during the migration period) and increase listed spring Chinook and steelhead survival rates. Another important objective of the program is to help resource managers develop the Basin-wide database for PIT-tagged salmonids and thus increase what is known about smolt migration timing and behavior in the Columbia River system.

Permit 1134 – Renewal

The Columbia River Inter-Tribal Fish Commission (CRITFC) is seeking to renew Permit 1134, under which they have been conducting research for more than ten years. The original permit was in place for five years (63 FR 30199) with one amendment (67 FR 43909); it expired on December 31, 2002. The next permit was also in place for five years expiring on December 31, 2007. The CRITFC is now requesting a new five-year permit to continue covering five study projects that, among them, would annually take adult and juvenile threatened SR fall Chinook salmon; adult and juvenile threatened SR spring/summer Chinook salmon; and adult and juvenile threatened SR steelhead in the Snake River basin. There have been some changes in the research over the last ten years and these changes are reflected in this application, nonetheless, the projects proposed are largely continuations of ongoing research. They are: Project 1 – Adult Spring/summer and Fall Chinook

Salmon and Summer Steelhead Ground and Aerial Spawning Ground Surveys; Project 2 – Cryopreservation of Spring/summer Chinook Salmon and Summer Steelhead Gametes; Project 3 – Adult Chinook Salmon Abundance Monitoring Using Video Weirs, Acoustic Imaging, and PIT tag Detectors in the South Fork Salmon River; Project 4 – Snorkel, Seine, fyke net, Minnow Trap, and Electrofishing Surveys and Collection of Juvenile Chinook Salmon and Steelhead; and Project 5 Juvenile Anadromous Salmonid Emigration Studies Using Rotary Screw Traps. Under these tasks, listed adult and juvenile salmon would be variously (a) observed/harassed during fish population and production monitoring surveys; (b) captured (using seines, trawls, traps, hook-and-line angling equipment, and electrofishing equipment) and anesthetized; (c) sampled for biological information and tissue samples, (d) PIT-tagged or tagged with other identifiers, (e) and released. The CRITFC does not intend to kill any of the fish being captured, but a small percentage may die as a result of the research activities.

The research has many purposes and would benefit listed salmon and steelhead in different ways. However, in general, the studies are part of ongoing efforts to monitor the status of listed species in the Snake River basin and to use that data to inform decisions about land- and fisheries management actions and to help prioritize and plan recovery measures for the listed species. Under the proposal, the studies would continue to benefit listed species by generating population abundance estimates, allowing comparisons to be made between naturally reproducing populations and those being supplemented with hatchery fish, and helping preserve listed salmon and steelhead genetic diversity.

Permit 1379 – Modification 1

The CRITFC is seeking to modify Permit 1379. The CRITFC is currently authorized to annually take listed salmonids (endangered UCR Chinook and steelhead; threatened MCR steelhead; threatened LCR steelhead and Chinook; threatened LCR coho; threatened SR Chinook and steelhead; and endangered SR sockeye) while conducting research designed to increase what we know about the status and productivity of various fish populations, collect data on migratory and exploitation (harvest) patterns, and develop baseline information on various population and habitat parameters in order to guide salmonid restoration strategies. The studies are: Project 1

Juvenile Upriver Bright Fall Chinook Sampling at the Hanford Reach; Project 2 Adult Chinook, Sockeye, and Coho Sampling at Bonneville Dam; and Project 3 Adult Sockeye Sampling at Tumwater Dam, Wenatchee River. They wish to modify the permit by (a) increasing the number of adult steelhead they take during the activities at Bonneville Dam, and (b) ensuring that tagging is a permitted activity during the Hanford Reach sampling. They are also asking to increase the number of SR Chinook they handle but not the number of mortalities.

The CRITFC is currently authorized to obtain fish from the adult collection facility at Bonneville Dam. The fish are anesthetized, measured, examined for marks, scale-sampled, and allowed to return to the river. They use similar techniques to sample listed fish at Tumwater Dam on the Wenatchee River. They use beach- and stick seines to capture juvenile fish in the Hanford reach of the Columbia River and are seeking express authorization to tag those fish. Under the other portions of the research, CRITFC captures and transports fish to a holding facility where they are anesthetized, examined for marks, adipose-clipped, coded wire tagged, allowed to recover, and released. The CRITFC wishes to be allowed to continue all these activities along with the modifications given above. They do not intend to kill any of the fish being captured but a small number may die as an unintended result of the activities.

Permit 1422 – Renewal

The United States Forest Service (USFS) is seeking to renew Permit 1422 for a period of five years. The permit was originally in place for five years and expired on December 31, 2007. Under Permit 1422, the USFS was previously authorized to annually take juvenile endangered UCR Chinook salmon, juvenile endangered UCR steelhead, and juvenile threatened MCR steelhead during research activities taking place at various points in the Yakima, Methow, Entiat, and Wenatchee River drainages in Washington State. They wish to continue those activities. Under the renewed permit, the fish would be captured (using minnow traps, hook-and-line angling, and electrofishing equipment), identified, and immediately released. The purpose of the research is to determine fish distribution in the subbasins listed above. The research would benefit the fish by giving land managers information they need in order to design forest management activities (e.g., timber sales, grazing plans, road building) in such a way as to conserve listed species. The USFS

does not intend to kill any of the listed fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 1465 – Renewal

The Idaho Department of Environmental Quality (IDEQ) is asking to renew Permit 1465 for a period of five years. Their current permit expires on December 31, 2008, but they wish to renew it now and modify it slightly. They are currently authorized to annually take juvenile threatened SR steelhead, threatened SR fall Chinook salmon, threatened SR spr/sum Chinook salmon, and endangered SR sockeye salmon during the course of two research projects designed to ascertain the condition of many Idaho streams and determine the degree to which they meet certain critical stream health parameters. Thus far, the fish have largely been captured using backpack electrofishing equipment (though boat electrofishing equipment has also been used), weighed and measured (some may be anesthetized to limit stress), and released. The IDEQ wishes to modify their permit by including a greater component of boat electrofishing, but the number of fish they are proposing to take would actually decrease from their currently allotted levels.

The purposes of the research are to (a) determine whether aquatic life is being properly supported in Idaho's rivers, streams and lakes, and (b) assess the overall condition of Idaho's surface waters. The fish would benefit from the research because the data it produces would be used to inform decisions about how and where to protect and improve water quality in the state. The IDEQ does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 1480 – Renewal

The United States Geological Survey (USGS) is asking to renew Permit 1480 for a period of five years. Their current permit expires on December 31, 2008, but they wish to renew it now. They are currently authorized to annually take adult and juvenile endangered UCR Chinook and steelhead in three tributaries to the Methow River in Washington State. The purpose of the research is to monitor the contribution these streams make to Chinook and steelhead production in the Methow subbasin both before and after human-made passage barriers in the streams have been removed. The research would benefit the fish by generating information on the effectiveness of such restoration actions in the area, and that

information, in turn, would be used to guide other such efforts throughout the region. The USGS proposes to capture the fish using weirs/traps and backpack electrofishing equipment anesthetize them, PIT-tag them (if they are large enough), allow them to recover, and release them. Several instream PIT-tag interrogation sites would be put into place to monitor the fish in the tributaries. In addition, tissue samples would be taken from some of the fish. The USGS does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 1560 – Renewal

The USGS is asking to renew Permit 1480 for a period of five years. Their current permit expires on December 31, 2008, but they wish to renew and slightly modify it now. Permit 1560 currently authorizes the USGS to annually take adult and juvenile threatened LCR Chinook salmon, threatened CR chum salmon, threatened MCR steelhead, and threatened LCR coho salmon in the White Salmon River, Washington, a tributary to the lower Columbia River. The USGS is seeking to continue that research. The objectives of the research are to (1) determine fish assemblage composition and fish use in the lower White Salmon River; (2) assess salmonid growth and survival as indices of productivity; (3) contribute to U.S. Fish and Wildlife Service's efforts to characterize life history, genetics, and health of Chinook stocks that currently use the lower White Salmon River; and (4) coordinate with ongoing sampling efforts associated with dam removal projects in the Elwha River system (Olympic Peninsula, Washington). The USGS would augment those objectives slightly by adding a baseline analysis for pathogens (disease) in the White River.

The study would benefit listed salmonids by providing information on the effects dam removal may have on important fish species such as Chinook, coho, steelhead, Pacific lamprey, bull trout, and sea-run cutthroat trout. The USGS proposes to conduct snorkel surveys instead of capturing fish whenever possible but they would also capture fish using backpack electrofishing equipment, traps, and angling. The researchers would then anesthetize, measure, weigh and inspect the fish for external diseases. The researchers would also clip the fins of some captured fish in order to collect genetic tissues and gauge trapping efficiency. The researchers would seek to avoid adult salmonids, but some may be handled as an unintentional result of sampling. Some LCR Chinook fry would

be sacrificed for the disease analysis, but otherwise the USGS does not intend to kill the fish being captured nonetheless, some juvenile fish may die as an unintentional result of the research activities.

Permit 1562 – Modification 1

The Oregon Department of Environmental Quality (DEQ) Laboratory and Environmental Assessment Division is asking to modify Permit 1562 a five-year research permit to take adult and juvenile UWR Chinook and steelhead; adult and juvenile LCR Chinook, coho, and steelhead; adult and juvenile CR chum; adult and juvenile MCR steelhead; adult and juvenile SR steelhead, fall-run Chinook, spring/summer-run Chinook, and sockeye; adult and juvenile OC coho; and adult and juvenile SONCC coho during the course of monitoring to evaluate the status of the chemical, habitat, and biological integrity of all perennial streams (wadeable and non-wadeable) across the United States. The monitoring would be conducted as part of the national Environmental Monitoring and Assessment Program (EMAP) which aims to advance the science of ecological monitoring and ecological risk assessment, guide national monitoring with improved scientific understanding of ecosystem integrity and dynamics, and demonstrate multi-agency monitoring through large regional projects. EMAP develops indicators to monitor the condition of ecological resources. The monitoring would benefit listed salmonids by providing data and assessments of fish habitat conditions and ecological resources to decision-makers and the public. Additionally, The DEQ would be able to make estimates of stream and river conditions across Oregon with known statistical confidences.

The DEQ proposes to capture (using backpack and/or boat electrofishing), identify, measure, and release juvenile fish. Adult fish may be encountered but would not be netted. The DEQ does not intend to kill any of the fish being captured, but a few may die as an unintended result of the activities.

Permit 10111

The Oregon State University (OSU) Department of Fisheries and Wildlife is requesting a five-year research permit to take adult and juvenile UWR Chinook and steelhead during the course of research designed to provide information on the dynamics and use of cold water refuges for anadromous salmon and other cold water species. The information would provide a more

rigorous understanding of thermal regimes in river systems and offer guidance for conservation and restoration planning, and species management. The study would benefit listed salmonids by helping determine whether the ecosystem services of cold water habitats can be quantified and incorporated into restoration and conservation programs. The OSU proposes to capture (using boat electrofishing), identify, measure, and release juvenile fish. Adult fish may be encountered but would not be netted. The OSU does not intend to kill any of the fish being captured, but a few may die as an unintended result of the activities.

Permit 10114

The Science Applications International Corporation (SAIC) is requesting a five-year research permit to take adult and juvenile PS Chinook and steelhead, and adult and juvenile HCS chum during research designed to characterize bay sediments and identify contaminated areas for future cleanup in Puget Sound, Washington. The study would ultimately benefit listed salmonids by helping minimize their exposure to contaminants during cleanup of the impacted sediments. The SAIC proposes to capture (using beach seining and otter trawling), identify, measure, enumerate, and release juvenile and adult fish. The SAIC does not intend to kill any of the fish being captured, but a few may die as an unintended result of the activities.

Permit 13374

The Bonneville Power Administration (BPA) is seeking a five-year permit to annually take juvenile MCR steelhead during the course of research designed to assess the current distribution and health of the fish in Rock Creek, Washington (a tributary to the Columbia River). The research would benefit the fish by helping managers plan recovery actions in the area particularly the Rock Creek Subbasin Recovery Planning Group. The researchers would use backpack electrofishing units to capture the fish. The fish would then be anesthetized, measured, and given PIT tags. Some of the fish would also receive fin clips for genetic sampling purposes. Another portion of the fish would be sacrificed to determine if any pathogens are present in the population. Any fish that die as an accidental result of the capturing and tagging activities would be used in place of fish that would have been lethally taken for the pathogen analysis.

Permit 13375

Forest and Channel Metrics (FCM) Inc. is seeking a two-year permit to capture and handle juvenile UCR Chinook and steelhead, LCR Chinook and steelhead, SR Chinook (spr/sum) and steelhead, PS Chinook, and LCR coho salmon while conducting headwater stream surveys over large portions of Washington State. The purpose of the research is to provide owners of industrial forest lands and the major state lands managers in Washington with accurate maps of where threatened and endangered salmonids are on their various properties. The work would benefit the salmon and steelhead by helping land managers plan and carry out their activities in ways that would have the smallest effect possible on the listed fish. The fish would be captured using backpack electrofishing equipment and released without tagging or even handling more than is necessary to ensure that they have recovered from the effects of being captured. The FCM researchers do not intend to kill any listed salmonids, but a small number may die as an unintended result of the activities.

Permit 13380

The Northwest Fisheries Science Center (NWFSC) is seeking to annually take natural juvenile SR spring/summer Chinook salmon and SR steelhead in the Salmon River subbasin, Idaho. This research was authorized for the past five years as part of Permit 1403, but the researchers determined, upon expiration of that permit in 2007, that they should seek an individual permit for their activities. The research is designed to assess three alternative methods of nutrient enhancement (Salmon carcasses, carcass analogues, and nutrient Pellets) on biological communities in Columbia River tributaries. In general, the purpose of the research is to learn how salmonids acquire nutrients from the carcasses of dead spawners and test three methods of using those nutrients to increase growth and survival among naturally produced salmonids. The research would benefit the fish by helping managers use nutrient enhancement techniques to recover listed salmonid populations. Moreover, managers would gain a broader understanding of the role marine-derived nutrients play in ecosystem health as a whole. This, in turn, would help inform management decisions and actions intended to help salmon recovery in the future.

Under the proposed research, the fish would variously be (a) captured (using

seines, nets, traps, and possibly, electrofishing equipment) and anesthetized; (b) measured, weighed and fin-clipped; (c) held for a time in enclosures in the stream from which they are captured; and (d) released. Some fish would also be intentionally killed as part of the research. It is also likely that a small percentage of the fish being captured would unintentionally be killed during the process. In addition, tissue samples would be taken from adult carcasses found on streambanks.

Permit 13381

The research proposed under this permit was authorized for the past five years as part of Permit 1406, but the researchers determined, upon expiration of that permit in 2007, that they should seek an individual permit for their activities. The NWFSC is therefore requesting a five-year permit to annually take juvenile threatened SR spr/sum Chinook salmon and juvenile threatened SR steelhead at various places in the Salmon River drainage in Idaho and at Little Goose Dam on the lower Snake River. The listed fish would be variously captured (using seines, dip nets, and electrofishing), re-captured at a smolt bypass facility, anesthetized, tagged with PIT tags or otherwise marked, tissue sampled, weighed, measured, and released.

The purpose of the research is to continue monitoring juvenile outmigration behavior among steelhead spr/sum Chinook salmon populations in Idaho. The research would benefit the fish by continuing to supply managers with the information they need to budget water releases at hydropower facilities in ways that would help protect migrating juveniles. Some juvenile listed fish would be intentionally killed as part of the research. It is also likely that a small percentage of the fish being captured would unintentionally be killed during the process.

Permit 13382

The research proposed under this permit was authorized for the past five years as part of Permit 1406, but the researchers determined, upon expiration of that permit in 2007, that they should seek an individual permit for their activities. The NWFSC is therefore requesting a five-year permit to annually take juvenile threatened SR spr/sum Chinook salmon and natural, juvenile threatened SR steelhead at various places in the Snake River drainage in Idaho and in various streams of Southeast Washington and Northeast Oregon. The listed fish would be

variously captured (using seines, dip nets, traps, and electrofishing), anesthetized, tissue sampled, weighed, measured, and released.

The purpose of the research is to continue monitoring the effects of supplementation among steelhead spring/summer Chinook salmon populations in Idaho. The research would benefit the fish by continuing to supply managers with the information they need to use hatchery programs to conserve listed species. The researchers do not intend to kill any of the fish being captured, but some may die as an unintended result of the process.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: April 16, 2008.

Marta Nammack,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8-8688 Filed 4-21-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648-XE70

Marine Mammals; File No. 10091

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Alaska Department of Fish and Game, 1255 West 8th Street, Juneau, AK, 99811 (Doug Larsen, Responsible Party) has been issued a permit to collect, receive, import/export, and conduct scientific research on marine mammal specimens.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249.

FOR FURTHER INFORMATION CONTACT:

Amy Sloan or Jennifer Skidmore, (301)713-2289.

SUPPLEMENTARY INFORMATION: On

December 31, 2007, notice was published in the **Federal Register** (72 FR 74274) that a request for a scientific research permit had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant is authorized to collect, receive, possess, import, and export marine mammal biological specimens (hard and soft parts) from pinnipeds (excluding walrus) and cetaceans to obtain information on population status

and distribution, stock structure, age distribution, mortality rates, productivity, feeding habits, and health that can be used for conservation and management purposes. Specimens may be imported and exported world-wide. The duration of the permit is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 16, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8-8686 Filed 4-21-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08-33]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601-3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08-33 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 11, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

APR 08 2008

In reply refer to:

USP001114-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-33, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the United Kingdom for defense articles and services estimated to cost \$125 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Millies".

Richard J. Millies
Deputy Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House

Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate

Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 08-33**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** United Kingdom
- (ii) **Total Estimated Value:**
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 0 million |
| Other | <u>\$125 million</u> |
| TOTAL | \$125 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 157 Mine Resistant Ambush Protected (MRAP) Category I 4X4 Cougar vehicles, tools and test equipment, maintenance support, contractor technical and logistics personnel services, support equipment, spare and repair parts, and other related elements of logistics support.
- (iv) **Military Department:** Navy (LTS)
- (v) **Prior Related Cases, if any:**
FMS Case LTQ - \$ 97M - 31Jul06
FMS Case LTR - \$104M - Pending
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** APR 0 8 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION**United Kingdom – Mine Resistant Ambush Protected (MRAP) Vehicles**

The Government of the United Kingdom has requested a possible sale of 157 Mine Resistant Ambush Protected (MRAP) Category I 4X4 Cougar vehicles, tools and test equipment, maintenance support, contractor technical and logistics personnel services, support equipment, spare and repair parts, and other related elements of logistics support. The estimated cost is \$125 million.

The United Kingdom is a major political and economic power in NATO and a key democratic partner of the U.S. in ensuring peace and stability in this region and around the world.

The United Kingdom requests these capabilities to provide for the safety of its deployed troops in support of Global War on Terror (GWOT) operations. This program will ensure the United Kingdom can effectively operate in hazardous areas in a safe, survivable vehicle, and enhance the United Kingdom's interoperability with U.S. forces. The United Kingdom is a staunch supporter of the U.S. in Iraq and Afghanistan, and the GWOT. The United Kingdom's troops are deployed in support of IRAQI FREEDOM and ENDURING FREEDOM, where U.S. assets currently provide this proposed capability. By acquiring this capability, the United Kingdom will be able to provide the same level of protection for its own forces as that provided the United States forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region. The United Kingdom will have no difficulty absorbing these vehicles into its Armed Forces.

The principal contractor will be: Force Protection Industries, Inc., of Ladson, South Carolina. There are no known offset agreements proposed in connection with this potential sale.

The proposed sale requires the continued support of seven Field Service Representatives (FSRs), currently providing in theater maintenance support for the existing Mastiff vehicles. An additional eight FSRs will be added under UK-P-LTR, and the United Kingdom has requested one additional FSR under this proposed sale to support the additional vehicles until 31 July 2009.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-33

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act**

**Annex
Item No. vii**

(vii) Sensitivity of Technology:

1. The Mine Resistant Ambush Protected (MRAP) Category I vehicle is an armored, multi-purpose combat vehicle Explosive Ordnance Disposal and intended to support mounted urban operations to include convoy security support and dismounted patrols. It is designed to increase crew survivability. The vehicle has a blast-resistant underbody designed to protect the crew from mine blasts, fragmentation, and direct fire weapons.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8-8435 Filed 4-21-08; 8:45 am]
BILLING CODE 5001-06-M

DEPARTMENT OF EDUCATION**Submission for OMB Review;
Comment Request**

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 22, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to oir_submission@omb.eop.gov or via fax to (202) 395-6974. Commenters should include the following subject line in their response "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 17, 2008.

Angela C. Arrington,
IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New Collection.

Title: Survey on Key Demographics and Needs of the Binational Migratory Children.

Frequency: Annually.

Affected Public: Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 833. Burden Hours: 417.

Abstract: This survey is to assess the demographic and educational needs of the binational children to improve their educational services and academic achievements.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3587. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-401-0920. Please specify the

complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E8-8662 Filed 4-21-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Demonstration Projects To Ensure Students With Disabilities Receive a Quality Higher Education Program (Demonstration Program); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

(Catalog of Federal Domestic Assistance (CFDA) Number: 84.333A.)

DATES: *Applications Available:* April 22, 2008.

Deadline for Transmittal of Applications: May 22, 2008.

Deadline for Intergovernmental Review: July 21, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Demonstration Program is to award grants to institutions of higher education (IHEs) to develop innovative demonstration projects that provide technical assistance or professional development that faculty and administrators at IHEs need to effectively teach students with disabilities. IHEs funded under this program also will disseminate information widely about promising practices and activities that yield positive results in their projects and will provide training to enable faculty and administrators in other IHEs to meet the educational needs of students with disabilities.

Program Authority: 20 U.S.C. 1140-1140d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.
Estimated Available Funds: \$6,629,764.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY

2009 from the list of unfunded applicants from this program.

Estimated Range of Awards: \$120,000-\$365,000.

Estimated Average Size of Awards: \$315,700.

Maximum Award: We will reject any application that proposes a budget exceeding \$365,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 21.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. **Eligible Applicants:** IHEs.

2. **Cost Sharing or Matching:** This program does not require cost sharing or matching.

IV. Application and Submission Information

1. **Address to Request Application Package:** You can obtain an application package via the Internet by downloading the package at: <http://www.Grants.gov>. You also can obtain the application package by writing or calling the following: Brenda Shade, Demonstration Program, U.S. Department of Education, 1990 K Street, NW., room 7090, Washington, DC 20006-8513. Telephone: (202) 502-7773. E-mail address: Brenda.Shade@ed.gov.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. **Content and Form of Application Submission:** Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 40 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles,

headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).

- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract.

We will reject your application if you exceed the page limit.

3. **Submission Dates and Times:** *Applications Available:* April 22, 2008.

Deadline for Transmittal of Applications: May 22, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically; or, in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to Section IV. 6. **Other Submission Requirements** in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 21, 2008.

4. **Intergovernmental Review:** This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. **Funding Restrictions:** We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Demonstration Program, CFDA Number 84.333A, must be submitted electronically using the Governmentwide Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Demonstration Program at <http://www.Grants.gov>. You must search for the downloadable application package for this program by the CFDA Number. Do not include the CFDA Number's alpha suffix in your search (e.g., search for 84.333, not 84.333A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your

application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see http://www.grants.gov/applicants/get_registered.jsp). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf>). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition, you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-

Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award Number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your

application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time; or, if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Brenda Shade, U.S. Department of Education, 1990 K Street, NW., Room 7090, Washington, DC 20006-8526. FAX: (202) 502-7699.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the

Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.333A),
400 Maryland Avenue, SW.,
Washington, DC 20202-4260; or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center,
4260, Attention: (CFDA Number
84.333A), 7100 Old Landover Road,
Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.333A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424,

the CFDA Number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. Award Notices: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. Administrative and National Policy Requirements: We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. Reporting: At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. Performance Measures: The objective of the Demonstration Program is to improve the quality of higher education for students with disabilities. In order to assess the performance of the program in achieving this objective the Department has developed the following two performance measures:

a. The percentage of faculty trained through project activities who

incorporate elements of their training into their classroom teaching.

b. The difference between the rate at which students with documented disabilities complete courses by faculty trained through project activities, and the rate at which other students complete the same courses.

If funded, awardees will be asked to collect and report data in their project's annual performance report (EDGAR, 34 CFR 75.590) on these two performance measures.

Consequently, applicants are advised to include these outcomes in conceptualizing the design, implementation, and evaluation of their proposed projects. Their measurement should be a part of the project evaluation plan, along with measures of your progress on the goals and objectives specific to your project. All grantees are expected to submit an annual performance report documenting their success in addressing these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT:

Brenda Shade, Demonstration Program, U.S. Department of Education, 1990 K Street, NW., room 7090, Washington, DC 20006-8526. Telephone: (202) 502-7773.

If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: April 16, 2008.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E8-8699 Filed 4-21-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information: Minority Science and Engineering Improvement Program (MSEIP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

*Catalog of Federal Domestic Assistance
(CFDA) Number: 84.120A.*

Dates:

Applications Available: April 22, 2008.

*Deadline for Transmittal of
Applications:* May 22, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The MSEIP is designed to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific and technological careers.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), these priorities are from allowable activities specified in section 352 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1067b(b)).

Competitive Preference Priorities: For FY 2008, three priorities are competitive preference priorities based on 34 CFR 637.31(c). Under 34 CFR 75.105(c)(2)(i) we award an additional five (5) points to an application that meets Competitive Preference Priority 1. Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets Competitive Preference Priority 2 and Competitive Preference Priority 3 over an application of comparable merit that does not meet these priorities.

These priorities are:

Competitive Preference Priority 1. Applications from institutions that have not received an MSEIP grant within five years prior to this competition.

Competitive Preference Priority 2. Applications from previous grantees with a proven record of success.

Competitive Preference Priority 3. Applications that contribute to achieving balance among funded projects with respect to—(a) geographic region; (b) academic discipline; and (c) project type.

Invitational Priorities: For FY 2008, three priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1. Applications that focus on the development of bridge or articulation programs that target pre-freshmen entering into science, technology, engineering, or mathematics (STEM) fields.

Invitational Priority 2. Applications that focus directly on student learning and encourage and facilitate implementation of pedagogical approaches that have been proven effective in increasing student retention and achievement in STEM fields.

Invitational Priority 3. Applications that focus on mentoring programs designed to increase the number of underrepresented students who graduate with STEM undergraduate degrees.

Program Authority: 20 U.S.C. 1067-1067k.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 637.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: \$2,932,725.

Estimated Range of Awards: Institutional Project Grant: \$25,000–\$200,000. Special Project Grant: \$25,000–\$100,000. Cooperative Project Grant: \$100,000–\$300,000.

Estimated Average Size of Awards: Institutional Project Grant: \$120,000. Special Project Grant: \$50,000. Cooperative Project Grant: \$200,000.

Maximum Awards: Institutional Project Grant: \$200,000. Special Project Grant: \$100,000. Cooperative Project Grant: \$300,000. For each type of grant, we will not fund any application at an amount exceeding the specified maximum amount for a single budget period of 12 months. We may choose not to further consider or review applications with budgets that exceed the maximum amounts; if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount. The Assistant Secretary for Postsecondary Education may change the maximum

amounts through a notice published in the **Federal Register**.

Estimated Number of Awards:
Institutional Project Grants: 10. Special Project Grants: 10. Cooperative Project Grants: 3.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the MSEIP Web site for further information on this program. The address is: <http://www.ed.gov/programs/duesmsi/index.html>

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* The eligibility of an applicant is dependent on the type of MSEIP project. There are four types of MSEIP projects: Institutional, design, special projects, and cooperative. We will not award design grants in the FY 2008 competition.

A. For institutional and special projects described in 34 CFR 637.12 through 637.14, eligible applicants include public and private nonprofit minority institutions of higher education as defined in section 361(1) and (2) of the HEA.

B. For special projects described in 34 CFR 637.14(b) and (c), eligible applicants are, in addition to those described in paragraph A, nonprofit science-oriented organizations, professional scientific societies, institutions of higher education that award baccalaureate degrees and meet the requirement of section 361(3) of the HEA, and consortia of organizations that meet the requirements of section 361(4) of the HEA.

C. For cooperative projects described in 34 CFR 637.15, eligible applicants are groups of nonprofit accredited colleges and universities whose primary fiscal agent is an eligible minority institution as defined in 34 CFR 637.4(b).

Note: As defined in 34 CFR 637.4(b), a *minority institution* means an accredited college or university whose enrollment of a single minority group or a combination of minority groups exceeds 50 percent of the total enrollment.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* Dr. Bernadette M. Hence, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006-8517. Telephone: (202) 219-7038 or (202) 502-7777, by fax: (202) 502-7861, or by e-mail: Bernadette.Hence@ed.gov or OPE.MSEIP@ED.GOV.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We have established a mandatory page limit for the narrative portion for each type of project application. The page limits are as follows: Institutional Project Application: 40 pages. Special Projects Application: 35 pages. Cooperative Project Application: 50 pages. You must limit the application narrative (Part III) to the equivalent of no more than these page limits. You must use the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides. Page numbers and a document identifier may be within the 1" margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); or Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices not specifically requested, these items will be counted as part of the Program Narrative (Part III) for purposes of the page limit requirement. You must include your complete

response to the selection criteria in the program narrative.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*
Applications Available: April 22, 2008.

Deadline for Transmittal of Applications: May 22, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Minority Science and Engineering Improvement Program (MSEIP), CFDA Number 84.120A, must be submitted electronically using the Governmentwide Grants.gov Apply site at: <http://www.Grants.gov>. Through this site, you will be able to download a

copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for MSEIP at: <http://www.Grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.120, not 84.120A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the

application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see http://www.grants.gov/applicants/get_registered.jsp). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf>). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your

application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Karen W. Johnson, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8517. FAX: (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.120A),
400 Maryland Avenue, SW.,
Washington, DC 20202–4260; or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center, Stop
4260, Attention: (CFDA Number
84.120A), 7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.120A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. **Selection Criteria:** The selection criteria for this program are from 34 CFR 637.32 (a) through (j), and are as follows. Applicants must address each of the selection criteria. The total weight of the selection criteria is 100 points; the weight of each criterion is noted in parentheses.

(a) Identification of need for the project (Total 10 points).

(b) Quality of key personnel (Total 5 points).

(c) Budget and cost effectiveness (Total 5 points).

(d) Evaluation plan (Total 10 points).

(e) Adequacy of resources (Total 5 points).

(f) Plan of operation (Total 15 points).

(g) Potential institutional impact of the project (Total 10 points).

(h) Institutional commitment to the project (Total 10 points).

(i) Expected Outcomes (Total 15 points).

(j) Scientific and educational value of the proposed project (Total 15 points).

2. **Review and Selection Process:**

Additional factors we consider in selecting an application for an award are in 34 CFR 75.217.

Tiebreaker for Institutional, Special Project, and Cooperative Grants. If there are insufficient funds for all applications with the same total scores, applications will receive preference in the following order: First, applications that satisfy the requirement of Competitive Preference Priority 1; second, applications that satisfy the requirements of both Competitive Preference Priorities 2 and 3; and third, applications that satisfy the requirements of Competitive Preference Priority 2.

VI. Award Administration Information

1. **Award Notices:** If your application is successful, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. **Administrative and National Policy Requirements:** We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved

application as part of your binding commitments under the grant.

3. **Reporting:** At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. **Performance Measures:** The Secretary has established the following key performance measures for assessing the effectiveness of the MSEIP program: (1) The percentage change in the number of full-time, degree-seeking minority undergraduate students at grantee institutions enrolled in the fields of engineering or physical or biological sciences, compared to the average minority enrollment in the same fields in the three-year period immediately prior to the beginning of the current grant; (2) the percentage of full-time undergraduate minority students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same institution in the fields of engineering or physical or biological sciences; and (3)(a) in four-year grantee institutions, the percentage of minority students who enrolled in the fields of engineering or physical or biological sciences who graduate within six years of enrollment; or (b) in two-year grantee institutions, the percentage of minority students enrolled in the fields of engineering or physical or biological sciences who graduate within three years of enrollment.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Karen W. Johnson, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006-8517. Telephone: (202) 502-7642 or (202) 502-7777, by fax: (202) 502-7861, or by e-mail: Karen.Johnson@ed.gov or Dr. Bernadette M. Hence, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006-8517. Telephone: (202) 219-7038 or (202) 502-7777, by fax (202) 502-7861, or by e-mail: Bernadette.Hence@ed.gov or OPE.MSEIP@ED.GOV.

If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in Section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: April 17, 2008.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E8-8711 Filed 4-21-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Projects (DRRPs), Rehabilitation Research and Training Centers (RRTCs), and Rehabilitation Engineering Research Centers (RERCs)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities for DRRPs, RRTCs, and RERCs.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes certain funding priorities for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice proposes one priority for a DRRP, one priority for an

RRTC, and one priority for an RERC. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2008 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before May 22, 2008.

ADDRESSES: Address all comments about Priority 1—Centers on Research and Capacity Building to Improve Outcomes for Individuals With Disabilities from Traditionally Underserved Racial and Ethnic Populations to Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 6026, Potomac Center Potomac (PCP), Washington, DC 20202-2700. If you prefer to send your comments through the Internet, use the following address: marlene.spencer@ed.gov.

Address all comments about Priority 2—Individuals With Disabilities Living in Rural Areas and Priority 3—Technologies for Successful Aging With Disability to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, PCP, Washington, DC 20202-2700. If you prefer to send your comments through the Internet, use the following address: donna.nangle@ed.gov.

If you send your comments through the Internet, you must include the priority title in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: For further information regarding Priority 1—Centers on Research and Capacity Building to Improve Outcomes for Individuals With Disabilities from Traditionally Underserved Racial and Ethnic Populations, contact Marlene Spencer. Telephone: (202) 245-7532.

For further information regarding Priority 2—Individuals With Disabilities Living in Rural Areas and Priority 3—Technologies for Successful Aging With Disability, contact Donna Nangle. Telephone: (202) 245-7462.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: This notice of proposed priorities is in concert with President George W.

Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: <http://www.whitehouse.gov/infocus/newfreedom>.

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: <http://www.ed.gov/about/offices/list/osers/nidrr/policy.html>.

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Invitation To Comment

We invite you to submit comments regarding these proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority or topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 6030, 550 12th Street, SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the

person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priorities in one or more notices in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or using additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priorities as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

In this notice, we are proposing one priority for a DRRP, one priority for an RRTC, and one priority for an RERC.

For the DRRP, the proposed priority is:

- **Priority 1—Centers on Research and Capacity Building to Improve Outcomes for Individuals With Disabilities from Traditionally Underserved Racial and Ethnic Populations.**

For the RRTC, the proposed priority is:

- **Priority 2—Individuals With Disabilities Living in Rural Areas.**

For the RERC, the proposed priority is:

- **Priority 3—Technologies for Successful Aging With Disability.**

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to improve the effectiveness of services

authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the requirements of the *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: <http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP>.

Proposed Priority

Priority 1—Centers on Research and Capacity Building To Improve Outcomes for Individuals With Disabilities From Traditionally Underserved Racial and Ethnic Populations

Background

In the United States (U.S.), most racial and ethnic minority populations have higher rates of disability than the non-Hispanic white and Asian populations. Non-Hispanic whites and Asians have the lowest rates of disability in the U.S.; specifically, 18 percent of non-Hispanic whites and 17 percent of Asians report having a disability. In contrast, approximately 24 percent of African Americans and approximately 24 percent of American Indians and Alaskan Natives report having a disability. Twenty-one percent of the Hispanic or Latino population and 19 percent of the Native Hawaiian or other Pacific Islander populations report having a disability (U.S. Bureau of the Census, 2003). In addition to having higher disability rates, racial and ethnic minority populations in the U.S. are growing faster than the non-Hispanic white population and now comprise approximately one third of the U.S.

population (U.S. Bureau of the Census, 2007).

Individuals with disabilities from most racial and ethnic minority populations in the U.S. face unique on-going barriers to full participation in society, and there is a general lack of research addressing the important question of which interventions can be employed to address those barriers effectively (National Council on Disability, 2003).

These long-standing demographic trends provided the basis for section 21 of the Rehabilitation Act, as amended (Rehabilitation Act). Section 21 of the Rehabilitation Act requires NIDRR to reserve a portion of its funds each year to carry out certain outreach activities, including making awards to minority entities and Indian tribes to conduct research, training, and technical assistance or related activities to improve services for individuals with disabilities under the Rehabilitation Act, especially individuals from racial and ethnic minority populations. The section 21 requirements are aligned with NIDRR's commitment to advance theories, measures, interventions, and products that lead to improved employment, community participation, and health and function outcomes for all individuals with disabilities, including individuals from racial and ethnic minority populations.

One critical aspect of NIDRR's work in this area is building the capacity of the disability and rehabilitation research field to engage in rigorous and culturally-relevant research. This capacity building includes providing opportunities for advanced research and advanced research training at minority entities, as defined in section 21(b)(5)(B) of the Rehabilitation Act. These minority entities are defined to include historically black colleges and universities, Hispanic-serving institutions of higher education, Indian tribal colleges and universities, and other institutions of higher education with a minority student enrollment of at least 50 percent. Capacity building also includes sponsoring outreach activities to reach minority entities and Indian tribes in order to promote their participation in advanced disability and rehabilitation research.

References

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Press-Release/www/releases/archives/population/010048.html.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority to establish, under the Disability and Rehabilitation Research Project (DRRP) program, Centers on Research and Capacity Building to Improve Outcomes for Individuals With Disabilities from Traditionally Underserved Racial and Ethnic Populations (each a Center).

This priority is intended to improve the quality and utility of research related to individuals with disabilities from traditionally underserved racial and ethnic populations in the United States and to enhance the capacity of minority entities (as defined in section 21(b)(5)(B) of the Rehabilitation Act, as amended) to conduct this research. Under this priority, each Center must be designed to contribute to the following outcomes:

(a) New knowledge about rehabilitation and independent living services and outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations, and knowledge about how services for these populations can be improved. Each Center must contribute to this outcome by conducting research that examines service experiences and outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations.

(b) Improved capacity to conduct high quality research and develop new knowledge about rehabilitation and independent living services and outcomes for individuals with disabilities from traditionally underserved racial and ethnic populations. Each Center must contribute to this outcome by developing strategic research and capacity-building collaborations with other entities that have demonstrated expertise in conducting high quality disability and rehabilitation research.

Applicants must focus their research activities on topics that fall under at least one of the following major life domains, which are identified in NIDRR's Final Long-Range Plan for FY 2005–2009:

(1) *Employment*. Topics of interest under this domain include but are not limited to the following: (a) The unique experiences and factors that influence outcomes for individuals with

disabilities from traditionally underserved racial and ethnic populations who are served by the State vocational rehabilitation (VR) services program; and (b) VR services and approaches that improve the employment outcomes of individuals with disabilities from racial and ethnic minority populations.

(2) *Participation and Community Living*. Topics of interest under this domain include but are not limited to the following: (a) the unique experiences and factors that affect community participation and community living outcomes of individuals with disabilities from racial and ethnic minority populations who are served by Department-funded centers for independent living (CILs); and (b) independent living services that improve the community participation outcomes of individuals with disabilities from racial and ethnic minority populations who are served by CILs.

(3) *Health and Function*. Topics of interest under this domain include but are not limited to the following: (a) The unique experiences and factors that affect health and function outcomes for individuals with disabilities from racial and ethnic minority populations who receive clinical services in medical rehabilitation programs; and (b) medical rehabilitation services or approaches that improve the health, function, employment, or community participation outcomes for individuals with disabilities from racial and ethnic minority populations.

In carrying out the purposes of the priority, each Center must—

- Involve individuals with disabilities from traditionally underserved racial and ethnic populations in planning and implementing the Center's activities, and evaluating its work;
- Develop, implement, and evaluate dissemination strategies for research and technical assistance products developed by the project;
- Develop and regularly update an online information dissemination system that meets a government- or industry-recognized standard for accessibility;
- Provide research-based expertise, consultation, and technical assistance to relevant service providers who are seeking to improve outcomes of individuals with disabilities from traditionally underserved populations; and
- Through consultation with the NIDRR project officer, coordinate and establish partnerships, as appropriate, with other academic institutions and

organizations that are relevant to the project's proposed activities.

Rehabilitation Research and Training Centers (RRTCs)

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on February 1, 2008 (72 FR 6132). Additional information on the RRTC program can be found at: <http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC>.

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Priority 2—Individuals With Disabilities Living in Rural Areas

Background

Current population estimates indicate that approximately 10 million (17 percent) of the 62 million individuals 5 years of age and older living in the rural United States have one or more disabilities. More than two million (20

percent) of these individuals with disabilities are living below the poverty level. In addition to being more likely to live in poverty than their non-disabled counterparts, individuals with disabilities living in rural areas are more likely to be 65 years of age and older, less likely to be employed, and more likely to be disabled veterans than are urban residents with disabilities (U.S. Census Bureau, 2006 American Community Survey) (Census Briefs).

Low population density, lack of accessible public transportation, and shortages of public health and other providers may limit options for employment, community participation, and access to programs and services for individuals with disabilities living in rural America (National Council on Disability, 2007; Phillips & McLerory, 2004; Gamm *et al.*, 2003). These characteristics of life in rural areas significantly affect vulnerable members of the population, including individuals with disabilities.

Previous NIDRR-funded research on vocational rehabilitation services for individuals with disabilities who live in rural areas found that individuals with disabilities who live in rural areas have higher rates of self-employment than other populations (Arnold, 1995). These findings led to changes within State VR programs to expand self-employment opportunities for individuals with disabilities in both rural and urban areas. These changes included greater recognition of self-employment as an acceptable employment outcome, and an increased use of rehabilitation approaches that promote self-employment among State VR program clients (Arnold & Ipsen, 2005). Despite this and other research-based changes in practice that have expanded rural employment opportunities and improved outcomes over time, individuals with severe disabilities who live in rural areas continue to have poor employment outcomes relative to individuals with severe disabilities living in urban areas (Lustig, Strauser, & Weems, 2004). There is a need for additional research to identify programs or interventions that can increase employment outcomes and economic well-being among individuals with disabilities living in rural areas.

Characteristics of life in rural areas also make access to health care difficult for individuals with disabilities. Lack of medical specialists in rural areas often necessitates frequent long-distance travel to large medical centers, and limited public transportation options in rural areas make it difficult for individuals with disabilities to access routine health care services (Iezzoni,

Killeen, & O'Day, 2006). Additional research is necessary to identify programs or interventions that can reduce barriers to health care services for individuals with disabilities living in rural areas, and to improve the health and function of this population.

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- Proposed Priority:
The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Individuals With Disabilities Living in Rural Areas. This RRTC must conduct rigorous research, training, technical

assistance, and dissemination activities to improve the employment, economic, and health outcomes for individuals with disabilities in rural areas of the United States (U.S.). The RRTC must identify programs, service delivery approaches, or interventions that support and lead to improved outcomes in these areas. Where possible, the RRTC must use a rigorous (*i.e.*, experimental or quasi-experimental) design to evaluate these programs, service delivery approaches, or interventions. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Policies, programs, or interventions that improve employment and economic outcomes for individuals with disabilities living in rural areas. The RRTC must contribute to this outcome by identifying evidence-based interventions, including exemplary vocational rehabilitation strategies, or developing and testing new interventions to improve employment and economic outcomes for these individuals.

(b) Rehabilitation or community-based programs or interventions that enhance access to health services and improve the health and function of individuals with disabilities living in rural areas of the U.S. The RRTC must contribute to this outcome by identifying, developing or modifying, and evaluating new programs or interventions to determine their effectiveness in enhancing access to health services and improving the health and function of individuals with disabilities living in rural areas of the U.S.

(c) Enhancement of the knowledge base of rehabilitation and health providers who deliver services to individuals with disabilities living in rural areas of the U.S. The RRTC must contribute to this outcome by developing, evaluating, and implementing research-based training and technical assistance programs and initiatives that are based upon findings from research activities described in paragraphs (a) and (b) of this priority.

Rehabilitation Engineering Research Centers Program

General Requirements of Rehabilitation Engineering Research Centers (RERCs)

RERCs carry out research or demonstration activities in support of the Rehabilitation Act of 1973, as amended, by—

- Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and

social knowledge to: (a) Solve rehabilitation problems and remove environmental barriers; and (b) study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or

- Demonstrating and disseminating: (a) Innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas; and (b) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; and
- Facilitating service delivery systems change through: (a) The development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services; and (b) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must be operated by, or in collaboration with, one or more institutions of higher education or one or more nonprofit organizations.

Each RERC must provide training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

Each RERC must emphasize the principles of universal design in its product research and development. Universal design is “the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design” (North Carolina State University, 1997. http://www.design.ncsu.edu/cud/about_ud/udprinciplestext.htm).

Additional information on the RERC program can be found at: <http://www.ed.gov/rschstat/research/pubs/index.html>.

Priority 3—Technologies for Successful Aging With Disability

Background

Results from the American Community Survey (ACS) indicate that, in 2006, the overall prevalence rate of disability among working-age individuals ages 21 to 64 was 12.9 percent (22.4 million), compared to 30.2 percent for individuals ages 65 to 74 (5.6 million), and 52.6 percent for individuals 75 years of age and older (8.9 million). In addition, the number of Americans who are 55 years of age and

older will nearly double between now and 2030—from 60 million to 107.6 million—as the Baby Boomers reach retirement age (Experience Corps, 2007). Given the strong relationship between age and disability, the total number of working-age and older adults living with a disability is expected to grow significantly as the United States (U.S.) population ages rapidly in the coming decades.

Thirty-seven percent of adults aged 65 and older reported having a severe disability in 2002. About 16 percent of adults in this age cohort require assistance to carry out daily activities and meet important personal needs (Steinmetz, 2006). Also, a large segment of the working-age population with disabilities is aging into midlife with disabilities that were acquired at birth through young-adulthood (McNeil, 1997). Evidence from empirical studies funded by NIDRR over the past few years indicates that many members of this working-age cohort are at risk of experiencing new health conditions and impairments that will undermine their community participation and community living, and result in “premature aging” (Kemp, 2005; Rimmer, 2005). Taken together, these studies point to two important segments of the U.S. population who will experience the dual effects of aging and disability—individuals with life-long and long-term disabilities, and individuals who age into disability for the first time in later life.

Despite the increased risks of disability associated with aging, older Americans strongly prefer to remain in their homes, use public services, and function independently as they age. A nationwide telephone survey of 2,000 individuals, conducted by the American Association of Retired Persons (AARP), found that “more than 8 in 10 respondents age 45 and over (including many Baby Boomers)—and more than 9 in 10 of those 65 and over—say they would like to stay where they are for as long as possible. Even if they should need help caring for themselves, 82 percent would prefer not to move from their current homes and many say they are modifying their residences to make this possible” (Bayer & Harper, 2000).

Currently, more than 12 million individuals in the U.S., about 80 percent of whom are 50 years of age or older and about half of whom are 65 years of age or older, need some type of long-term care services and supports, including assistive technologies, to perform daily activities and remain in their homes (International Longevity Center, 2006).

Assistive technology use has increased for all ages, but especially for

those 65 years of age and over (Russell *et al.*, 1997). A 1992 study estimated that 2.5 million individuals, or about 1 percent of the U.S. population, have an unmet need for assistive technology devices (LaPlante *et al.*, 1992).

Designing appropriate and cost-effective assistive technologies for aging adults with disabilities will require a better understanding of the unique needs of technology users among this population, and the circumstances under which technology can most effectively be used to meet such needs (Agree & Freedman, 2003). Accordingly, NIDRR seeks to fund a RERC that will evaluate new or existing technologies to address the challenges of community participation, employment, and community living experienced by middle-age and older adults with disabilities.

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Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the establishment of an RERC for Technologies for Successful Aging with Disability. Under this priority, the RERC must research, evaluate, and develop new assistive technologies and approaches, or modify and apply existing technologies and approaches that address the challenges to community participation experienced by middle-age and older adults with disabilities in home, work, or community settings.

Under this priority, the RERC must be designed to contribute to the following outcomes:

(a) Increased technical and scientific knowledge regarding the use of technologies for successful aging with disability. The RERC must contribute to this outcome by conducting no more than four rigorous research and development projects that address the needs of individuals with disabilities and that use state-of-the-art methodologies. These projects must generate measurable results and improve policy, practice, or system capacity to use technology to meet the community participation needs of individuals who are aging with disabilities, or who are aging into disability.

(b) Improved technologies, technology-based products, and environments for successful aging with disability. The RERC must contribute to this outcome by developing new, or modifying and applying existing technologies, technology-based products, and built environments, and testing and evaluating their utility for intended users.

(c) Increased impact of research in the area of technologies for successful aging with disability. The RERC must contribute to this outcome by providing technical assistance to public and private organizations, individuals with disabilities, and employers on policies, guidelines, and standards related to the use of technologies to facilitate successful aging with disability.

(d) Increased transfer of RERC-developed technologies to the marketplace. The RERC must contribute to this outcome by developing and implementing a technology transfer plan for ensuring that all technologies developed by the RERC are made

available to the public. The RERC must develop its technology transfer plan in the first year of the project period in consultation with the NIDRR-funded Disability and Rehabilitation Research Project, Center on Knowledge Translation for Technology Transfer.

In addition, the RERC must—

- Have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings;

- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;

- Provide as part of its proposal, and then implement, a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;

- Provide as part of its proposal, and then implement, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate its research results to individuals with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties;

- Conduct a state-of-the-science conference on its designated priority research area in the fourth year of the project period, and publish a comprehensive report on the final outcomes of the conference in the fifth year of the project period; and

- Coordinate research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

Summary of Potential Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. These proposed priorities will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of these proposed priorities is that the establishment of a new DRRP, a new RRTC, and a new RERC will support the President's NFI and will improve the lives of individuals with disabilities. The new DRRP, RRTC, and RERC will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 part 79.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Numbers 84.133A Disability Rehabilitation Research Projects, 84.133B Rehabilitation Research and Training Centers, and 84.133E Rehabilitation Engineering Research Centers Program)

Program Authority: 29 U.S.C. 762(g), 764(a), 764(b)(2), and 764(b)(3).

Dated: April 17, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8-8714 Filed 4-21-08; 8:45 am]

BILLING CODE 4000-01-

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Request for written input.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services requests written input regarding NIDRR's long-range plan for fiscal years 2010-2014 (the 2010-2014 Plan). The purpose of this solicitation is to obtain ideas from the public on the content and direction of the new NIDRR 2010-2014 Plan.

DATES: We must receive your comments on or before May 22, 2008.

ADDRESSES: Address all written input to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, Potomac Center Plaza, Washington, DC 20202-2700. If you prefer to send your input through the Internet, please submit it at the following Web site <http://www.neweditions.net/NIDRRLLRP>, or use the following e-mail address: NIDRR_Mailbox@ed.gov.

If you submit your written input through the Internet, identify the specific topic of your input in the subject line of your electronic message from among the following: employment outcomes; participation and community living; health and function; technology; and demographics. If you are submitting general input, please use the term "General" in the subject line of your electronic message. Please limit your input to no more than two single-spaced pages. Please submit your input only once to ensure that we do not receive duplicate copies.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotope, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245-7462 or by e-mail: donna.nangle@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

As authorized under the Rehabilitation Act of 1973, as amended (Act) (29 U.S.C. 760-762), NIDRR's mission is—

- To generate new knowledge and to promote its effective use to improve the abilities of individuals with disabilities to perform activities of their choice in the community, including the pursuit of employment; and

- To expand society's capacity to provide full opportunities and accommodation for individuals with disabilities.

Pursuant to section 202(h) of the Act (29 U.S.C. 762(h)), the Assistant Secretary for Special Education and Rehabilitative Services periodically publishes a five-year plan that outlines NIDRR's upcoming priorities for rehabilitation research, demonstration projects, training, and related activities, and explains the basis for these priorities. NIDRR's long-range plan for fiscal years 2005-2009 (2005-2009 Plan) was published in the **Federal Register** on February 15, 2006 (71 FR 8165) and can be accessed on the Internet at the following Web site: <http://www.ed.gov/about/offices/list/osers/nidrr/policy.html>.

Note: Individuals with disabilities may also obtain a copy of the 2005-2009 Plan in an alternate format (e.g., Braille, large print, audiotope, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

NIDRR held a public meeting on March 19, 2008 that was accessible by Webcast via the Internet or by participating in a toll-free teleconference. A transcript and an archive of this Webcast are available at: <http://www.tvworldwide.com/events/does/080319>.

Development of the 2010-2014 Plan

NIDRR has begun the process of preparing the 2010-2014 Plan, and is interested in receiving, among other things, suggestions for research topics that are consistent with its mission for fiscal years 2010 through 2014.

As NIDRR works to develop the 2010-2014 Plan, the Assistant Secretary would like feedback from the public that includes, but is not limited to, suggestions for research:

- That would address the current needs of, or emerging issues facing, individuals with disabilities.
- that could help improve employment outcomes for individuals with disabilities.

- that could improve the programs of the Office of Special Education and Rehabilitative Services, including its vocational rehabilitation and independent living programs.

NIDRR is also seeking input on:

- What strategies might be effective in building capacity in the area of disability and rehabilitation research.

- What NIDRR can do to ensure that its research and development activities produce results that can help improve the lives of individuals with disabilities.

Applicable Program Regulations: 34 CFR part 350.

Authority: 29 U.S.C. 762.

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Dated: April 17, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8-8691 Filed 4-21-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Strengthening Institutions Program (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), and Alaska Native-Serving and Native Hawaiian-Serving Institutions (ANNH) programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

(Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.031A, 84.031T, 84.031N, and 84.031W.)

Dates:

Applications Available: April 22, 2008.

Deadline for Transmittal of Applications: May 22, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The SIP, TCCU, and the ANNH programs authorized by Title III, Part A of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1057-1059d, provide grants to eligible institutions of higher education (IHEs) to help them become self sufficient and expand their capacity to serve low-income students by providing funds to improve and strengthen their academic quality, institutional management and fiscal stability. Section 499A of the HEA, as added by the College Cost Reduction and Access Act (CCRAA), Public Law 100-84, makes additional funds available in Fiscal

Years 2008 and 2009 to certain minority-serving institutions eligible for the SIP programs including an additional \$30 million to the TCCU program and \$15 million to the ANNH program. Awards under these programs are hereafter referred to as CCRAA-TCCU and CCRAA-ANNH.

Program Authority: 20 U.S.C. 1057-1059d and Pub. L. 110-84.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 607.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds:

\$23,411,000 for the SIP program, \$40,517,000 for the TCCU program (includes \$30,000,000 in CCRAA funding), and \$18,880,000 for the ANNH program (includes \$15,000,000 in CCRAA funding) for FY 2008.

Estimated Average Size of Awards: See following chart.

Estimated Number of Awards: See following chart.

Program name and type of award	Maximum award amount (\$)	Estimated number of awards	Estimated average award amount (\$)
Strengthening Institutions Program (84.031A):			
5-year Individual Development Grants	400,000	64	300,000
5-year Cooperative Arrangement Grants	500,000	1	500,000
Tribally Controlled Colleges and Universities Program (84.031T):			
5-year Individual Development Grants	475,000	6	450,000
1-year Construction Grants	1,650,000	6	1,336,000
2-year CCRAA-TCCU Construction Grants	3,000,000	10	3,000,000
Alaska Native and Native Hawaiian Program (84.031N and 84.031W):			
5-year Individual Development Grants	500,000	8	400,000
2-year CCRAA-ANNH Renovation Grants	2,000,000	10	1,500,000

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months for development and cooperative arrangement grants, 12 months for one-year TCCU construction grants, and 24 months for CCRAA-TCCU two-year construction and CCRAA-ANNH renovation grants.

III. Eligibility Information

1. *Eligible Applicants:* An IHE that qualifies as an eligible institution under the SIP, TCCU, and the ANNH programs

may apply for grants under this notice. These programs are authorized by Title III, Part A, of the HEA. To qualify as an eligible institution under any Title III, Part A programs, an institution must, among other requirements—

(1) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(2) Be legally authorized by the State in which it is located to be a junior or

community college or to provide an educational program for which it awards a bachelor's degree;

(3) Be designated as an "eligible institution" by demonstrating that it: A) has an enrollment of needy students as described in 34 CFR 607.3; and B) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Relationship between the Title III, Part A programs, and the Hispanic-Serving Institutions (HSI) program.

Note 1: A grantee under the Developing Hispanic-Serving Institutions (HSI) program, which is authorized by Title V of the HEA, may not receive a grant under any HEA, Title III, Part A program. The Title III, Part A programs include the SIP, TCCU and ANNH programs. Further, a current HSI program grantee may not give up its HSI grant in order to receive a grant under any Title III, Part A program.

Note 2: An eligible HSI that does not fall within the limitation described in Note 1 (i.e., is not a current grantee under the HSI program) may apply for a FY 2008 grant under all Title III, Part A programs for which it is eligible, as well as receive consideration for a grant under the HSI program. However, a successful applicant may receive only one grant.

Note 3: An eligible IHE that submits more than one application may only be awarded one individual development grant or one cooperative arrangement development grant in a fiscal year. Furthermore, we will not award a second cooperative arrangement development grant to an otherwise eligible IHE for the same award year as the IHE's existing cooperative arrangement development grant award.

Note 4: The Department will make five-year awards for individual development grants and five-year awards for cooperative arrangement development grants in rank order from separate funding slates according to the average score received from a panel of three readers. The Department will make 1-year construction grants under the TCCU program, 2-year CCRAA-TCCU construction and 2-year CCRAA-ANNH renovation grants in rank order from separate funding slates according to the average score received from a panel of three readers.

2. Cost Sharing or Matching: These programs do not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds (20 U.S.C. 1057(d)(2) and 1059c(c)(3)(B)).

IV. Application and Submission Information

1. Address to Request Application Package: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006-8513. Telephone: (202) 502-7576 or by e-mail: darlene.collins@ed.gov.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) by contacting the program contact person listed in this section.

2. Content and Form of Application Submission: Requirements concerning the content of an application, together with the forms you must submit, are in the application package for these programs.

Page Limits: We have established mandatory page limits for the applications to be submitted under this notice. You must limit your application to the equivalent of no more than 50 pages for an individual development grant, 70 pages for cooperative arrangement development grant; and 35 pages for a construction or a renovation using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1 inch margins at the top, bottom, and both sides. Page numbers and an identifier may be outside the 1" margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions and all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will be rejected.

The page limit does not apply to Part I, the Application for Federal Assistance Face Sheet (SF 424); the Supplemental Information for SF 424 Form required by the Department of Education; Part II, the Budget Information Summary Form (ED Form 524); and Part IV, the Assurances and Certifications. The page limit also does not apply to a Table of Contents and the Program Abstract. If you include any attachments or appendices, these items will be counted as part of the Program Narrative (Part III of the application) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

We will reject your application if you exceed the page limit.

3. Submission Dates and Times:
Applications Available: April 22, 2008.

Deadline for Transmittal of Applications: May 22, 2008.

Applications for grants under this competition must be submitted

electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. **Other Submission Requirements in this notice:**

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for these programs.

5. Funding Restrictions: We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Applicability of Executive Order 13202. Applicants that apply for construction funds under the Title III, Part A Programs, must comply with Executive Order 13202, signed by President George W. Bush on February 17, 2001, and amended on April 6, 2001. This Executive Order provides that recipients of Federal construction funds may not "require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)" or "otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s)." However, the Executive Order does not prohibit contractors or subcontractors from voluntarily entering into these agreements. Projects funded under these programs that include construction activity will be provided a copy of this Executive Order and will be asked to certify that they will adhere to it.

6. *Other Submission Requirements:* Applications for grants under the SIP, TCCU, and ANNH programs must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the SIP, TCCU, and ANNH programs (CFDA Numbers 84.031A, 84.031T, 84.031N, and 84.031W) must be submitted electronically using the Governmentwide Grants.gov Apply site at <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the SIP, TCCU, and ANNH programs at <http://www.Grants.gov>. You must search for the downloadable application package for this program competition by the CFDA Number. Do not include the CFDA Number's alpha suffix in your search (e.g., search for 84.031, not 84.031A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is received—that is date and time stamped by the Grants.gov system—later than 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements.

When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see http://www.grants.gov/applicants/get_registered.jsp). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf>). You also must provide on your application the same DUNS Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information typically included on the Department of Education Supplemental Information

Form (SF 424); Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

- Your electronic application must comply with any page limit requirements described in this notice.

- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award Number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will

accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that the problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time; or, if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8513. Fax: (202) 502–7861. Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the

Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.031A,
84.031T, 84.031N or 84.031W), 400
Maryland Avenue, SW., Washington,
DC 20202–4260; or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center, Stop
4260, Attention: (CFDA Number
84.031A, 84.031T, 84.031N or
84.031W), 7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark;
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;
- (3) A dated shipping label, invoice, or receipt from a commercial carrier;
- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031A, 84.031T, 84.031N or 84.031W), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA Number, including suffix letter, if any, of the competition under which you are submitting your application.

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. Selection Criteria: The selection criteria for these programs are in 34 CFR 607.22(a)–(g). Applicants must address each of the following selection criteria (separately for each proposed activity). The total weight of the selection criteria is 100 points; the maximum score for each criterion is noted in parentheses.

- (a) Quality of The Applicant's Comprehensive Development Plan (Maximum 25 Points).
- (b) Quality of Activity Objectives (Maximum 15 Points).
- (c) Quality of Implementation Strategy (Maximum 20 Points).
- (d) Quality of Key Personnel (Maximum 7 Points).
- (e) Quality of Project Management Plan (Maximum 10 Points).
- (f) Quality of Evaluation Plan (Maximum 15 Points).
- (g) Budget (Maximum 8 Points).

2. Review and Selection Process: For five-year individual development grants, five-year cooperative arrangement development grants, one-year construction grants, and two-year construction and renovation grants, awards will be made in rank order according to the average score received from a panel of three readers.

Tie-breaker for Development Grants. In tie-breaking situations for development grants described in 34 CFR 607.23(b), the regulations for the Title III, Part A programs require that we award one additional point to an application from an IHE that has an endowment fund for which the market value per FTE student is less than the comparable average per FTE student at a similar type IHE. We award one additional point to an application from an IHE that had expenditures for library materials per FTE student that are less than the comparable average per FTE student at a similar type IHE. We also add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

- (i) Faculty development;

- (ii) Funds and administrative management;
- (iii) Development and improvement of academic programs;
- (iv) Acquisition of equipment for use in strengthening management and academic programs;
- (v) Joint use of facilities; and
- (vi) Student services

For the purpose of these funding considerations, we use 2005–2006 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given in the case of applicants for: (a) Individual development grants to applicants that have the lowest endowment values per FTE student; and (b) cooperative arrangement development grants to applicants in accordance with section 394(b) of the HEA, if the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant institution.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally.

If your application is not evaluated or not selected for funding, we will notify you by written correspondence.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118, 75.720 and 34 CFR 607.31.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the SIP, TCCU, and ANNH programs:

- a. The percentage change, over a five-year period, of the number of full-time degree-seeking undergraduates enrolling at IHEs. Note that this is a long-term

measure, which will be used to periodically gauge performance, beginning in FY 2009;

- b. The percentage of first-time, full-time degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same institution;

- c. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 4-year IHEs who graduate within 6 years of enrollment; and

- d. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at 2-year IHEs who graduate within 3 years of enrollment.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7576 or by e-mail: darlene.collins@ed.gov.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g. Braille, large print, audiotape, or computer diskette) on request to the program contact person in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: April 17, 2008.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E8–8702 Filed 4–21–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Training Program for Federal TRIO Programs (Training Program); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

(Catalog of Federal Domestic Assistance (CFDA) Number: 84.103A.)

DATES:

Applications Available: April 22, 2008.

Deadline for Transmittal of Applications: May 23, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Training Program provides grants to train staff and leadership personnel employed in, participating in, or preparing for employment in, projects funded under the Federal TRIO Programs to improve the operation of these projects.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv) and 34 CFR 75.105(b)(2)(ii), these priorities are from section 402G(b) of the Higher Education Act of 1965, as amended (HEA), and the regulations for this program (34 CFR 642.34).

Note: Each successful applicant must provide at least one training session annually on each topic listed within the specific priority for which it receives a grant. The training must be tailored to the needs of TRIO staff with less than two years of TRIO project experience. In addition, to be consistent with the goal of serving all regions of the country, as provided in 34 CFR 642.33, each grantee must provide training to at least 290 participants each year, unless we specify another number of participants.

Each application must clearly identify the specific priority number for which a grant is requested, and must address each of the topics listed under that specific priority. To ensure fair consideration, an application for a grant under a specific priority should address only that priority. A grantee who wants to apply under more than one priority should submit separate applications for each priority. Each application also must identify how the applicant will meet the requirement to provide at least one training session tailored to the needs of TRIO staff with less than two years of experience, annually.

For example, an application for a grant under Priority 1 should address only training to improve recordkeeping, reporting student and project performance, and the rigorous evaluation of project performance as a means for designing, and operating a model TRIO project, and must describe

how the applicant will provide at least one training session each year on each of these topics that is geared to the needs of TRIO staff with less than two years of TRIO project experience.

Absolute Priorities: For FY 2008, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet these priorities. These priorities are:

Priority 1. Training to improve: recordkeeping; reporting student and project performance; and the rigorous evaluation of project performance in order to design and operate a model TRIO project.

Under this priority, one award will be made for training designed specifically for staff working on projects funded under the Upward Bound Program only. Any other awards under this priority will be made for training for staff working on projects funded under the TRIO Programs other than the Upward Bound Program.

Number of expected awards: 3–4.

Maximum award amount: \$450,000.

Priority 2. Training on: budget management and the legislative and regulatory requirements for operation of projects funded under the Federal TRIO Programs.

Under this priority, one award will be made for training designed specifically for staff working on projects funded under the Upward Bound Program only. Any other awards under this priority will be made for training for staff working on projects funded under the TRIO Programs other than the Upward Bound Program.

Number of expected awards: 3–4.

Maximum award amount: \$400,000.

Priority 3. Training on: Assessment of student needs; proven retention and graduation strategies; and the use of educational technology in order to design and operate a model TRIO project.

Number of expected awards: 2–3.

Maximum award amount: \$450,000.

Priority 4. Training on: Student financial aid and college and university admissions policies and procedures.

Number of expected awards: 1–2.

Maximum award amount: \$400,000.

Maximum number of applications for a priority: Under Priorities 1 and 2, an applicant may submit only one application under each specific priority for a grant to provide training designed specifically for staff working on projects funded under the Upward Bound Program only. In addition, under Priorities 1 and 2, an applicant may submit a second application under each specific priority to provide training for staff working on projects funded under TRIO Programs other than the Upward

Bound Program. Under Priorities 3 and 4 an applicant may submit only one application for a grant under each specific priority. If an applicant submits more than one application under a specific priority, other than as noted for Priorities 1 and 2, we will accept only the application with the latest “date/time received” validation, and we will reject all other applications.

Program Authority: 20 U.S.C. 1070a–11 and 1070a–17.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98 and 99.

(b) The regulations for this program in 34 CFR part 642.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: \$4,250,000.

Estimated Range of Awards: \$350,000—\$450,000.

Estimated Average Size of Awards: \$425,000.

Maximum Award: We will reject any application that proposes a budget exceeding the maximum amount listed for each of the four absolute priorities, listed as follows, for a single budget period of 12 months:

- Priority 1: \$450,000;
- Priority 2: \$400,000;
- Priority 3: \$450,000; and
- Priority 4: \$400,000.

To be consistent with the goal of serving all regions of the country, as provided in 34 CFR 642.33, successful applicants will be expected to provide training to at least 290 participants, annually, unless we specifically approve another number.

Estimated Number of Awards: 9–13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. Eligible Applicants: Institutions of higher education and other public and private nonprofit institutions and organizations.

2. Cost Sharing or Matching: This program does not require cost sharing or matching.

IV. Application and Submission Information

1. Address to Request Application Package: Jane Wrenn, U.S. Department of Education, 1990 K Street, NW., Room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or by e-mail: TRIO@ed.gov.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. Content and Form of Application Submission: Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: Part III, the application narrative is where you, the applicant, address the selection criteria and priorities that reviewers use to evaluate your application. You must limit Part III, the program narrative, to no more than 50 pages, using the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1” margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, captions and all text in charts, tables, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the application for Federal assistance face sheet (SF 424); Part II, the budget information summary form (ED Form 524); Part III–A, the program profile form; Part III–B, the one-page narrative form; and Part IV, the assurances and certifications. The page limit also does not apply to the table of contents. If you include any attachments or appendices, these items will be counted as part of Part III, the program narrative, for purposes of the page limit requirement. You must include your complete response to the selection criteria and priorities in Part III, the program narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times: Applications Available:* April 22, 2008.

Deadline for Transmittal of Applications: May 23, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 642. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Training Program, CFDA Number 84.103A, must be submitted electronically using the Governmentwide Grants.gov Apply site at: <http://www.Grants.gov>. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-

mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Training Program at: <http://www.Grants.gov>. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.103 not 84.103A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov

system. You can also find the Education Submission Procedures pertaining to Grants.gov at: <http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf>.

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see http://www.grants.gov/applicants/get_registered.jsp). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see <http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf>).

You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition, you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

- Your electronic application must comply with any page-limit requirements described in this notice.

- After you electronically submit your application, you will receive from

Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1-800-518-4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time; or, if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Eileen S. Bland, U.S. Department of Education, 1990 K Street, NW., Room 7000, Washington, DC 20006-8510. Fax: (202) 502-7857.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail.

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.103A),
400 Maryland Avenue, SW.,
Washington, DC 20202-4260; or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center, Stop
4260, Attention: (CFDA Number
84.103A), 7100 Old Landover Road,
Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.

- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

- (3) A dated shipping label, invoice, or receipt from a commercial carrier.

- (4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.103A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

- (1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

- (2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program competition are from 34 CFR 642.31 and are listed in the application package.

Note: For the FY 2008 competition, the Secretary has identified “the Need” for

training projects through the selection of four absolute priorities. Therefore, the Secretary will consider that an applicant has satisfied the "Need" criterion listed in 34 CFR 642.31(f) by applying for a grant under one of these priorities, and applicants are not required to address this criterion. The application package contains instructions on addressing the remaining selection criteria.

2. *Review and Selection Process:* A panel of non-Federal readers will review each application in accordance with the selection criteria, pursuant to 34 CFR 642.30(a). The individual scores of the readers will be added and the sum divided by the number of readers to determine the reader score received in the review process. In accordance with 34 CFR 642.32, the Secretary will award prior experience points to applicants that have conducted a Training Program project within the last three fiscal years, based on their documented experience. Prior experience points, if any, will be added to the application's averaged reader score to determine the total score for each application.

Under section 402A(c)(3) of the HEA, the Secretary is not required to make awards under the Training Program for Federal TRIO Programs in the order of the scores received by the application in the review process and adjusted for prior experience. For FY 2008, the Secretary will select an application for funding within each specific absolute priority for which a grant is requested in the order of the reader score received by the application in the review process, as follows:

Under Priorities 1 and 2, within each specific priority, the Secretary will select an application for funding from among those applications that proposed to provide training designed specifically for staff working on projects funded under the Upward Bound Program only, in the order of the reader score received by the applications in the review process. The Secretary will also select an application for funding from among the applications that proposed to provide training for staff working on projects funded under TRIO Programs other than the Upward Bound Program in the order of the reader score received by the application in the review process.

Under Priorities 3 and 4, within each specific priority, the Secretary will select an application for funding in the order of the reader score received by the application in the review process.

Within each specific priority, if there are insufficient funds to fund all applications at the next reader score, the Secretary will use the reader score received by the application in the review process, adjusted for prior experience, to make awards. In the

event a tie still exists, the Secretary will select for funding the applicant that has the greatest capacity to provide training in all regions of the Nation in order to assure accessibility to the greatest number of prospective training participants, consistent with 34 CFR 642.33.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We also may notify you informally; however, informal correspondence does not constitute an award notice or a binding funding decision.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to <http://www.ed.gov/fund/grant/apply/appforms/appforms.html>.

4. *Performance Measures:* The success of the Training Program is measured by its cost-effectiveness, based on the percentage of personnel working on TRIO funded projects who receive training each year, and by the percentage of those receiving training who rate the training as highly useful. All grantees will be required to submit an annual performance report documenting their success in training personnel working on TRIO funded projects, including the average cost per trainee and the trainees' evaluations of the effectiveness of the training provided. The success of the Training Program also is assessed on the quantitative and qualitative outcomes of

the training projects based on project evaluation results.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Jane Wrenn, or if unavailable, contact Eileen S. Bland, U.S. Department of Education, 1990 K Street, NW., Room 7000, Washington, DC 20006-8510. Telephone: (202) 502-7600 or by e-mail: TRIO@ed.gov.

If you use a TDD, call the FRS, toll free, at 1-800-877-8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: April 17, 2008.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E8-8708 Filed 4-21-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC08-561-001; FERC-561]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

April 15, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and an extension of the expiration date for this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of February 11, 2008 (73 FR 7725–26) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by May 20, 2008.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–7345. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, *Attention:* Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC08–561–001.

Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission's submission guidelines. Complete filing instructions and acceptable filing formats are available at (<http://www.ferc.gov/help/submission-guide/electronic-media.asp>). To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (<http://www.ferc.gov/docs-filing/efiling.asp>), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to

the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact ferconlinesupport@ferc.gov or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT:

Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.gov.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–561 “Annual Report of Interlocking Positions.”
 2. *Sponsor:* Federal Energy Regulatory Commission.
 3. *Control No.* 1902–0099.
- The Commission is now requesting that OMB approve this information collection with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to implement the statutory provisions of Title II, section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 825d) which amended Part III Section 305(c) of the Federal Power Act (FPA). Submission of the list is necessary to fulfill the requirements of section 211—Interlocking Directorates, which defines monitoring and regulatory operations concerning interlocking directorate positions held by utility personnel and possible conflicts of interest. The information is collected by the Commission to identify persons holding interlocking position between public utilities and possible conflicts of interest. Through this process, the Commission is able to review and exercise oversight of interlocking directorates of public utilities and their related activities. Specifically, the Commission must determine that individuals in utility operations holding two positions at the same time would not adversely affect the public interest. The Commission can employ enforcement proceedings when violations and omissions of the Act's provisions occur. The reporting requirements are found at 18 CFR 46.6 and 131.31

5. *Respondent Description:* The respondent universe is comprised of

public utilities and from those entities the Commission received reports from 1,996 persons serving as officers or directors of those concerns.

6. *Estimated Burden:* 499 total hours, 1996 respondents, 1 response per respondent, and .25 hours per response (average).

7. *Estimated Cost Burden to Respondents:* \$30,320. (499 hours divided by 2,080 hours per year per employee times \$126,384 per year average per employee). The cost per respondent is \$15.

Statutory Authority: Section 305(c) of the Federal Power Act, 16 U.S.C. 825d.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8634 Filed 4–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC08–566–001; FERC–566]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

April 15, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C., the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of February 11, 2008 (73 FR 7723–25) and has made this notification in its submission to OMB.

DATES: Comments on the collection of information are due by May 20, 2008.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be

reached by telephone at 202-395-7345. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED-34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC08-566-001.

Documents filed electronically via the Internet must be prepared in the acceptable filing format and in compliance with the Federal Energy Regulatory Commission's submission guidelines. Complete filing instructions and acceptable filing formats are available at (<http://www.ferc.gov/help/submission-guide/electronic-media.asp>). To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (<http://www.ferc.gov/docs-filing/efiling.asp>), and then follow the instructions for each screen. First-time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed, or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact ferconlinesupport@ferc.gov or toll-free at (866) 208-3676 or for TTY, contact (202) 502-8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502-8415, by fax at (202) 273-0873, and by e-mail at michael.miller@ferc.gov.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC-566 "Annual Report of a Utility's Twenty Largest Purchasers".
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.:* 1902-0114.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the

information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Section 305 of the Federal Power Act, as amended by Section 211 of the Public Utility Regulatory Policies Act of 1978. Submission of the list is necessary to fulfill the requirements of Section 211-Interlocking Directorates, which defines monitoring and regulatory operations concerning interlocking directorate positions held by utility personnel and possible conflicts of interest. The information on facilities, who seek qualifying status for their facilities, to file the information is collected by the Commission to identify large purchasers of electric energy and possible conflicts of interest. Through this process, the Commission is able to review and exercise oversight of interlocking directorates of public utilities and their related activities. The Commission implements these requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 46, Section 46.3.

5. *Respondent Description:* The respondent universe currently comprises 183 respondents (average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 1,452 total hours, 242 respondents (average per year), 1 response per respondent, and 6 hours per respondent (average).

7. *Estimated Cost Burden to Respondents:* 1,452 total hours/2,080 hours per year × \$126,384 per year = \$88,226. The cost per respondent is \$365.

Statutory Authority: Section 305(c)(2)(D), 16 U.S.C. 825d.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-8635 Filed 4-21-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459-212]

Union Electric Company, dba AmerenUE; Notice of Application and Soliciting Comments, Motions To Intervene, and Protests

April 15, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Shoreline Management Plan (SMP).
- b. *Project No.:* 459-212.

c. *Date Filed:* March 28, 2008.

d. *Applicant:* Union Electric Company, dba AmerenUE.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The project is located on the Osage River, in Benton, Camden, Miller, and Morgan Counties, Missouri. The project is located immediately downstream from the U.S. Army Corps of Engineers' (Corps) Harry S. Truman Dam and occupies 1.6 acres of inundated federal lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mark Jordan, AmerenUE General Supervisor, One Ameren Plaza, 1901 Chouteau Avenue, P.O. Box 66149, St. Louis, MO 63166-6149, (573) 681-7246

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502-8674, or by e-mail: shana.high@ferc.gov.

j. *Deadline for filing comments and/or motions:* May 16, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, DHAC, PJ-12.1, 888 First Street, NE., Washington, DC 20426. Please reference the project number (P-459-212) on any comments or motions filed. Comments and motions filed need to carefully specify the appropriate project number in order to avoid confusion with the SMPs concurrently filed by UPPCO for four other projects (see item k below). 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.

k. *Description of Proposal:* Union Electric Company, dba AmerenUE, filed an SMP for the Osage Hydroelectric Project to provide for: (a) An updated permitting program, including measures to assure compliance with federal and state permitting requirements for activities on project lands, (b) commitments to identify and protect sensitive habitat, (c) a vegetative buffer policy, (d) enhanced enforcement, (e) vector (mosquito) control, (f) a certified dock builders program, (g) an Adopt-A-Shoreline cleanup program, (h) a derelict dock removal program, (i) a shoreline protection hotline, and (j) educational programs.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or call toll-free 1-866-208-3676, or for TTY, call (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-8636 Filed 4-21-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07-17-002]

Bridgeline Holdings, L.P.; Notice of Compliance Filing

April 15, 2008.

Take notice that on April 2, 2008, Bridgeline Holdings, L.P. filed a Report of Refunds in compliance with the Commission's letter order issued on January 28, 2008 in Docket Nos. PR07-17-000 and PR07-17-001.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive 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
April 22, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-8630 Filed 4-21-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08-85-000]

Columbia Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Appalachian Expansion Project—Hamlin Compressor Station and Request for Comments on Environmental Issues

April 15, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed Appalachian Expansion Project—Hamlin Compressor Station Project involving construction and operation of a compressor station and piping to an existing pipeline by Columbia Gas Transmission Company (Columbia) in Lincoln County, West Virginia. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on May 19, 2008. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and to encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>).

Summary of the Proposed Project

Columbia proposes to build a compressor station along its SM116 pipeline, a part of its Appalachian Pipeline System, to provide additional

transportation service of natural gas to its customers in the Mid-Atlantic and Eastern Markets. Proposed construction would include:

- One compressor building housing two 4,735 horsepower natural gas-fired compressors;
- One auxiliary building, with office space;
- One truck loading facility with a used oil storage tank and two sumps
- An emergency generator; and
- Ancillary foundations, pipe supports, and landscaping that include fencing and crushed stone ground cover.

The general location of the proposed facilities is shown in Appendix 1.¹

Land Requirements for Construction

The project would be built on a 22-acre parcel owned by Columbia and would affect approximately 6.75 acres during construction, with 1.63 acres permanently converted for project use. Construction of pipeline facilities would affect approximately 6.07 acres of open land, 0.58 acres of forested lands, and a 0.10-acre area of County Road 7–2, which would be within the proposed facility footprint. The remaining 5.08 acres would be revegetated to prevent erosion.

The EA Process

We² are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes Columbia's proposal. By this notice, we are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

NEPA also requires the FERC to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this

¹ The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the "Additional Information" section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Columbia.

² "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

Notice of Intent, we are requesting public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Water resources;
- Land use and visual quality;
- Cultural resources;
- Vegetation and wildlife (including threatened and endangered species);
- Air quality and noise;
- Reliability and safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, where necessary, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are received and considered, please carefully follow the instructions in the Public Participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal and alternatives to the proposal, including alternative compressor station sites and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberley D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 3, PJ–11.3;

- Reference Docket No. CP08–85–000; and

- Mail your comments so that they will be received in Washington, DC on or before May 19, 2008.

Please note that the Commission strongly encourages electronic filing of any comments, interventions, or protests to this proceeding. See Title 18 of the Code of Federal Regulations (CFR), Part 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at <http://www.ferc.gov> under the "eFiling" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing." In addition, there is a "Quick Comment" option available, which is an easy method for interested persons to submit text-only comments on a project. The *Quick-Comment User Guide* can be viewed at <http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf>. Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid email address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenor play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding.

If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).³ Only intervenors have the right to seek rehearing of the Commission's decision.

³ Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

The Notice of Application for this proposed project issued on March 13, 2008 identified the date for the filing of interventions as April 3, 2008. However, affected landowners and parties with environmental concerns may be granted late intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet Web site (<http://www.ferc.gov>) using the "eLibrary" link. Click on the eLibrary link, then on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Finally, public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-8631 Filed 4-21-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08-333-000; ER08-333-001]

Las Vegas Cogeneration Limited Partnership; Notice of Issuance of Order

April 15, 2008.

Las Vegas Cogeneration Limited Partnership (Las Vegas) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Las Vegas also requested waivers of various Commission regulations. In particular, Las Vegas requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Las Vegas.

On March 4, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests 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 Las Vegas, 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 (2004). 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 May 14, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Las Vegas 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 Las Vegas, 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 Las Vegas' 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. E8-8632 Filed 4-21-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08-564-000; ER08-564-001]

Vision Power Systems, Inc.; Notice of Issuance of Order

April 15, 2008.

Vision Power Systems, Inc. (Vision Power) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Vision Power also requested waivers of various Commission regulations. In particular, Vision Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Vision Power.

On April 15, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests 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 Vision Power, should file a protest with the Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004). 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 May 15, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Vision Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Vision Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Vision Power's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at <http://www.ferc.gov>, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-8633 Filed 4-21-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08-100-000]

Texas Eastern Transmission, LP; Notice of Application

April 15, 2008.

Take notice that on April 1, 2008, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed in Docket

No. CP08-100-000, an application, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), for an order authorizing Texas Eastern's Northern Bridge Project which will provide up to 150,000 Dth per day of firm natural gas transportation capacity from the Clarington, Ohio area to the Delmont, Pennsylvania area, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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.

Specifically, Texas Eastern seeks authorization to construct, install, own, operate, and maintain 14,416 horsepower of additional compression at its Holbrook Compressor Station located in Greene County, Pennsylvania through the addition of a new 13,333 horsepower compressor unit and the uprate of an existing compressor unit by 1,083 horsepower. Texas Eastern also seeks authority to abandon four reciprocating compressor units totaling 5,400 horsepower at the Holbrook Compressor Station. The net increase in compression at the Holbrook Compressor Station will be 9,016 horsepower. Finally, Texas Eastern seeks authority to uprate an existing compressor unit at its Uniontown Compressor Station in Fayette County, Pennsylvania by 1,650 horsepower.

Any questions regarding this application should be directed to Garth Johnson, General Manager, Certificates & Reporting, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251-1642, at (713) 627-5415 (phone) or (713) 627-5947 (Fax).

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS)

or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, 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: April 30, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-8637 Filed 4-21-08; 8:45 am]

BILLING CODE 6717-01-P

EXPORT-IMPORT BANK

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105-121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

Time and Place: May 14, 2008, at 9:30 a.m. to 12 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Discussions will focus on U.S. Ex-Im Bank's ongoing international business development initiatives including changing economic factors in Angola and Ghana; a briefing relative to the Millennium Challenge grant for Tanzania and the Bank's independent power projects initiative in Nigeria; a report on the SAAC members discussion with Africa attendees at the Bank's annual meeting; an update on the SAAC recommendation concerning extending the insurance brokers' commission for medium-term guaranteed transactions; as well as focusing on the Bank's city/state partnership program and the dealer finance initiative.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person

wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to May 14, 2008, Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565-3525 or TDD (202) 565-3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565-3525.

Kamil Cook,
Deputy General Counsel.

[FR Doc. E8-8455 Filed 4-21-08; 8:45 am]

BILLING CODE 6690-01-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 May 7, 2008.

A. Federal Reserve Bank of Kansas City (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Charles C. Neal, individually and as trustee of the Charles A. Neal Revocable Trust, and by Charles C. Neal, Ann L. Neal and Jane E. Neal, all of Miami, Oklahoma; Elizabeth Edwards, Argyle, Texas; and Mary K. Neal, University City, Missouri, as members of the Neal family group;* to retain control of First Miami Bancshares, Inc., parent of The First National Bank and Trust Company of Miami, Miami, Oklahoma, and Bank of Billings, Billings, Missouri.

Board of Governors of the Federal Reserve System, April 17, 2008.

Robert deV. Frierson,
Deputy Secretary of the Board.

[FR Doc. E8-8665 Filed 4-21-08; 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 application 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 website 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 May 15, 2008.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Hazen Bancorporation, Inc., Hazen, North Dakota;* to increase its ownership to 19.20 percent of the voting shares of North Star Holding Company, Inc., Jamestown, North Dakota, and thereby indirectly acquire Unison Bank, Jamestown, North Dakota and Unison Bank, Mesa, Arizona (a de novo bank).

2. *McIntosh County Bank Holding Company, Inc., Ashley, North Dakota;* to acquire additional shares and maintain 33.33 percent of the voting shares of North Star Holding Company, Inc., Jamestown, North Dakota, and thereby indirectly acquire Unison Bank, Jamestown, North Dakota and Unison Bank, Mesa, Arizona.

3. *North Star Holding Company, Inc., Jamestown, North Dakota*; to acquire 100 percent of the voting shares of Unison Bank, Mesa, Arizona (a de novo bank).

4. *Wishek Bancorporation, Inc., Wishek, North Dakota*; to acquire through its 28.26 percent ownership of North Star Holding Company, Inc., Jamestown, North Dakota, shares of Unison Bank, Mesa, Arizona (a de novo bank).

Board of Governors of the Federal Reserve System, April 17, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8-8666 Filed 4-21-08; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Development of Herpes Simplex Virus (HSV)-2 Serologic Testing Algorithms, Potential Extramural Projects (PEP) 2008-R-21

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.

Time and Date: 1 p.m.-2 p.m., May 14, 2008 (Closed).

Place: Teleconference.

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 "Development of Herpes Simplex Virus (HSV)-2 Serologic Testing Algorithms, PEP 2008-R-21."

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404)498-1194.

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: April 15, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8-8616 Filed 4-21-08; 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): Evaluation of the Validity of Coverage Survey Self-Reported Audit Vaccination Status, Funding Opportunity Announcement (FOA) IP08-003; Strategies to Extend the Influenza Vaccination Season in Medical Practices, IP08-004; Effectiveness of a Hospital-Based Program for Vaccination of Birth Mothers and Household Contacts with Influenza Vaccines and Combined Tetanus Toxoid and a Cellular Pertussis Vaccine, FOA IP08-005; Effectiveness of an Intervention to Promote a Targeted Vaccination Program in the Obstetrician-Gynecologist Setting, FOA IP08-008

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:

Time and Date: 12 p.m.-4 p.m., May 20, 2008 (Closed).

Place: Teleconference.

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 "Evaluation of the Validity of Coverage Survey Self-Reported Audit Vaccination Status, FOA IP08-003; Strategies to Extend the Influenza Vaccination Season in Medical Practices, FOA IP08-004; Effectiveness of a Hospital-Based Program for Vaccination of Birth Mothers and Household Contacts with Influenza Vaccines and Combined Tetanus Toxoid and a Cellular Pertussis Vaccine, FOA IP08-005; Effectiveness of an Intervention to Promote a Targeted Vaccination Program in the Obstetrician-Gynecologist Setting, FOA IP08-008."

Contact Person for More Information: Sheree Marshall Williams, Ph.D., Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone: (404) 639-4896.

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: April 15, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8-8617 Filed 4-21-08; 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): Addressing Barriers to Diagnosis and Genetic Testing for Duchenne Muscular Dystrophy, Potential Extramural Projects (PEP) 2008-R-12

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.

Time and Date: 1 p.m.-2 p.m., May 16, 2008 (Closed).

Place: Teleconference.

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 "Addressing Barriers to Diagnosis and Genetic Testing for Duchenne Muscular Dystrophy, PEP 2008-R-12."

Contact Person for More Information: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498-1194.

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: April 15, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8-8643 Filed 4-21-08; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2006-D-0302] (formerly Docket No. 2006D-0419)

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Voluntary National Retail Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Voluntary National Retail Food Regulatory Program Standards" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of January 15, 2008 (73 FR 2500), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910-0621. The approval expires on March 31, 2011. A copy of the supporting statement for this information collection is available on the Internet at <http://www.reginfo.gov/public/do/PRAMain>.

Dated: April 15, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-8680 Filed 4-21-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2008-N-0050]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 22, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-6974, or e-mailed to baguilar@omb.eop.gov. All comments should be identified with the OMB control number 0910-0442. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Device Tracking—(OMB Control Number 0910-0442)—Extension

Section 211 of the Food and Drug Administration Modernization Act (FDAMA) (Public Law 105-115) became effective on February 19, 1998. FDAMA amended the previous medical device tracking provisions under section 519(e)(1) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(e)(1) and (e)(2)) and were added by the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101-629). Unlike the tracking provisions under

SMDA which required tracking of any medical device meeting certain criteria, FDAMA allows FDA discretion in applying tracking provisions to medical devices meeting certain criteria, and provides that tracking requirements for medical devices can be imposed only after FDA issues an order. In the *Federal Register* of February 8, 2002 (67 FR 5943), FDA issued a final rule which conformed existing tracking regulations to changes in tracking provisions effected by FDAMA under part 821 (21 CFR part 821)).

Section 519(e)(1) of the act, as amended by FDAMA provides that FDA may require by order, that a manufacturer adopt a method for tracking a class II or III medical device, if the device meets one of the three following criteria: (1) The failure of the device would be reasonably likely to have serious adverse health consequences, (2) the device is intended to be implanted in the human body for more than 1 year (referred to as a "tracked implant"), or (3) the device is life-sustaining or life-supporting (referred to as a "tracked l/s-l/s device") and is used outside a device user facility.

Tracked device information is collected to facilitate identifying the current location of medical devices and patients possessing those devices, to the extent that patients permit the collection of identifying information. Manufacturers and FDA (where necessary), use the data to: (1) Expedite the recall of distributed medical devices that are dangerous or defective and (2) facilitate the timely notification of patients or licensed practitioners of the risks associated with the medical device.

In addition, the regulations include provisions for: (1) Exemptions and variances, (2) system and content requirements for tracking, (3) obligations of persons other than device manufacturers, e.g., distributors; records and inspection requirements, (4) confidentiality, and (5) record retention requirements.

Respondents for this collection of information are medical device manufacturers, importers, and distributors of tracked implants or tracked l/s-l/s devices used outside a device user facility. Distributors include multiple and final distributors, including hospitals.

In the *Federal Register* of February 5, 2008 (73 FR 6729), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

CFR Sections	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
821.2 and 821.30(e)	4	1	4	12	48
821.25(a)	1	1	1	76	76
821.25(d)	22	1	22	2	44
821.30(a) and (b)	17,000	72	1,222,725	0.1666	203,706
821.30(c)(2)	1	1	1	28	28
821.30(d)	17,000	15	259,186	0.1666	43,180
Total					247,082

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

CFR Sections	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
821.25(b)	229	46,260	10,593,433	0.2899	3,071,036
821.25(c)	229	1	229	63.0	14,430
821.25(c)(3)	229	1,124	257,454	0.2899	74,636
TOTAL					3,160,102

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual hourly reporting burden for respondents involved in medical device tracking is estimated to be 247,082 hours, and the annual recordkeeping burden for these respondents is estimated to be 3,160,102 hours. These numbers have been rounded up. The burden estimates cited in tables 1 and 2 of this notice are based primarily upon the data and methods provided in FDA's assessment for fiscal year (FY) 1999 entitled "A Cost Assessment of Medical Device Tracking." Using implantation procedures from the National Center for Health Statistics, FDA applied a 2-percent annual growth rate to estimate the number of procedures for tracked implant devices for FY 1997 through FY 2006. This assessment also used unit shipment data in combination with various growth rates to estimate annual sales distribution for the tracked I/s-I/s devices over the same time period. In addition, the assessment also estimated the burden on industry for developing and maintaining tracking systems for these medical devices for FY 1997 through FY 2006.

For the annual recordkeeping burden, the number of respondent medical device manufacturers subject to device tracking is estimated to be 229 and is based on data from FDA's manufacturers database. FDA issued

tracking orders to 20 additional medical device manufacturers during the time period for FY 2002 through FY 2004. Under § 821.25(c), the additional medical device manufacturers collectively bear a one-time recordkeeping burden of 10,560 hours to develop a medical device tracking system. FDA's estimate of 17,000 medical device distributor respondents contained in this assessment, are derived from Dun & Bradstreet sources on medical equipment wholesalers, retailers, home care dealers, and rental companies. Health Forum, an American Hospital Association Company, provided statistics on hospitals.

Dated: April 15, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8-8682 Filed 4-21-08; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee. This meeting was announced in the **Federal Register** of March 27, 2008 (73 FR 16314). The amendment is being made to reflect changes in the introductory paragraph and to add a portion entitled "Closed Committee Deliberations." There are no other changes.

FOR FURTHER INFORMATION CONTACT:

Teresa Watkins, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301-827-7001, FAX: 301-827-6776, e-mail:

Teresa.Watkins@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572) in Washington, DC area, codes 3014512529 and 3014512535. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 27, 2008, FDA announced that a meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee would be held on May 5 and 6, 2008.

On page 16314, in the third column, the introductory paragraph of the document is amended to read as follows:

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

On page 16315, the second column of the document is amended to add a portion entitled "Closed Committee Deliberations" to read as follows:

Closed Committee Deliberations: On May 5, 2008, from 8 a.m. to 9:15 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)). During this session, the committee will discuss the details of a proprietary research report and protocol addressing characteristics of different formulations.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: April 16, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8-8683 Filed 4-21-08; 8:45 am]

BILLING CODE 4160-01-S

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.

Platform for the High Throughput Screening of Single Nucleotide Polymorphisms and Small Insertions and Deletions

Description of Technology: Available for licensing and commercial development is an oligoarray-based process for gene-specific single nucleotide polymorphism (SNP) genotyping based on comparative hybridization. This process can detect, even in heterozygous conditions, known and potentially flag unknown variants (point mutations, base insertion or deletion) along the complete sequence of a given gene while drastically cutting the time and costs compared to high-throughput direct sequencing without affecting sensitivity and specificity. The accuracy and efficiency of the invention was validated based on the BRCA-1 breast and ovarian cancer predisposing gene. This process can easily be custom designed to include within the same platform a relatively large number of genes relevant to a specific clinical condition and it is particularly useful for the screening of long genomic region with relatively infrequent but clinically relevant variants.

More specifically, the invention is made reliable by the development of two tailored algorithms: the first automatically designs the complete data set of gene-specific probes starting from the genomic sequence according to the user specification (size of the probes, relative position, etc.); and the other is based on an algorithm that flags gene variants in the test sample. This allows detecting unknown variants in the region in which only the reference hybridizes to the probes. These features drastically reduce the amount of sequencing (the gold standard for SNP detection) to small regions in which a discrepancy between test signal and reference signal is found. Moreover, there is no limit, other than the physical area of the slide, to the number of probes that can be added to the array

and the number of genes that can be queried simultaneously. Thus, a repertoire of considerable size can be scanned in a single test for each sample with sensitivity and specificity comparable to direct sequencing.

Applications: The immediate clinical applications of this platform is a remarkable improvement of genetic testing by increasing the number of target genes that can be screened in a short time, at a minimal cost using an automated simplified analysis, such as the sequencing-grade screening for BRCA-1 variants and the detection of mutations in cancerous tissues. The method can be also applied to other human genes (coding and non-coding sequences), and other sequences from animals, bacterial and viruses.

Development Status: Method fully developed and validated.

Inventors: Ena Wang (CC), Alessandro Monaco (CC), Francesco M Marincola (CC), et al.

Patent Status: U.S. Provisional Application No. 61/068,182 filed 05 Mar 2008 (HHS Reference No. E-082-2008/0-US-01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301-435-4507; thalhamc@mail.nih.gov.

Generation of Wild-Type Dengue Viruses for Use in Rhesus Monkey Infection Studies

Description of Technology: Dengue virus is a positive-sense RNA virus belonging to the *Flavivirus* genus of the family *Flaviviridae*. Dengue virus is widely distributed throughout the tropical and semitropical regions of the world and is transmitted to humans by mosquito vectors. Dengue virus is a leading cause of hospitalization and death in children in at least eight tropical Asian countries. There are four serotypes of dengue virus (DEN-1, DEN-2, DEN-3, and DEN-4) that annually cause an estimated 50-100 million cases of dengue fever and 500,000 cases of the more severe form of dengue virus infection known as dengue hemorrhagic fever/dengue shock syndrome (DHF/DSS). This latter disease is seen predominately in children and adults experiencing a second dengue virus infection with a serotype different than that of their first dengue virus infection and in primary infection of infants who still have circulating dengue-specific maternal antibody. A vaccine is needed to lessen the disease burden caused by dengue virus, but none is licensed.

Because of the association of more severe disease with secondary dengue

virus infection, a successful vaccine must induce immunity to all four serotypes. Immunity is primarily mediated by neutralizing antibody directed against the envelope (E) glycoprotein, a virion structural protein. Infection with one serotype induces long-lived homotypic immunity and a short-lived heterotypic immunity. Therefore, the goal of immunization is to induce a long-lived neutralizing antibody response against DEN-1, DEN-2, DEN-3, and DEN-4, which can best be achieved economically using live attenuated virus vaccines. This is a reasonable goal since a live attenuated vaccine has already been developed for the related yellow fever virus, another mosquito-borne flavivirus present in tropical and semitropical regions of the world.

The evaluation of live attenuated dengue vaccine candidates in rhesus monkeys requires wild type control viruses for each of the four dengue serotypes. These control viruses are used for comparison to the attenuated strains and post-vaccination challenge to assess vaccine efficacy. As such, these viruses need to be well characterized and sufficiently pure to ensure that they will replicate to consistent levels in rhesus monkeys. Characterization generally includes sequence analysis, titration, and evaluation in monkeys. The following viruses have been characterized: (1) DEN1 WP (2) DEN1 Puerto Rico/94 (3) DEN2 NGC prototype (4) DEN2 Tonga/74 (5) DEN3 Sleman/78 and (6) DEN4 Dominica/81.

Application: Dengue/Flavivirus vaccine studies, dengue/Flavivirus diagnostics, dengue/Flavivirus research tools.

Development Status: Materials are available for transfer.

Inventors: Stephen S. Whitehead and Joseph E. Blaney, Jr. (NIAID).

Publications:

1. AP Durbin, RA Karron, W Sun, DW Vaughn, MJ Reynolds, JR Perreault, B Thumar, R Men, C-J Lai, WR Elkins, RM Chanock, BR Murphy, SS Whitehead. A live attenuated dengue virus type 4 vaccine candidate with a 30 nucleotide deletion in the 3' untranslated region is highly attenuated and immunogenic in humans. *Am J Trop Med Hyg.* 2001 Nov;65(5):405-413.

2. SS Whitehead, B Falgout, KA Hanley, JE Blaney Jr., L Markoff, BR Murphy. A live, attenuated dengue virus type 1 vaccine candidate with a 30-nucleotide deletion in the 3' untranslated region is highly attenuated and immunogenic in monkeys. *J Virol.* 2003 Jan;77(2):1653-1657.

3. SS Whitehead, KA Hanley, JE Blaney Jr., LE Gilmore, WR Elkins, BR Murphy. Substitution of the structural genes of dengue virus type 4 with those of type 2 results in chimeric vaccine candidates which are attenuated for mosquitoes, mice, and rhesus monkeys. *Vaccine* 2003 Oct 1;21(27-30):4307-4316.

4. JE Blaney Jr., CT Hanson, KA Hanley, BR Murphy, SS Whitehead. Vaccine candidates derived from a novel infectious cDNA clone of an American genotype dengue virus type 2. *BMC Infect Dis.* 2004 Oct 4;4:39.

5. JE Blaney Jr., CT Hanson, CY Firestone, KA Hanley, BR Murphy, SS Whitehead. Genetically modified, live attenuated dengue virus type 3 vaccine candidates. *Am J Trop Med Hyg.* 2004 Dec;71(6):811-821.

6. JE Blaney Jr., JM Matro, BR Murphy, SS Whitehead. Recombinant, live-attenuated tetravalent dengue virus vaccine formulations induce a balanced, broad, and protective neutralizing antibody response against each of the four serotypes in rhesus monkeys. *J Virol.* 2005 May;79(9):5516-5528.

7. JE Blaney Jr., NS Sathe, CT Hanson, CY Firestone, BR Murphy, SS Whitehead. Vaccine candidates for dengue virus type 1 (DEN1) generated by replacement of the structural genes of rDEN4 and rDEN4Delta30 with those of DEN1. *Virol J.* 2007 Feb 28;4:23.

Patent Status: HHS Reference No. E-042-2008/0—Research Tool. Patent protection is not being sought for this technology.

Licensing Status: Available for nonexclusive biological materials licensing only.

Licensing Contact: Peter A. Soukas, J.D.; 301-435-4646; soukasp@mail.nih.gov.

A Rapid Ultrasensitive Assay for Detecting Prions in Samples Based on the Seeded Polymerization of Recombinant Normal Prion Protein (rPrP-sen)

Description of Technology: Prion diseases are infectious neurodegenerative diseases of great public concern. Humans may be infected by eating infected animals (primarily hooved animals or ungulates). Blood transfusions have also been documented as a cause of human cases of prion infection. Prion diseases include: Creutzfeldt-Jakob disease (CJD) (humans); variant Creutzfeldt-Jakob disease (vCJD) (humans); Scrapie (sheep); Bovine Spongiform Encephalopathy (BSE) (cattle); and Chronic Wasting Disease (deer, elk and moose). Currently available rapid tests for infectious prions, which are

routinely used to monitor slaughtered animals, are not sensitive enough to detect prion infections in samples from live animals or humans and must be performed post-mortem. Additionally, these tests cannot be used to detect subinfectious concentrations of infectious prions in humans or animals. An ultrasensitive assay for infectious prions, the protein-misfolding cyclic amplification assay (PMCA), is available for testing live animals or humans; however, this test is expensive because it is difficult to perform, relies on the use of brain homogenates, and can take 2-3 weeks to perform.

This technology enables the rapid detection of extremely low, sub-lethal, concentrations of prions. This assay, like PMCA, is based on the prion-induced polymerization of normal prion protein (PrP-sen). However, this assay, unlike PMCA uses recombinant normal prion protein (rPrP-sen) rather than normal prion protein derived from brain homogenate. The use of rPrP-sen provides major advantages over PMCA. rPrP-sen provides a relatively inexpensive, abundant, and concentrated source of pure PrP-sen as a substrate for the PMCA prion amplification reaction. This permits the detection of PrP-res in 2-3 hours and the ultrasensitive detection of PrP-res in 2 to 3 days. Moreover, relative to PrP-sen in brain tissue, rPrP-sen is much easier to mutate and chemically modify to facilitate detection of prion-induced PMCA amplification products in potentially high-throughput formats. In its current embodiment, the ultrasensitive assay has been used to consistently detect (by western blot) around 50 ag of hamster PrP-Sc (0.003 lethal dose) in cerebral spinal fluid and brain tissue within 2 to 3 days.

Applications:

A diagnostic assay for detecting prion diseases early.

An assay for monitoring the progression of prion disease and the effectiveness of treatments.

A veterinary assay for detecting PrP-res in live animals and assessing the extent of prion disease in live herds.

An assay for the detection of prion in commercial products (e.g., biotechnological or agricultural), blood and blood products, transplantation tissues, medical devices, and environmental samples.

Market:

Currently, there is a need for a rapid, ultrasensitive, veterinary test for prion diseases in live animals used for human consumption and a need for assessing the extent of prion infection in live herds.

Currently, there is a need for a human diagnostic assay to detect prion disease early when treatment is most effective and a need for monitoring the effectiveness of treatments for prion diseases.

Currently, there is a need for a rapid, ultrasensitive test for prions in commercial products (e.g., biotechnological or agricultural), blood and blood products, transplantation tissues, medical devices, and environmental samples in which prion contamination might be a concern.

Inventors: Ryuichiro Atarashi, Roger A. Moore, Suzette A. Priola, and Byron W. Caughey (NIAID).

Related Publication: R Atarashi et al. Ultrasensitive detection of scrapie prion protein using seeded conversion of recombinant prion protein. *Nat Methods* 2007 Aug;4(8):645–650.

Patent Status: U.S. Provisional Application No.60/961,364 filed 20 Jul 2007 (HHS Reference No. E–109–2007/0-US–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: RC Tang, J.D., LL.M.; 301–435–5031; tangrc@mail.nih.gov.

Collaborative Research Opportunity: The NIAID Laboratory of Persistent Viral Diseases, TSE/Prion Biochemistry Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Byron Caughey, Ph.D. at (406) 363–9264 or bcaughey@niaid.nih.gov for more information.

Identification of a Cell-Surface Co-Receptor That Mediates the Uptake and Immunostimulatory Activity of “D” Type CpG Oligonucleotides

Description of Technology: Unmethylated CpG motifs are present at high frequency in bacterial DNA. They provide a danger signal to the mammalian immune system that triggers a protective immune response characterized by the production of Th1 and proinflammatory cytokines and chemokines. Although the recognition of CpG DNA by B cells and plasmacytoid dendritic cells is mediated by TLR 9, these cell types differ in their ability to bind and respond to structurally distinct classes of CpG oligonucleotides. The inventors' work established that CXCL16, a membrane-bound scavenger receptor, influences the uptake, subcellular localization, and cytokine profile induced by D oligonucleotides.

Knowing that CXCL16 can be used to selectively internalize ODN could be

useful for (1) Improving the activity of D type ODN, (2) improving recognition (and side effects) of other types of ODNs by deleting regions that interact with CXCL16 (3) potentially improving the targeting of any drug or biologic to CXCL16 expressing cells, (4) targeting antisense ODNs to immune cells or preventing side effects from antisense therapy, and also applications to (5) DNA vaccines and other agents that require targeting to CXCL16 expressing cells such as dendritic cells and monocytes.

This application claims methods of inducing an immune response that include administering agents that increase the activity and/or expression of CXCL16 and a D ODN. The application also claims methods of decreasing an immune response to a CpG ODN, including administering agents that decrease the activity and/or expression of CXCL16. Compositions including one or more D type ODNs and an agent that modulates the activity and/or expression of CXCL16 are also claimed.

Application: Vaccine adjuvants, production of vaccines, immunotherapeutics.

Developmental Status: Preclinical studies have been performed; oligonucleotides have been synthesized.

Inventors: Dennis Klinman (FDA/CBER; NCI), Ihsan Gursel (FDA/CBER), Maya Gursel (FDA/CBER).

Publication: M Gursel et al. CXCL16 influences the nature and specificity of CpG-induced immune activation. *J Immunol.* 2006 Aug 1;177(3):1575–1580.

Patent Status: U.S. Provisional Application No. 60/713,547 filed 31 Aug 2005 (HHS Reference No. E–036–2005/0–US–01); PCT Application No. PCT/US2006/033774 filed 28 Aug 2006 (HHS Reference Number E–036–2005/0–PCT–02); U.S. Patent Application No. 12/065,085 filed 27 Feb 2008 (HHS Reference Number E–036–2005/0–US–03).

Licensing Status: Available for exclusive or nonexclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Experimental Immunology, Immune Modulation Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, Ph.D. at 301–435–3121 or hewesj@mail.nih.gov for more information.

Use of Suppressive Oligonucleotides To Treat Uveitis

Description of Technology: Uveitis is a major cause of visual loss in industrialized nations. Uveitis refers to an intraocular inflammation of the uveal tract, namely, the iris, choroids, and ciliary body. Uveitis is responsible for about ten percent (10%) of the legal blindness in the United States. Complications associated with uveitis include posterior synechia, cataracts, glaucoma and retinal edema.

Suppressive CpG oligodeoxynucleotides (ODNs) are ODNs capable of reducing an immune response, such as inflammation. Suppressive ODNs are DNA molecules of at least eight nucleotides in length, where the ODN forms a G-tetrad, and has a circular dichroism value greater than 2.9. In a suppressive ODN, the number of guanosines is at least two.

This application claims compositions and methods for the treatment of uveitis. Specifically, the application claims use of suppressive CpG ODNs to treat uveitis. The compositions and methods of the application can be used for the treatment of anterior, posterior and diffuse uveitis.

Application: Vaccine adjuvants, production of vaccines, immunotherapeutics.

Developmental Status: Preclinical studies have been performed; oligonucleotides have been synthesized.

Inventors: Dennis Klinman (FDA/CBER; NCI), Igal Gery (NEI), Chiaki Fujimoto (NEI).

Patent Status: U.S. Provisional Application No. 60/569,276 filed 06 May 2004 (HHS Reference No. E–152–2004/0–US–01); PCT Application No. PCT/US2005/015761 filed 05 May 2005, which published as WO 2005/11539 on 09 Dec 2006 (HHS Reference No. E–152–2004/0–PCT–02); U.S. Patent Application No. 11/579,518 filed 03 Nov 2006 (HHS Reference Number E–152–2004/0–US–03); International filings in Australia, Canada, China, Europe, India, Japan, Mexico.

Licensing Status: Available for exclusive or nonexclusive licensing.

Licensing Contact: Peter A. Soukas, J.D.; 301–435–4646; soukasp@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Experimental Immunology, Immune Modulation Group, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John D. Hewes, Ph.D. at 301–

435-3121 or hewesj@mail.nih.gov for more information.

Mapping Internal and Bulk Motion of an Object With Phase Labeling in Magnetic Resonance Imaging

Description of Technology: Current MRI methods for tracking the motion of an object over a relatively long period of time requires the use of precisely defined grid points that may be inexact because of limited image resolution or the size of the element being tracked. Phase contrast velocity mapping generally provides high spatial resolution and simple data processing. However, it is generally unsuitable for motion tracking and prone to error. This invention is a cutting edge Magnetic Resonance Imaging (MRI) technique that provides a method for mapping the internal and bulk motion of a specimen by labeling the phase of the specimen magnetization with a selected spatial function and measuring changes in the phase of the magnetization. The special function is selectable to provide magnetization phase modulation corresponding to displacements in a selected direction such as Cartesian or radial or azimuthal direction. This method and associated apparatus is capable of producing images based on magnetization phase modulation using data from stimulated echoes and anti-echoes. This invention has important applications in, among other areas, cardiac functional imaging and can be used to compute accurate strain maps of the heart.

Inventors: Anthony H. Aletras and Han Wen (NHLBI).

Patent Status: U.S. Patent No. 7,233,818 issued 19 Jun 2007 (HHS Reference No. E-234-1999/3-US-06); U.S. Patent Application No. 11/800,398 filed 03 May 2007 (HHS Reference No. E-234-1999/3-US-08).

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Susan Ano, Ph.D.; 301-435-5515; anos@mail.nih.gov.

Dated: April 14, 2008.

David Sadowski,

Deputy Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8-8620 Filed 4-21-08; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 17, 2008, 3 p.m. to April 17, 2008, 5 p.m. National Institutes of Health, 6701 Rockledge Drive, Bethesda MD 20892 which was published in the **Federal Register** on April 9, 2008, 73 FR 19229.

The meeting will be held April 21, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: April 14, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8452 Filed 4-21-08; 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 invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Multicausal Models of Physiome Conflict.

Date: May 21, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Ping Fan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301-435-1740, fanp@csr.nih.gov.

Name of Committee: Immunology Integrated Review Group; Transplantation,

Tolerance, and Tumor Immunology Study Section.

Date: May 29-30, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301-435-3566, cooperc@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Death and Neurodegeneration.

Date: June 2, 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: Alexander Yakovlev, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301-435-1254, yakovleva@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chronic Fatigue and Fibromyalgia Syndromes, Temporomandibular Disorders.

Date: June 4, 2008.

Time: 1 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: J. Terrell Hoffeld, DDS, PhD, USPHS Dental Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301-435-1781, th88q@nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular Aspects of Diabetes and Obesity Study Section.

Date: June 5-6, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: San Francisco Airport Marriott, 1800 Old Bayshore Highway, Burlingame, CA 94010.

Contact Person: Ann A. Jerkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435-4514, jerkinsa@csr.nih.gov.

Name of Committee: Health of the Population Integrated Review Group; Nursing Science: Children and Families Study Section.

Date: June 5, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Melinda Tinkle, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7770, Bethesda, MD 20892, (301) 594-6594, tinklem@csr.nih.gov.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.

Date: June 5-6, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ross D. Shonat, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7849, Bethesda, MD 20892, (301) 435-2786, shonatr@csr.nih.gov.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Rehabilitation Sciences Study Section.

Date: June 5-6, 2008.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Old Town Alexandria, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435-1786, pelham@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Development Methods of In Vivo Imaging and Bioengineering Research.

Date: June 9-10, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, (301) 435-2409, shabestb@csr.nih.gov.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section.

Date: June 9, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435-1258, micklinm@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Nuclear Dynamics and Transport.

Date: June 10-11, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Alessandra M. Bini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301 435-1024, binia@csr.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Central Visual Processing Study Section.

Date: June 10-11, 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: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function D Study Section.

Date: June 10-11, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: James W. Mack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435-2037, mackj2@csr.nih.gov.

Name of Committee: Cardiovascular Sciences Integrated Review Group; Hypertension and Microcirculation Study Section.

Date: June 10-11, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 435-1777, zouai@csr.nih.gov.

Name of Committee: Oncological Sciences Integrated Review Group; Cancer Biomarkers Study Section.

Date: June 10-11, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Steven B. Scholnick, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301-435-1719, scholnis@csr.nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroimmunology and Brain Tumors Study Section.

Date: June 12-13, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Marina del Rey Marriott, 4100 Admiralty Way, Marina del Rey, CA 90292.

Contact Person: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435-1184, joshij@csr.nih.gov.

Name of Committee: Oncological Sciences Integrated Review Group; Developmental Therapeutics Study Section.

Date: June 12-13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hotel Nikko, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301-435-1767, gubanic@csr.nih.gov.

Name of Committee: Cardiovascular Sciences Integrated Review Group; Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: June 12-13, 2008.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Olga A. Tjurmina, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451-1375, ot3d@nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

Date: June 12-13, 2008.

Time: 8 a.m. to 3 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: Stuart B. Moss, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301-435-1044, mossstua@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group Biology and Diseases of the Posterior Eye Study Section

Date: June 12-13, 2008

Time: 8 a.m. to 5:30 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: Michael H. Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435-0910, chaitinm@csr.nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

Date: June 12–13, 2008.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Marina del Rey Marriott, 4100 Admiralty Way, Marina del Rey, CA 90292.

Contact Person: Pat Manos, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, manospa@csr.nih.gov.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

Date: June 12–13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–1507, niw@csr.nih.gov.

Name of Committee: Oncological Sciences Integrated Review Group; Chemo/Dietary Prevention Study Section.

Date: June 12–13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Sally A. Mulhern, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435–5877, mulherns@csr.nih.gov.

Name of Committee: Hematology Integrated Review Group; Erythrocyte and Leukocyte Biology Study Section.

Date: June 12, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Delia Tang, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, tangd@csr.nih.gov.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

Date: June 12–13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 401 6K, MSC 7814, Bethesda, MD 20892, 301–451–1327, tthyagar@csr.nih.gov.

Name of Committee: Cardiovascular Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.

Date: June 12–13, 2008.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Fishermans Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Maqsood A. Wani, PhD, DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7814, Bethesda, MD 20892, 301–435–2270, wanimags@csr.nih.gov.

Name of Committee: Health of the Population Integrated Review Group; Community Influences on Health Behavior.

Date: June 12–13, 2008.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, schwarte@csr.nih.gov.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: June 12–13, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington, 1919 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Anna L. Riley, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, rileyann@csr.nih.gov.

Name of Committee: Oncological Sciences Integrated Review Group; Drug Discovery and Molecular Pharmacology Study Section.

Date: June 12–13, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Hungyi Shau, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–435–1720, shauhung@csr.nih.gov.

Name of Committee: Health of the Population Integrated Review Group; Behavioral Genetics and Epidemiology Study Section.

Date: June 12–13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Elisabeth Koss, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–1721, kosse@csr.nih.gov.

Name of Committee: Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Date: June 12–13, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–594–1321, diramig@csr.nih.gov.

Name of Committee: Oncological Sciences Integrated Review Group; Cancer Immunopathology and Immunotherapy Study Section.

Date: June 12–13, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hotel Nikko, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Denise R. Shaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, shawdeni@csr.nih.gov.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

Date: June 12–13, 2008.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Lee S. Mann, JD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, mannl@csr.nih.gov.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Enabling Bioanalytical and Biophysical Technologies Study Section.

Date: June 12–13, 2008.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

Contact Person: Vonda K. Smith, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, 301–435–1789, smithvo@csr.nih.gov.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Child Psychopathology and Developmental Disabilities Study Section.

Date: June 12–13, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bolger Center Hotel, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435-4445, doussarj@csr.nih.gov.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry B Study Section.

Date: June 12-13, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Kathryn M. Koeller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301-435-2681, koellerk@csr.nih.gov.

Name of Committee: Health of the Population Integrated Review Group; Cardiovascular and Sleep Epidemiology Study Section.

Date: June 12-13, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: J. Scott Osborne, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435-1782, osbornes@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Reproductive Endocrinology.

Date: June 12, 2008.

Time: 1 p.m. to 2 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: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046-E, MSC 7892, Bethesda, MD 20892, 301-435-1154, sheardn@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, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 14, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8453 Filed 4-21-08; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group, Clinical Trials Review Committee.

Date: June 30-July 1, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Patricia A. Haggerty, PhD, Chief, Clinical Studies and Training Scientific Review Section, Review Branch, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892-7924, 301-435-0288, haggertp@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: April 14, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-8513 Filed 4-21-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I-129, Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I-129,

Petition for Nonimmigrant Worker; OMB Control Number 1615-0009.

On February 5, 2008, U.S. Citizenship and Immigration Services (USCIS) published a 60 Day notice in the **Federal Register** announcing a revision to Form I-129. However due to the approaching expiration of Form I-129 at the end of May, USCIS has decided to publish the second submission as an extension. When the proposed revision to Form I-129 is ready to be reviewed by the public, USCIS will follow normal protocol and publish another 60 and 30 Day Notice in the **Federal Register** announcing the revision and requesting comments.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 5, 2008, at 73 FR 6733 allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 22, 2008. This process is conducted in accordance with 5 CFR 1320.10.

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 Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352 or via e-mail at rfs.regs@dhs.gov, and to the OMB USCIS Desk Officer via facsimile at 202-395-6974 or via e-mail at kastrich@omb.eop.gov.

When submitting comments by e-mail, please make sure to add OMB Control Number 1615-0009 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the

validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-129, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. This form is used by an employer to petition for aliens to come to the U.S. temporarily to perform services, labor, and training or to request extensions of stay or changes in nonimmigrant status for nonimmigrant workers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 2.75 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,014,607 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: <http://www.regulations.gov/search/index.jsp>.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone number 202-272-8377.

Dated: April 16, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.
[FR Doc. E8-8645 Filed 4-21-08; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Information Collection; Hunting and Fishing Application and Report Forms for National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We 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.

DATES: You must submit comments on or before June 23, 2008.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); hope_grey@fws.gov (e-mail); or (703) 358-2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES) or by telephone at (703) 358-2482.

SUPPLEMENTARY INFORMATION: I. Abstract

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended, (Administration Act) and the Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4) (Recreation Act) govern the administration and uses of national wildlife refuges and wetland management districts. The Administration Act consolidated all the different refuge areas into a single "Refuge System." It also authorizes us to permit public uses on lands of the National Wildlife Refuge System and identifies six priority public uses on national wildlife refuges, including hunting and fishing. The Administration Act instructs us that these uses are "legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges, and which generally fosters refuge management and through which

the American public can develop an appreciation for fish and wildlife."

The Administration Act also directs us to: "provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting."

The Recreation Act allows the use of refuges for public recreation when it is not inconsistent or does not interfere with the primary purpose(s) of the refuge.

There are 389 national wildlife refuges where we administer hunting and/or fishing programs. We only collect user information at about 20 percent of these refuges. Information that we plan to collect will help us to:

(1) Administer and monitor hunting and fishing programs on refuges.

(2) Distribute hunting and fishing permits in a fair and equitable manner to eligible participants.

We are proposing nine new application and report forms associated with hunting and fishing on refuges. We may not allow all opportunities on all refuges; therefore, we require different forms for each. Not all refuges will use each form and some refuges may collect the information in a nonform format.

We will use the following application forms when we assign areas, dates, and/or types of hunts via a drawing because of limited resources, high demand, or when a permit is needed to hunt. We will issue application forms for specific periods, usually seasonally or annually.

(1) FWS Form 3-2354 (Quota Deer Hunt Application).

(2) FWS Form 3-2355 (Waterfowl Lottery Application).

(3) FWS Form 3-2356 (Big Game Hunt Application).

(4) FWS Form 3-2357 (Migratory Bird Hunt Application).

(5) FWS Form 3-2358 (Fishing/Shrimping/Crabbing Application)

We plan to collect information on:

(1) Applicant (name, address, phone number) so that we can notify applicants of their selection.

(2) User preferences (dates, areas, method) so that we can distribute users equitably.

(3) Whether or not the applicant is applying for a special opportunity for disabled or youth hunters.

(4) Age of youth hunter(s) so that we can establish eligibility.

We will ask users to report on their success after their experience so that we can evaluate hunt quality and resource impacts. We will use the following activity reports, which we will distribute during appropriate seasons, as

determined by State or Federal regulations.
 (1) FWS Form 3-2359 (Big Game Harvest Report).
 (2) FWS Form 3-2360 (Fishing Report).
 (3) FWS Form 3-2361 (Migratory Bird Hunt Report).
 (4) FWS Form 3-2362 (Upland Game Hunt Report).
 We plan to collect information on:
 (1) Names of users so we can differentiate between responses.

(2) City and State of residence so that we can better understand if users are local or traveling.
 (3) Dates, time, and number in party so we can identify use trends to allocate staff and resources.
 (4) Details of success by species so that we can evaluate quality of experience and resource impacts.

II. Data
OMB Control Number: None. This is a new collection.

Title: Hunting and Fishing Application Forms and Reports for National Wildlife Refuges
Service Form Number(s): 3-2354, 3-2355, 3-2356, 3-2357, 3-2358, 3-2359, 3-2360, 3-2361, and 3-2362.
Type of Request: New collection.
Affected Public: Individuals and households.
Respondent's Obligation: Required to obtain or retain a benefit.
Frequency of Collection: On occasion.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
FWS Form 3-2354 (Quota Deer Hunt Application)	175,000	175,000	30 minutes	87,500
FWS Form 3-2355 (Waterfowl Lottery Application)	90,000	90,000	30 minutes	45,000
FWS Form 3-2356 (Big Game Hunt Application)	2,500	2,500	30 minutes	1,250
FWS Form 3-2357 (Migratory Bird Hunt Application)	5,000	5,000	30 minutes	2,500
FWS Form 3-2358 (Fishing/Shrimping/Crabbing Application)	2,500	2,500	30 minutes	1,250
FWS Form 3-2359 (Big Game Harvest Report)	85,000	85,000	15 minutes	21,250
FWS Form 3-2360 (Fishing Report)	400,000	400,000	15 minutes	100,000
FWS Form 3-2361 (Migratory Bird Hunt Report)	5,000	5,000	15 minutes	1,250
FWS Form 3-2362 (Upland Game Hunt Report)	50,000	50,000	15 minutes	12,500
Totals	815,000	815,000	.....	261,250

III. Request for Comments

We invite comments concerning this IC on:

- (1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- (2) the accuracy of our estimate of the burden for this collection of information;
- (3) ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 2, 2008.

Hope Grey,
Information Collection Clearance Officer,
Fish and Wildlife Service.

FR Doc. E8-8674 Filed 4-21-08; 8:45 am

Billing Code 4310-55-S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R4-R-2008-N0014; 40136-1265-0000-S3]

Pee Dee National Wildlife Refuge, Anson and Richmond Counties, NC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Pee Dee National Wildlife Refuge for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the Final CCP. The primary purpose of this 8,443-acre refuge is to protect migratory birds. Major habitats include bottomland hardwoods, upland pine forests, mixed pine-hardwoods, croplands, grasslands/old fields, managed wetlands, and open water. The refuge also has 1,306 acres in a conservation easement.

Significant issues identified by the public, intergovernmental partners, and the Service include: Need for comprehensive wildlife and habitat management; lack of baseline data; threats to threatened, endangered, and imperiled species; impacts of increasing

human population; need for increased partnerships and interagency coordination; spread of exotic species; impacts to water quantity and quality; need for improved environmental education and interpretation; need for a cultural resource management plan; and the need for maintaining quality hunting, fishing, and other wildlife-dependent public use activities.

DATES: To ensure consideration, we must receive your written comments by May 22, 2008. We will hold a public meeting. We will announce the upcoming meeting in the local news media.

ADDRESSES: Requests for copies of the Draft CCP/EA should be addressed to: Jeffrey Bricken, Refuge Manager, Pee Dee National Wildlife Refuge, 5770 U.S. Highway 52 North, Wadesboro, NC 28170. The Draft CCP/EA may also be accessed and downloaded from the Service's Internet Web site <http://southeast.fws.gov/planning>. Comments on the Draft CCP/EA may be submitted to the above address or via electronic mail to Jeffrey_bricken@fws.gov.

FOR FURTHER INFORMATION CONTACT: Jeffrey Bricken at 704/694-4424.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Pee Dee National Wildlife Refuge. We started the process through a notice in the **Federal Register** on November 7, 2006 (71 FR 65122).

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act and NEPA.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives for managing the refuge and chose Alternative C as the proposed alternative.

Alternatives

A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A: Current Management (No Action)

Wildlife and habitat management on the refuge would stay at current levels. We would continue to survey, maintain habitats, and limit disturbance to threatened and endangered species, including the red-cockaded woodpecker and the Schweinitz's sunflower, as well as State-listed species. We would minimize erosion and runoff to protect stream/diadromous fishes and freshwater mussels. We would survey, monitor, and maintain habitat to benefit migratory birds, including waterfowl, shorebirds, wading birds, and landbirds. Impoundments would be drained annually to control aquatic weeds. There would be incidental feral hog control as part of the deer hunt, but no coyote management. Forest management activities would maintain upland pine and bottomland hardwood habitats. We would manage 300 acres of flooded crop impoundments, moist-soil units, and a greentree reservoir. Approximately

1,200 acres of croplands would be farmed under a cooperative program.

Management of warmwater fish species on the refuge would be limited to a survey performed by partners, but there would be no management of herpetological species. Management of water quantity would include monitoring and controlling water levels in impoundments and the greentree reservoir. In addition, we would provide minimum flow requirements for the Pee Dee River to Progress Energy during Federal relicensing meetings for two Pee Dee River dams. There would be no active management for water quality on the refuge. Resource protection would be maintained at current levels. We would seek to acquire land from willing sellers within the approved refuge acquisition boundary. Approximately 1,300 acres would continue to be protected in easement. Conservation gaps and corridors would not be addressed. Law enforcement patrols would protect historical and archaeological resources.

The visitor services' program would continue at the current level. Deer/feral hog, turkey, and small-game hunting opportunities would be maintained at current levels. No waterfowl hunting would be permitted. Fishing opportunities would be maintained. As part of wildlife observation and photography, we would maintain a 2.75-mile wildlife drive, three hiking trails (3.5 miles total), ~25 miles of public gravel roads, and an observation blind. Horseback riding would continue on public roads via special use permits. We would conduct 28 environmental and interpretive programs annually. Friends Group membership and volunteer levels would remain the same.

The refuge staff presently consists of five positions: Refuge manager, assistant refuge manager, office assistant, engineering equipment operator, and park ranger. The assistant refuge manager position is scheduled for abolishment under Alternative A. There would be limited intergovernmental coordination under this alternative.

Alternative B: Migratory Bird Emphasis

We would focus management on the needs of trust resources (i.e., listed species and migratory birds). We would increase habitat restoration efforts to support these species, and more areas would be seasonally closed to limit their disturbance. Survey and monitoring efforts for stream/diadromous fishes and freshwater mussels would increase, and we would work with partners to protect upstream lands in the watershed for priority aquatic species. A water quality program would be implemented.

Management of migratory birds would be increased as the moist-soil unit acreage would be expanded. Exotic species control would benefit trust species. Upland and bottomland forest management would focus on the needs of listed species and migratory birds. Cropland acreage would be reduced to make way for old fields planted with native warm season grasses. We would work with partners to conduct herpetological and fish surveys, and to ensure that water quantities and qualities support trust species.

Under this alternative, resource protection efforts would increase. Land acquisition and archaeological resource efforts would be the same as under Alternative A. However, we would work with partners to identify conservation gaps and wildlife corridors to protect listed species and migratory birds. GIS databases would be established for easement properties to evaluate their contribution to listed species' objectives.

Visitor services would be increased. If needed, we would consider implementing a specific hunt program for feral hogs to control their population. Fishing opportunities would be the same as under Alternative A. We would seasonally close key areas to the public to limit disturbance to trust species, but would install additional photo-blinds and work to improve boat access to the Pee Dee River. We would develop on- and off-site education and interpretive programs, focusing messages on trust resources and the minimization of human impacts. We would work to acquire an environmental education facility. We would train staff, volunteers, and teachers to incorporate interpretive themes into programs. Friends Group membership and volunteer levels would be increased and focused on the needs of listed species and migratory birds.

Administration would expand with increased staffing levels; the following staff would be required in addition to the current staff: Assistant refuge manager (position scheduled for abolishment under Alternative A), biologist, forestry technician, maintenance worker (2), and park ranger.

Alternative C: Biodiversity and Biological Integrity Emphasis (Proposed Alternative)

We would emphasize wildlife and habitat diversity, with management activities being expanded. Habitats would be improved to support listed species. Some key areas would be seasonally closed to the public to limit

disturbance to threatened, endangered, and imperiled species. Survey and monitoring efforts for stream/diadromous fishes and freshwater mussels would be increased. We would work with partners to protect upstream watershed areas outside the refuge, and a water quality program would be implemented to further protect priority aquatic species. We would document the presence or absence of Schweinitz's sunflower on the refuge and establish populations. For migratory birds, we would intensively survey and monitor and would increase the acreage of moist-soil units. Sweetgum trees would be thinned in areas of the bottomland hardwood forest to favor mast-producing species.

Exotic species control efforts would focus on maintaining biodiversity. If needed, a specific feral hog hunt would be implemented to reduce the impacts of this invasive species to refuge biodiversity. We would work with the State to determine the impacts of coyotes. Upland habitats would be managed for biodiversity and GIS databases would be developed for these areas. Some flooded crop impoundments would be replaced with moist-soil units to increase multi-species use. Additional acreage of grassy fields would be planted with native warm season species. Cooperative farming would be maintained at current levels. Herpetological and fish surveys and monitoring efforts would increase, and we would ensure that management practices do not adversely impact these species.

Under the proposed action, resource protection efforts would be expanded. Signage along the refuge boundary would be maintained, and we would seek to acquire land from willing sellers within the approved acquisition boundary. We would develop GIS databases for easements and ensure that they are managed according to refuge biodiversity objectives. We would work with partners to protect conservation gaps and corridors to support wildlife and habitat diversity.

We would expand visitor services. Turkey hunting would be expanded to include areas in Richmond County. Deer hunting opportunities would be increased. Small game hunting opportunities would remain the same. We would implement quail population monitoring to determine the number of hunting days and bag limits. To improve fishing opportunities, we would increase boat access to the Pee Dee River and consider additional stocking of fish in refuge ponds. Three additional photo-blinds would be installed, and we would evaluate the potential for

additional birding trails. We would continue to allow horseback riding on public roads via special use permits. We would develop on- and off-site education and interpretive programs with messages focused on biodiversity and the minimization of human impacts. We would train staff, volunteers, and teachers to incorporate interpretive themes into programs. An on-site environmental education center would be built. We would develop an outreach plan to increase awareness of the archaeological and historical resources on the refuge. We would increase and focus Friends Group and volunteer efforts to support wildlife and habitat diversity. Administration would expand to include maintenance programs in support of biodiversity and biological integrity. In addition to current staff, we would add the following positions over the 15-year life of the CCP: Assistant refuge manager (position scheduled for abolishment under Alternative A), biologist, forestry technician, maintenance worker (2), and park ranger.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Next Step

After the comment period ends for the Draft CCP/EA, we will analyze the comments and address them in the form of a Final CCP and Finding of No Significant Impact.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57.

Dated: December 31, 2007.

Jon Andrew,
Acting Regional Director.

Editorial Note: This document was received at the Office of the Federal Register on April 16, 2008.

[FR Doc. E8-8618 Filed 4-21-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R3-ES-2008-N0054;30120-1113-0000 C4]

Endangered and Threatened Wildlife and Plants; 5-Year Reviews[FU1]

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of review; request for information on seven listed midwestern species.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), initiate 5-year reviews of three endangered species (least tern—interior population, Illinois cave amphipod, and Minnesota dwarf trout lily) and four threatened species (Lake Erie water snake, Lakeside daisy, Leedy's roseroot and northern wild monkshood) under the Endangered Species Act of 1973, as amended (Act). We request any new information on these species that may have a bearing on their classification as endangered or threatened. Based on the results of these 5-year reviews, we will make a finding on whether these species are properly classified under the Act.

DATES: To allow us adequate time to conduct these reviews, we must receive your information no later than June 23, 2008. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information and review the information that we receive on these species, see "Public Solicitation of New Information."

FOR FURTHER INFORMATION CONTACT: For species-specific information, contact the appropriate person under "Public Solicitation of New Information." Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800-877-8337 for TTY assistance.

SUPPLEMENTARY INFORMATION: We initiate 5-year reviews of the endangered least tern (*Sterna antillarum*) (interior nesting population), endangered Illinois cave amphipod (*Gammarus acherondytes*), endangered Minnesota dwarf trout lily (*Erythronium propullans*), and threatened Lake Erie water snake (*Nerodia sipedon insularum*), all of which are found among the western Lake Erie offshore islands and adjacent waters in the United States and Canada, as well as Lakeside daisy (*Hymenoxis herbacea*), Leedy's roseroot (*Sedum integrifolium* ssp. *leedyi*) and northern wild monkshood (*Aconitum noveboracense*), under the Act.

We request any new information on these species that may have a bearing on their classification as endangered or threatened.

Based on the results of these 5-year reviews, we will make a finding on whether these species are properly classified under the Act.

Why Do We Conduct a 5-Year Review?

Under the Act, we maintain the List of Endangered and Threatened Wildlife and Plant Species (List) at 50 CFR 17.11 and 17.12. We amend the List by publishing final rules in the **Federal Register**. Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Section 4(c)(2)(B) requires that we

determine (1) Whether a species no longer meets the definition of threatened or endangered and should be removed from the List (delisted); (2) whether a species more properly meets the definition of threatened and should be reclassified from endangered to threatened; or (3) whether a species more properly meets the definition of endangered and should be reclassified from threatened to endangered. Using the best scientific and commercial data available, a species will be considered for delisting if the data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3)

the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification requires a separate rulemaking process. Therefore, we are requesting submission of any such information that has become available since either the original listing or the most recent status review for these species. Based on the results of these 5-year reviews, we will make the requisite findings under section 4(c)(2)(B) of the Act.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under review. This notice announces initiation of our active review of the species in Table 1.

TABLE 1.—SUMMARY OF LISTING INFORMATION, 3 WILDLIFE SPECIES AND 4 PLANT SPECIES IN THE MIDWEST REGION

Common name	Scientific name	Status	Where listed	Final listing rule
Least tern (interior nesting population).	<i>Sterna antillarum</i>	Endangered	U.S.A. [AR, CO, IA, IL, IN, KS, KY, LA (Miss. R. and tributaries north of Baton Rouge), MS (Miss. R.), MO, MT, ND, NE, NM, OK, SD, TN, TX (except within 50 miles of coast)].	50 FR 21784; 05/28/1985.
Lake Erie water snake	<i>Nerodia sipedon insularum</i> .	Threatened	*Lake Erie offshore islands and their adjacent waters (located more than 1 mile from mainland)—U.S.A. (OH), Canada (Ont.).	64 FR 47126; 08/30/1999.
Illinois cave amphipod	<i>Gammarus acherondytes</i> .	Endangered	U.S.A. (IL)	63 FR 46900; 09/03/1998.
Lakeside daisy	<i>Hymenoxis herbacea</i> ...	Threatened	U.S.A. (IL, MI, OH), Canada (Ont.)	53 FR 23742; 06/23/1988.
Leedy's roseroot	<i>Sedum integrifolium</i> ssp. <i>leedyi</i> .	Threatened	U.S.A. (MN, NY)	78 FR 14649; 04/22/1992.
Minnesota dwarf trout lily.	<i>Erythronium propullans</i>	Endangered	U.S.A. (MN)	58 FR 10521; 03/26/1986.
Northern wild monkshood.	<i>Aconitum noveboracense</i> .	Threatened	U.S.A. (IA, NY, OH, WI)	43 FR 17910; 04/26/1978.

* We define the offshore islands as those 22 or more named and unnamed western Lake Erie islands and rock outcrops located greater than 1.6 km (1 mi) from the Ohio mainland and Ontario mainland. We define the offshore island's adjacent waters as the western Lake Erie waters surrounding the offshore islands and located greater than 1.6 km (1 mi) from the Ohio mainland and Ontario mainland. These islands and rock outcrops and their adjacent waters are located within boundaries roughly defined as 82°07'30" North Longitude, 41°33'00" West Latitude, and 42°00'00" West Latitude. The U.S. Lake Erie offshore islands and rock outcrops include, but are not limited to, the islands called Kellys, South Bass, Middle Bass, North Bass, Sugar, Rattlesnake, Green, Gibraltar, Starve, Gull, Ballast, Lost Ballast, and West Sister. Canadian Lake Erie offshore islands and rock outcrops of Lake Erie include, but are not limited to, the islands called Pelee, Middle, East Sister, Middle Sister, North Harbour, Hen, Chick, Big Chicken, and Little Chicken.

What Information Do We Consider in Our Review?

In our 5-year review, we consider all new information available at the time of the review. These reviews will consider the best scientific and commercial data that have become available since the original listing determination or most recent status review of each species, such as—(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics; (B) Habitat conditions, including but not limited to amount, distribution, and suitability; (C) Conservation measures that have been implemented to benefit the species; (D) Threat status and trends (see five factors under heading “How do we determine whether a species is endangered or

threatened?”); and (E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List of Endangered and Threatened Wildlife and Plants, and improved analytical methods.

Public Solicitation of New Information

We request any new information concerning the status of the wildlife species least tern (interior nesting population), Lake Erie water snake (located on the western Lake Erie offshore islands and adjacent waters), and Illinois cave amphipod, and of the plant species Lakeside daisy, Leedy's roseroot, Minnesota dwarf trout lily, and northern wild monkshood. See “What

Information Do We Consider in Our Review?” for specific criteria. If you submit information, support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. We specifically request information regarding data from any systematic surveys, as well as any studies or analysis of data that may show population size or trends; information pertaining to the biology or ecology of the species; information regarding the effects of current land management on population distribution and abundance; information on the current condition of habitat; and recent information regarding conservation

measures that have been implemented to benefit the species. Additionally, we specifically request information regarding the current distribution of populations and evaluation of threats faced by the species in relation to the five listing factors (as defined in section 4(a)(1) of the Act) and the species' listed status as judged against the definition of threatened or endangered. Finally, we solicit recommendations pertaining to the development of, or potential updates to recovery plans and additional actions or studies that would benefit these species in the future.

Our practice is to make information, including names and home addresses of respondents, available for public review. Before including your address, telephone number, e-mail address, or other personal identifying information in your response, you should be aware that your entire submission—including your personal identifying information—may be made publicly available at any time. While you can ask us in your response to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mail or hand-deliver information on the following species to the U.S. Fish and Wildlife Service, Field Supervisor, at the corresponding address below. You may also view information we receive in response to this notice, as well as other documentation in our files, at the following locations by appointment, during normal business hours.

Least tern: 101 Park DeVillie Drive, Suite A, Columbia, MO 65203-0007, Attention: Ms. Jane Ledwin. Direct inquiries to Ms. Ledwin at 573-234-2132, extension 109.

Lake Erie water snake: 6950-H Americana Parkway, Reynoldsburg, OH 43068-4127, Attention: Ms. Megan Seymour. Direct inquiries to Ms. Seymour at 614-469-6923, extension 16.

Lakeside daisy: 6950-H Americana Parkway, Reynoldsburg, OH 43068-4127, Attention: Ms. Sarena Selbo. Direct inquiries to Ms. Selbo at 614-469-6923, extension 17.

Illinois Cave amphipod: 1511 47th Ave., Moline, IL 61265, Attention: Ms. Kristen Lundh. Direct inquiries to Ms. Lundh at 309-757-5800, extension 215.

Leedy's roseroot and Minnesota dwarf trout lily: 4101 E. 80th Street, Bloomington, MN 55425-1665, Attention: Mr. Phil Delphey. Direct inquiries to Mr. Delphey at 612-725-3548.

Northern wild monkshood: 2661 Scott Tower Drive, New Franken, WI 54229-9565, Attention: Ms. Cathy Carnes.

Direct inquiries to Ms. Carnes at 920-866-1732.

All electronic information must be submitted in Text format or Rich Text format to *FW3MidwestRegion_5YearReview@fws.gov*. Please send information for each species in a separate e-mail. Provide your name and return address in the body of your message and include the following identifier in the subject line of the e-mail: Information on 5-year review for [NAME OF SPECIES].

How Are These Species Currently Listed?

Table 1 provides current listing information. Also, the List, which covers all listed species, is also available on our Internet site at <http://endangered.fws.gov/wildlife.html#Species>.

Definitions Related to this Notice

To help you submit information about the species we are reviewing, we provide the following definitions:

Species includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature;

Endangered species means any species that is in danger of extinction throughout all or a significant portion of its range; and

Threatened species means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the five following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What Could Happen as a Result of Our Review?

For each species under review, if we find new information that indicates a change in classification may be warranted, we may propose a new rule that could do one of the following: (a)

Reclassify the species from threatened to endangered (uplist); (b) reclassify the species from endangered to threatened (downlist); or (c) remove the species from the List (delist).

If we determine that a change in classification is not warranted, then the species will remain on the List under its current status.

Authority: We publish this document under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 19, 2008.

Robert Krska,

Acting Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. E8-8707 Filed 4-21-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2008-N0073; 80221-1113-0000-F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before May 22, 2008.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W-2606, Sacramento, CA, 95825 (telephone: 916-414-6464; fax: 916-414-6486). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist, see **ADDRESSES** (telephone: 760-431-9440; fax: 760-431-9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review

and comment from local, State, and Federal agencies, and the public on the following permit requests. 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.

Permit No. TE-094318

Applicant: Jessica S. Vinje, Escondido, California.

The applicant requests an amendment to take (nest monitor) the lease Bell's vireo (*Vireo bellii pusillus*) in conjunction with monitoring in San Diego County, California for the purpose of enhancing its survival.

Permit No. TE-817400

Applicant: East Bay Regional Park District, Oakland, California.

The applicant requests an amendment to take (harass by survey, locate/monitor nests, and conduct predator control) the California least tern (*Sterna Antillarum browni*) in conjunction with surveys and population monitoring studies within Alameda County, California, for the purpose of enhancing its survival.

Permit No. TE-177979

Applicant: Allison DuRose Rudalevige, Costa Mesa, California.

The applicant requests an amendment to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of each species in California, for the purpose of enhancing their survival.

Permit No. TE-177978

Applicant: John D. Gerlach, Fair Oaks, California.

The applicant requests an amendment to remove/reduce to possession the *Tuctoria mucronata* (Solano grass) from federal lands in conjunction with reintroduction and research studies in Yolo County, California for the purpose of enhancing their survival.

Permit No. TE-179013

Applicant: Scott M. Werner, Oak View, California.

The applicant requests an amendment to take (nest monitor) the lease Bell's vireo (*Vireo bellii pusillus*) in conjunction with monitoring in Santa Barbara, San Luis Obispo, and Ventura Counties, California for the purpose of enhancing its survival.

Permit No. TE-179034

Applicant: Angela D. Hyder, Sandia Park, New Mexico.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Dated: April 16, 2008.

Michael Fris,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. E8-8655 Filed 4-21-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R6-ES-2008-N0074; 60120-1113-0000-D2]

Receipt of Application of Endangered Species Recovery Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: We announce our receipt of an application to conduct certain activities pertaining to enhancement of survival of endangered species.

DATES: Written comments on this request for a permit must be received by May 22, 2008.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Fisheries—Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225-0486; facsimile 303-236-0027. Documents and other information submitted with these applications are available for review,

subject to the requirements of the Privacy Act [5 U.S.C. 552A] and Freedom of Information Act [5 U.S.C. 552], by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail or by telephone at 303-236-4256. All comments received from individuals become part of the official public record.

SUPPLEMENTARY INFORMATION: The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant—ERO Resources, Denver, Colorado, TE-040510.

The applicant requests a permit amendment to add nest searching during surveys for Southwestern willow flycatchers (*Empidonax traillii extimus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: March 28, 2008.

James J. Slack,

Deputy Regional Director, Denver, Colorado.

[FR Doc. E8-8656 Filed 4-21-08; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB a new information collection request (ICR) for approval of the paperwork requirements for the National Cooperative Geologic Mapping Program (NCGMP). To submit a proposal for the NCGMP three standard OMB forms and project narrative must be completed and submitted via on Grants.gov. This notice provides the public an opportunity to comment on the paperwork burden of these forms. The forms are available at http://www.O7.grants.gov/agencies/approved_standard_forms.jsp and the NCGMP narrative guidance is available at <http://www.usgs.gov/contracts/STATEMAP/index.html>.

DATE: Submit written comments by June 23, 2008.

ADDRESSES: You may submit comments on this information collection to the Department of the Interior, USGS, via:

- E-mail atravnic@usgs.gov. Use Information Collection Number ____ – NEW, NCGMP in the subject line.
- FAX: (703) 648–7069. Use Information Collection Number ____ – NEW, NCGMP in the subject line.

- Mail or hand-carry comments to the Department of the Interior; USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. Please reference Information Collection ____ – NEW, NCGMP in your comments.

FOR FURTHER INFORMATION CONTACT:

Randall Orndorff, 703–648–4316. Copies of the forms can be obtained at no cost at <http://www.reginfo.gov>, or by contacting the USGS clearance officer at the phone number listed below.

SUPPLEMENTARY INFORMATION: Title: National Cooperative Geologic Mapping Program (NCGMP).

OMB Control Number: ____ – NEW NCGMP.

Form Number: Standard Form 424 “Application for Federal Assistance”, Standard Form 424A “Budget Information Non-Construction Programs”, and Standard Form 424B “Assurances Non-Construction Programs”, and Project narrative guidance posted on Grants.gov.

Abstract: The primary objectives of the STATEMAP component of the NCGMP are to establish the geologic framework of areas determined to be vital to the economic, social, or scientific welfare of individual States. The State Geologist shall determine mapping priorities in consultation with a multi-representational State Mapping Advisory Committee. These priorities shall be based on: (a) state requirements for geologic-map information in areas of multiple-issue need or areas of compelling single-issue need, and (b) State requirements for geologic-map information in areas where mapping is required to solve critical earth-science problems. Priorities are not dependent on past agreements with the USGS. The community partner is the state geological surveys whose responsibilities vary from state to state. The state surveys function as basic scientific information sources for their state governments, and some have regulatory responsibilities for water, oil and gas, and land reclamation. Many are associated with state university systems. Every federal dollar awarded to a state geological survey through an annual competitive grant process is matched by

a state dollar. State priorities are set with the advice of the broad-based State Mapping Advisory Committee. Since the beginning of the Program in 1992, the states have matched over \$60 million. In 2006, STATEMAP is supporting 125 projects in 47 states. The authority for the program is listed in the National Geologic Mapping Act (Pub. L. 106–148).

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, “Data and information to be made available to the public or for limited inspection.” Responses are voluntary. No questions of a “sensitive” nature are asked. We intend to release the project abstracts and primary investigators for awarded/funded projects only.

Frequency: Annually.
Estimated Number and Description of Respondents: 50 State Geological Surveys are canvassed for one frequency period.

Estimated Number of Responses: Approximately 46 proposals are submitted by individuals involved in the area of geologic mapping.

Annual burden hours: 920.
Estimated Annual Reporting and Recordkeeping “Hour” Burden: We estimate the public reporting burden averages 20 hours per response. This includes the time for prioritizing project, developing, writing, reviewing proposal and submitting the information through Grants.gov.

Estimated Reporting and Recordkeeping “Non-Hour Cost” Burden: There are no “non-hour cost” burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) (44 U.S.C. 3501, et seq.) requires each agency “* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *” Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the

agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60-day public comment period.

USGS Information Collection Clearance Officer: Alfred Travnicek, 703–648–7231.

Dated: April 15, 2008.

Randall C. Orndorff,

Program Coordinator, National Cooperative Geologic Mapping Program.

[FR Doc. E8–8527 Filed 4–21–08; 8:45 am]

BILLING CODE 4311-AM-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–22100, F–22102; AK–962–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to NANA Regional Corporation, Inc. for lands located in the vicinity of Ambler, Alaska. Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until May 22, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone

at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Judy A. Kelley,

Land Law Examiner, Resolution Branch.

[FR Doc. E8-8654 Filed 4-21-08; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-200-0777-XZ-241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held May 20-21, 2008 from 10:30 a.m. to 5 p.m. May 20, 2008 and from 8 a.m. to 3 p.m. May 21, 2008.

ADDRESSES: St. Agnes Catholic Church Meeting Hall, Hwy. 285 and 5th Street, Saguache, Colorado 81149.

FOR FURTHER INFORMATION CONTACT: Andrew Archuleta, Saguache Field Office Manager, (719) 655-2547.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics include: Manager updates on current land management issues including: presentations and discussions on the oil and gas leases in San Luis Valley, alternative energy proposals in San Luis Valley, Term Permit Renewals—status and progress on May 20. On May 21 agenda topics include a field trip to Penitente Canyon Special Recreation Management Area, La Garita Wetlands and Grazing Allotment, Elephant Rocks Area of Critical Environmental Concern. After lunch topics will include the Anderson Ditch update, public comments, and the Kerber Creek Restoration. All meetings

are open to the public. The public is encouraged to make oral comments to the Council or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the USDI-BLM-Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting minutes and agenda (10 days prior to each meeting) are also available at: http://www.blm.gov/rac/co/fracc/co_fr.htm.

Dated: April 14, 2008.

Linda McGlothlen,

Acting Royal Gorge Field Manager.

[FR Doc. E8-8667 Filed 4-21-08; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-300-1020-PH; DDG080003]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The RAC will next meet in Malad, Idaho on June 4, 2008 and in Preston, Idaho June 5, 2008. The meeting will be at the BLM/FS Malad Office 195 South 300 East, Malad, Idaho at 10 a.m. on June 4th for a short introduction (one hour) to the field trip. After which, the RAC will travel to the Holbrook area to talk about fire and fire rehabilitation. On June 5, 2008, the RAC will be traveling to the Onieda Narrows area in the morning to talk about recreation issues. Other topics will be scheduled as appropriate. All meetings are open to the public.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land

management in the BLM Idaho Falls District (IFD), which covers eastern Idaho.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT:

Joanna Wilson, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone: (208) 524-7550. E-mail: Joanna_Wilson@blm.gov.

Dated: April 11, 2008.

Joanna Wilson,

RAC Coordinator, Public Affairs Specialist.

[FR Doc. E8-8403 Filed 4-21-08; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-922-08-1310-FI; COC60856]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC60856 from Black Resources, Inc., for lands in Montezuma County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at (303) 239-3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre or fraction thereof, per year and 16 $\frac{2}{3}$ percent, respectively. The lessee has paid the required \$500 administrative fee and \$163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee

has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC60856 effective October 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: April 15, 2008.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E8-8619 Filed 4-21-08; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 032449, NMNM 048730, NMNM 52411, and NMNM 52412]

Public Land Order No. 7706; Modification of Public Land Order Nos. 2131 and 2228 and Secretarial Orders dated July 17, 1947 and August 12, 1948; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies and establishes a 20-year term for two Public Land Orders and two Secretarial Orders, which withdrew public lands and reserved them for use of the Federal Aviation Administration in the maintenance of air navigation facilities. The lands, which aggregate approximately 193 acres, are still needed for the purpose for which they were withdrawn. The lands will remain withdrawn from surface entry and mining but not from mineral and geothermal leasing or mineral material sales.

DATES: *Effective Date:* April 22, 2008.

FOR FURTHER INFORMATION CONTACT: Gilda Fitzpatrick, Bureau of Land Management, New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502, 505-438-7597.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration has determined that the lands are still needed for air navigation site purposes. A copy of the original withdrawal orders containing legal descriptions of the lands involved is available from the Bureau of Land Management, New Mexico State Office at the address above.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order Nos. 2131 (25 FR 5765, June 23, 1960) and 2228 (25 FR 13693, December 24, 1960) and the Secretarial Orders dated July 17, 1947 and August 12, 1948, which withdrew public lands from surface entry and mining, and reserved them for use of the Federal Aviation Administration in the maintenance of air navigation facilities, are hereby modified to expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawals shall be extended.

Dated: April 8, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8-8646 Filed 4-21-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period May 1, 2008 through October 31, 2008. The List of Restricted Joint Bidders published in the **Federal Register** November 14, 2007, covered the period November 1, 2007 through April 30, 2008.

Group I.

ExxonMobil Corporation.
ExxonMobil Exploration Company.

Group II.

Shell Oil Company.
Shell Offshore Inc.
SWEPI LP.
Shell Frontier Oil & Gas Inc.
Shell Consolidated Energy Resources Inc.
Shell Land & Energy Company.
Shell Onshore Ventures Inc.

Shell Offshore Properties and Capital II, Inc.

Shell Rocky Mountain Production LLC.

Shell Gulf of Mexico Inc.

Group III.

BP America Production Company.
BP Exploration & Production Inc.
BP Exploration (Alaska) Inc.

Group IV.

TOTAL E&P USA, Inc.

Group V.

Chevron Corporation.
Chevron U.S.A. Inc.
Chevron Midcontinent, L.P.
Unocal Corporation.
Union Oil Company of California.
Pure Partners, L.P.

Group VI.

ConocoPhillips Company.
ConocoPhillips Alaska, Inc.
ConocoPhillips Petroleum Company.
Phillips Pt. Arguello Production Company.
Burlington Resources Oil & Gas Company LP.
Burlington Resources Offshore Inc.
The Louisiana Land and Exploration Company.
Inexco Oil Company.

Group VII.

Eni Petroleum Co. Inc.
Eni Petroleum US LLC.
Eni Oil US LLC.
Eni Marketing Inc.
Eni BB Petroleum Inc.
Eni US Operating Co. Inc.
Eni BB Pipeline LLC.

Group VIII.

Petrobras America Inc.

Dated: March 27, 2008.

Randall B. Luthi,

Director, Minerals Management Service.

[FR Doc. E8-8595 Filed 4-21-08; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

National Park Service

Temporary Concession Contract for Pinnacles National Monument, CA

AGENCY: National Park Service, Interior.

ACTION: Notice of proposed award of temporary concession contract for the operation of the Pinnacles Campground Store within Pinnacles National Monument, CA.

EFFECTIVE DATE: The term of the temporary concession contract will commence as of the day after the termination date of the current temporary concession contract, TC-PINN001-06.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program

Manager, National Park Service, Washington, DC 20240, Telephone 202/513-7156.

SUMMARY: Pursuant to 36 CFR 51.24, public notice is hereby given that the National Park Service proposes to award a temporary concession contract for the conduct of retail services ("Services") available to the public visiting Pinnacles National Monument, California for a term not to exceed 16 months. The visitor services include the operation of a small convenience/grocery store. This action is necessary to avoid interruption of visitor services.

SUPPLEMENTARY INFORMATION: The temporary concession contract is proposed to be awarded to Damm Bros. Company, a qualified person. The store is currently operated under TC-PINN001-06, a contract that includes the operation of the adjacent campground. The owner of the current concession under TC-PINN001-06 has become ill and must terminate his contract before its original expiration date of March 15, 2008. Upon termination of TC-PINN001-06, the National Park Service will begin to operate the campground. However, the store will be operated under temporary concession contract TC-PINN001-08.

The National Park Service has determined that a temporary contract is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services.

This action is issued pursuant to 36 CFR 51.24(a). This is not a request for proposals.

Dated: March 21, 2008.

Daniel N. Wenk,

Deputy Director, National Park Service.

[FR Doc. E8-8660 Filed 4-21-08; 8:45 am]

BILLING CODE 4312-53-M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-456 and 731-TA-1151-1152 (Preliminary)]

Citric Acid and Certain Citrate Salts From Canada and China

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing

duty investigations Nos. 701-TA-456 and 731-TA-1151-1152 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada and China of citric acid and certain citrate salts, provided for in subheadings 2918.14.00 and 2918.15.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by May 29, 2008. The Commission's views are due at Commerce within five business days thereafter, or by June 5, 2008.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: April 14, 2008.

FOR FURTHER INFORMATION CONTACT:

Christopher J. Cassise (202-708-5408), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on April 14, 2008, by Archer Daniels Midland Co., Decatur, IL; Cargill, Inc., Wayzata, MN; and Tate & Lyle Americas, Inc., Decatur, IL.

Participation in the investigations and public service list.—Persons (other than

petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on May 7, 2008, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Christopher J. Cassise (202-708-5408) not later than May 2, 2008, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 12, 2008, a written brief containing information and arguments pertinent to the subject matter of the investigations.

Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 16, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-8649 Filed 4-21-08; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Employment and Training Administration

Office of Apprenticeship and the Women's Bureau; Notice of Availability of Funds and Solicitation for Grant Applications for Women in Apprenticeship and Nontraditional Occupations (WANTO) Grants

Announcement Type: New.
Solicitation for Grant Announcement (SGA).

Funding Opportunity Number: SGA/DFA-PY-07-08.

Catalog of Federal Domestic Assistance Number: 17.201

Key Dates: The closing date for receipt of applications is June 6, 2008.

SUMMARY: The Women's Bureau (WB) and the Employment and Training Administration's (ETA's) Office of Apprenticeship (OA), U.S. Department

of Labor (DOL or Department), announce the availability of \$1,000,000 to establish a grant program for the purpose of assisting employers and labor unions in the placement and retention of women in apprenticeship and nontraditional occupations. This program year 2007 SGA is authorized under the WANTO Act of 1992, Pub. L. 102-530, 29 U.S.C. 2501 *et seq.* To that end, the OA and the WB plan to disburse 2007 WANTO grant funds to three community-based organization (CBO)/registered apprenticeship program (RAP) consortia to conduct innovative projects to improve the recruitment, selection, training, employment, and retention of women in apprenticeships in the construction industry. Each CBO/RAP consortium must consist of a minimum of: (1) A construction industry RAP sponsor; and (2) a CBO (which may be a faith-based organization (FBO) with demonstrated experience in providing job training services (soft skills and some hard skills), placement, and support services to women for construction industry jobs.

It is anticipated that awards will be in the amount of approximately \$300,000.

SUPPLEMENTARY INFORMATION: This SGA consists of eight (8) sections:

- Section I provides the funding opportunity description.
- Section II describes the size and nature of the anticipated awards.
- Section III describes applicant eligibility criteria.
- Section IV outlines the application submission and withdrawal requirements.
- Section V describes the application review information.
- Section VI outlines additional award administration information.
- Section VII lists the Agency Contact.
- Section VIII provides other information, including acronyms and definitions.

I. Funding Opportunity Description

A. Background

The WANTO Act of 1992, Pub. L. 102-530, 29 U.S.C. 2501 *et seq.* authorizes DOL to disburse technical assistance grants to promote the recruitment, training, and retention of women in apprenticeship and nontraditional occupations. The WB and OA co-administer the WANTO program, and have the responsibility for implementing this grant process.

B. Purpose

The WANTO Act's purpose is to provide technical assistance to

employers and labor unions (E/LU) to encourage employment of women in apprenticeships and nontraditional occupations (A/NTO). One of the means of providing technical assistance is through competitive grants which focus on conducting innovative projects to improve the recruitment, selection, training, employment, and retention of women in apprenticeships in the construction industry. WANTO grants are awarded to CBOs, which may include faith-based, union-related organizations and employer-related nonprofit organizations, among others, to provide technical assistance to RAP sponsors. DOL has found that placement and retention of women in A/NTO pose significant challenges. For example, on average, only three percent of all newly registered and active apprentices in construction occupations are women. Approximately 75 percent of all registered apprenticeship programs are in the construction industry. Therefore, the Department is focusing this notice on registered apprenticeship opportunities for women in the construction industry. From 1994 to 2002, DOL funded WANTO grants annually to CBOs and FBOs that delivered technical assistance to employers and labor organizations to prepare them to successfully recruit, train, employ and retain women. The outcomes of these prior WANTO grants consisted largely of training and resource manuals, as well as recruitment videos. The numbers of women placed in registered apprenticeships through WANTO grant activities were lower than expected. Therefore, the PY 2007 WANTO grants are intended to help connect women with the significant employment opportunities available in registered apprenticeship programs in the construction industry. Additionally, to ensure women served by these PY 2007 WANTO grants have access to a full range of supportive services and training, as well as specific employment opportunities, this SGA requires applicants to demonstrate establishment of a consortium consisting of CBOs and RAP sponsors whereby the employers and RAP sponsors will be responsible partners for placing women into their programs. RAPS are any person, association, committee, or organization operating an apprenticeship program in whose name the program is registered or approved. For the purposes of this notice, all apprenticeable occupations in the construction industry meet the definition of nontraditional occupations (NTO).

In support of the DOL's strategic goals of a prepared and competitive workforce, and ETA's strategic focus on regional economic development, bonus points are being awarded to applicants that go beyond the minimum SGA requirements by demonstrating strong broad-based partnerships with multiple organizations advocating for women in nontraditional occupations seeking to meet regional talent development needs.

II. Award Information

A. Grant Awards

The OA and WB anticipate awarding two-year grants totaling approximately \$300,000 each to no more than three CBO/RAP consortia, with each consortium consisting of at least one of each: (1) A construction industry RAP sponsor; and (2) a CBO (which may be faith-based) with demonstrated experience in providing job training services (work readiness as well as industry-specific training), placement, and support services to women for construction industry jobs.

B. Period of Performance

The period of performance will be up to 24 months from the date of execution of the grant documents. DOL ETA may approve a request for a no cost extension to grantees for an additional period of time based on the success of the project and other relevant factors.

III. Eligibility Information

A. Eligible Applicants

Under this announcement only CBO/RAP consortia, as defined in section VIII.F of this SGA, may apply for and receive a grant award. Current WANTO grantees are not eligible to receive funding under this announcement. This requirement does not prevent the participation of other entities which are integral to the implementation of the project.

IV. Application and Submission Information

A. Address To Request Application Package

Please note that this announcement includes all the information needed to apply for this funding opportunity. Additionally, all application materials will be made available on the following Web sites: <http://www.doleta.gov/sga/> and <http://www.grants.gov>.

B. Content and Form of Application

The proposal must consist of two separate and distinct parts: Part A, the Cost Proposal and Part B, the Technical Proposal. Applications that fail to adhere to the instructions in this section

may be deemed non-responsive and may not be considered for funding.

1. Requirements for the Cost Proposal

Application for Federal Assistance SF-424. The SF-424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement on behalf of the applicant. Upon confirmation of an award, the individual signing the SF-424 on behalf of the applicant shall represent the responsible entity. All applications for Federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. Applicants must supply their DUNS number in item 8 of SF-424. The DUNS number is easy to obtain and there is no charge. To obtain a DUNS number, access <http://www.dnb.com> or call 1-866-705-5711.

Budget Information for SF-424A. Standard Form 424A must contain a detailed cost breakout on each of the expenditures under Section B. The budget should be accompanied by a detailed narrative. As noted in Section II.A, the budget should be prepared for the entire grant period.

Note: The Application for Federal Assistance (SF-424) is available at http://www.grants.gov/techlib/424_20090131.doc and the Budget Information Form (SF-424A) is available at <http://www.doleta.gov/sga/forms/form424a.pdf>.

Equal Employment Opportunity Survey. Applicants are also requested to submit Office of Management and Budget (OMB) Survey No. 1890-0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at <http://www.doleta.gov/sga/forms.cfm>.

Applicants must include in their cost proposal the cost of any requested travel to Washington, DC.

2. Requirements for the Technical Proposal

The technical proposal text is limited to twenty (20) double-spaced, single-sided 8.5 inch by 11 inch pages with 12 point text font and one-inch margins. Pages must be numbered. Only those attachments listed below as "Required Attachments" will be excluded from the page limit. The "Required Attachments" must be affixed as separate, clearly identified appendices to the application. The "Required Attachments" are as follows:

- (a) A Table of Contents, listing the application sections.
- (b) Documentation of applicant eligibility, which should include proof of the CBO's status as a private nonprofit organization as defined under section 101(7) of the Workforce Investment Act of 1998 (WIA), Pub. L.

105-220, 29 U.S.C. 2801 *et seq.* DOL ETA will verify that RAP sponsors are registered with DOL ETA or a DOL ETA-recognized State Apprenticeship Agency.

(c) A two-page abstract summarizing the proposed project.

(d) Documentation of the applicant's experience, capability, and qualifications for recruiting, training, hiring and retaining women in A/NTO, as described in Part V, Section A1, "Organizational Overview", of this notice.

(e) An organizational chart, resumes and key personnel, and complete staffing plans. Resumes of all key staff (e.g., Executive Director, Project Director, etc.) must include a description of each individual's roles and responsibilities, his/her current employment status and previous work experience, including position title, duties, dates in position, employing organizations and educational background. Staffing plans must identify all key tasks, the person(s) and days required to complete each task and the percentage of time allocated to the program by individuals assigned to the task, including subcontractors and consultants.

(f) A list of the activities to be performed by each participating organization.

(g) The consortium of organizations must include a copy of the consortium agreement and must identify the consortium member that will act as the administrative entity for the project as well as the project lead. No member of a consortium shall make a separate application under this grant program. In addition, the agreement must specify the consortium's arrangements for handling the administrative and financial responsibilities for the program.

C. Submission Dates, Times and Addresses

Applications may be submitted in either method described below, and must be received no later than 4:45 p.m. Eastern Time on the closing date. The application will not be considered if an applicant fails to adhere to the submission instructions below.

Electronic Submissions. The Department requests that applicants apply online at <http://www.grants.gov>. The Department strongly recommends that applicants immediately initiate and complete the "Get Started" steps to register with [grants.gov](http://www.grants.gov) at <http://www.grants.gov/GetStarted>. Please note that these steps could take several days to complete, and this time should be factored into plans for electronic

application submission in order to avoid facing unexpected delays that could result in the rejection of an application. Documents should be saved as a .doc or .pdf file prior to electronic submission through grants.gov. It is highly recommended that online submissions be completed at least three (3) working days prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by overnight delivery service in the event of any electronic submission problems. Applicants take a significant risk by waiting to the last day to submit by grants.gov.

U.S. Postal Mail and Overnight Submissions. Submit one (1) blue-ink signed, typewritten original of the application, and two (2) signed photocopies in one package to: U.S. Department of Labor, Employment and Training Administration, Attention: James Stockton, Mail Stop: N-4716, 200 Constitution Avenue, NW., Washington, DC 20210

Note: Applications submitted by e-mail, telegram, or facsimile will not be accepted.

Late Applications. Any application received after the closing date will not be considered, unless it is received before awards are made and it was: (a) Sent by U.S. Postal Service registered or certified mail no later than the fifth calendar day before the closing date (e.g., an application required by the 20th of the month must be postmarked by the 15th of that month); or (b) Sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee no later than 4:45 pm at the place of mailing, two (2) working days (excluding weekends and Federal holidays and days when the Federal government is closed), prior to the closing date; or (c) It is determined by the government that the late receipt was due solely to the mishandling by the Federal government after receipt at DOL at the address indicated.

Acceptable Evidence for Late Applications. The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the closing date and time shall be considered to have been mailed late.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee is the date entered by the Post Office receiving

clerk on the "Express Mail/Next Day Service—Post Office to Addressee" label, and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service.

"Postmarked" means a printed, stamped, or otherwise placed impression that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation, "bull's eye," postmark on both the receipt and the envelope or wrapper.

Mail Advisory in the DC Area. All applicants are advised that U.S. mail delivery in the Washington, DC area is erratic. Packages addressed to DOL are subject to radiation screening before delivery. All applicants must take this into consideration when preparing to meet the application closing date, as each applicant assumes the risk for ensuring a timely submission of its application. The Department recommends that applicants confirm receipt of their applications by contacting James Stockton, U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, telephone (202) 693-3335 before the closing date. This is not a toll-free number.

Applications may be withdrawn by written notice or telegram (including mailgram) at any time before the Department makes an award. An applicant may withdraw its submission in person by the applicant or through an authorized representative of the applicant if: (1) The applicant makes the representative's identity known to the Grant Officer; and (2) the representative signs a receipt when he or she receives the withdrawn application.

D. Funding Restrictions

Administrative Costs. The primary use of grant funds should be to support the actual project. Therefore, applicants receiving grant funds under this solicitation may not use more than 10 percent of the amount requested for administrative costs associated with the project. Administrative costs are defined at 20 CFR 667.220.

Indirect Cost Rate. An indirect cost rate (ICR) is required when an organization operates under more than one grant or other activity whether Federally-assisted or not. Organizations must use the ICR supplied by the cognizant Federal agency. If an organization requires a new ICR or has a pending ICR, the Grant Officer will award a temporary billing rate for 90

days until a provisional rate can be issued. This rate is based on the fact that an organization has not established an ICR agreement. Within this 90 day period, the organization must submit an acceptable indirect cost proposal to their Federal cognizant agency to obtain a provisional ICR.

Allowable Costs. The Department determines what constitutes allowable costs in accordance with the following Federal cost principles, as applicable: (1) State and Local Government—OMB Circular A-87; (2) Educational Institutions—OMB Circular A-21; (3) Nonprofit Organizations—OMB Circular A-122; and (4) Profit-making Commercial Firms—48 CFR Part 31.

Legal rules pertaining to inherently religious activities by organizations that receive Federal financial assistance. The government is generally prohibited from providing direct Federal financial assistance for inherently religious activities. See 29 CFR Part 2, Subpart D. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of sub-recipients.

V. Application Review Information

A. Evaluation Criteria

All applicants are required to use the rating criteria format when developing their proposals. The technical panel will review grant applications against the criteria listed below. Up to 135 points may be awarded to an application. This total is based on up to 100 points for the required information described in A.1, 2, and 3 below, and up to 35 bonus points for special program emphasis described in A.4 below. In order to receive full credit, applicants must provide quality information that does more than reiterate the requirement statement or merely state how it will be accomplished. Therefore, responses must be thoughtful and reflect a strategic vision for how these requirements will be achieved. In addition, an applicant that describes only what has been accomplished in the past but lacks full description of what it will do during the grant period will not receive credit for the response.

Points Summary:

(1) Organizational Overview—up to 20 points.

(2) Placement of Women in Registered Apprenticeship Programs—up to 30 points.

(3) Scope of WANTO Project and Projected Outcomes—up to 50 points.

(4) Bonus—up to 35 points.

(a) Incorporation of more than one RAP in the consortium—10 points.

(b) Incorporation of more than one construction industry discipline in the RAP partners and incorporation of a governing board that includes apprenticeship coordinators and/or labor organizations—5 points.

(c) Inclusive of multiple geographic areas in the consortium—10 points.

(d) Incorporation of Technology-Based Learning into the project to support and facilitate the project participants' training and preparation for apprenticeship—10 points. See Section VIII for a definition and examples of Technology-Based Learning.

1. Organizational Overview (up to 20 points)

The applicant must demonstrate its experience, capability and qualifications for administering a grant project. To be considered fully responsive, the applicant must address all of the following:

(a) Describe the consortium members' experience and leadership [for the purpose of] recruiting, selecting, training, placing and retaining women in apprenticeships in the construction industry.

(b) Describe how the management structure and staffing of the organization are aligned with the grant requirements, vision, and goals; and how the structure and staffing are designed to assure responsible general management of the organization.

(c) Identify all key tasks, the hours required for the completion of such tasks, and the persons responsible for completing each task.

(d) Indicate if tradeswomen or women in nontraditional occupations serve as active members of the consortium as either employed staff or as board members.

(e) Where applicable, differentiate between the applicant consortium and any proposed consultants or subcontractors, providing information on each of the above.

2. Placement of Women in Registered Apprenticeship Programs (up to 30 points)

The consortium must demonstrate how it will place 100 women in RAP(s) each year of the grant. For full credit under this element, the applicant must provide detailed information for the following:

(a) Strategies for identifying the occupations in which RAP(s) plan to train and employ women.

(b) A description of the types of construction apprenticeable occupations

in which the RAP(s) plan to train and employ women.

(c) The number of apprentices registered by the RAP(s) per year for the last five years.

(d) A description of how the applicant will assure that there are or will be suitable and appropriate positions available in the construction industry RAP(s).

3. Scope of WANTO Project and Projected Outcomes (up to 50 points)

The applicant must demonstrate comprehensive, targeted, and effective technical assistance to be provided to the RAP(s) with WANTO funding. The OA and WB consider the successful placement of 100 women in construction industry apprenticeships the primary successful outcome a grantee can achieve with WANTO funding.

To be considered fully responsive, the applicant must:

(a) Discuss in detail the types of technical assistance (TA) that will be provided to the RAP(s). Examples of such TA include: (1) Outreach strategies and orientation sessions to recruit women into the RAP(s) occupations and specific openings in RAP(s); (2) pre-apprentice occupational skills training to prepare women for apprenticeship, including English as a Second Language instruction; (3) ongoing orientations for the RAP(s) and workers on creating a successful environment for women in apprenticeship; (4) support groups and facilitating networks for women in apprenticeship, on or off the job site, to improve their retention; (5) liaison services between tradeswomen and the RAP(s) to address workplace issues related to gender; and (6) conducting exit interviews with tradeswomen to evaluate their on-the-job experience and to assess the effectiveness of the program.

(b) Document any leveraged resources or funding anticipated for the accomplishment of the proposed project and a description of how the funds will be used.

(c) Describe the outcomes the applicant anticipates as a result of WANTO funding. This must include the number of women to be placed in: (1) Pre-apprenticeships; and (2) apprenticeships.

4. Bonus Points (up to 35 points)

Bonus points will be awarded for proposals that demonstrate experience or indicate their plans to provide one or more of the following:

(a) Incorporation of more than one RAP in the consortium. (10 points).

(b) Incorporation of more than one construction industry discipline in the RAP partners and incorporation of a

governing board that includes apprenticeship coordinators and/or labor organizations. (5 points).

(c) Inclusion of multiple geographical areas into the consortium. (10 points).

(d) Incorporation of Technology-Based Learning to support and facilitate the project participants' training and preparation for apprenticeship. (10 points).

B. Review and Selection Process

Selection Process. The Grant Officer will convene an evaluation panels to review and evaluate the applications using the point scoring system and Rating Criteria format specified in Section A above. The Grant Officer will rank applications based on the score assigned by the panels through the evaluation process. The ranking will be the primary basis used to identify applicants as potential grantees; however, the review panel's recommendations are advisory in nature and not binding on the Grant Officer. The government will consider applications rated by the evaluation panels with a score of 80 or above to be eligible for a grant award. Applicants that score less than 80 will not be eligible for a grant award.

Other Evaluation Factors. Final awards will be made based on the best interests of the Federal government, including, but not limited to, such factors as technical quality, geographic balance, occupational and/or industrial impact, availability of funds and uniqueness of project. The Federal government reserves the right to ask for clarification or hold discussions, but may elect to award a grant without such discussion. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer by the applicant. The Grant Officer's determination of award under this SGA is the final agency action.

VI. Additional Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA Homepage (<http://www.doleta.gov>). The Grant Officer expects to announce the results of this competition approximately 60 days after the closing date for receipt of applications.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees, including FBOs, will be subject to all applicable Federal laws

(available at <http://thomas.loc.gov>), regulations (available at <http://gpoaccess.gov/cfr>) and the applicable OMB Circulars (available at <http://www.whitehouse.gov/omb/circulars>). The grants awarded under this SGA will be subject to administrative standards and provisions as applicable, including, but not limited to, the following:

- All Grant Recipients—20 Code of Federal Regulations (CFR) Part 667.220 (Administrative Costs).
- Non-Profit Organizations—OMB Circulars A-122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).
- Educational Institutions—OMB Circulars A-21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).
- All entities must comply with 29 CFR Parts 37, 93, and 98, and where applicable 29 CFR Parts 96 and 99.

2. Administrative Standards and Provisions

Except as specifically provided, DOL ETA acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Grants Management circulars require, and an entity's procurement procedures must require, that all procurement transactions will be conducted, as practical, to provide full and open competition. If a proposal identifies a specific entity to provide the services, the DOL ETA award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition.

C. Reporting

The grantee is required to provide the reports and documentation listed below. *Quarterly Financial Reports.* A Quarterly Financial Status Report (ETA 9130) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 45 days after the end of each calendar year quarter. Grantees must use DOL ETA's On-Line Electronic Reporting System.

Quarterly Progress Reports. The grantee must submit a quarterly progress report to the designated Federal Project Officer within 45 days after the end of each calendar year quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. DOL ETA may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL ETA reporting requirements. The quarterly progress

report should be in narrative form and should include:

(a) A comparison of actual accomplishments with the goals and objectives established for the period. This must include discussion of placements in pre-apprenticeship programs, apprenticeships and nontraditional jobs, giving the name and address of each workplace and company involved; and TA provided to RAP(s) as well as the nature of the TA provided.

(b) Reasons why established goals were not met, if appropriate.

(c) Any problems that may impede the performance of the grant and the proposed corrective action.

(d) Any changes in the proposed work to be performed during the next reporting period.

In addition, between scheduled reporting dates, the grantee(s) must immediately inform the OA and WB of significant developments affecting the ability to accomplish the work.

Final Report. No later than 90 days after the expiration of the grant award, the grantee must submit two copies of the camera-ready final report, each bound in a professional manner in a loose-leaf notebook. These materials must be paid for with grant funds. Instructions for the final report will be issued and may include performance data, outcome results, an assessment of the grant project, any employer or labor organization plans for follow-up of participants, and Executive Summary of no more than three (3) pages. Upon request of either the OA or WB, the grantee must submit a draft final report no more than 60 days after the expiration date of the grant. The OA and the WB will then review the draft report, and provide written comments to the grantee within 15 days of receipt.

VII. Agency Contacts

For further information about this SGA, please contact James Stockton, Grant Officer of the Division of Federal Assistance, at (202) 693-3335. This is not a toll-free number. Applicants may fax questions about the program or information in this SGA to (202) 693-2879, and must specifically address the fax to James Stockton and should include SGA/DFA PY-07-08, a contact name, fax and phone number, and an email address. The mailing address is: U.S. Department of Labor, Employment and Training Administration, Attention: James Stockton, Room N-4716, 200 Constitution Avenue, NW., Washington, DC 20210.

VIII. Other Information

A. Questions About the Program or SGA

Questions and responses submitted to the Grant Officer regarding this SGA will be posted on the Employment and Training Administration Web site at <http://www.doleta.gov/grants>. Questions will be received for one month after publication only. DOL ETA will not respond to duplicate questions or questions that are not within the scope of this SGA. Please do not direct questions to the OA or WB.

B. Post Grant Award Conference

No later than eight (8) weeks after an award, the grantees must meet with the OA and the WB at the Post-Award Conference to discuss the project, related components and TA; timelines; TA outcomes; assessment comments and final approval. The grantees, the OA and WB will discuss and make decisions on the following program activities:

(1) The proposed TA commitments for registered apprenticeship, and related skilled nontraditional occupation activities and responsibilities; the number of targeted RAP(s); and the number of women who will be placed in a registered apprenticeship program.

(2) The methodology the proposed partnership will use to support/change management and employee attitudes to promote female workers in A/NTO.

(3) The types of systemic change anticipated by the TA strategies that will be incorporated into ongoing employer recruitment, hiring, training, and promotion of women in A/NTO.

(4) The occupational, industrial, and geographical impact anticipated.

(5) The supportive services to be provided to employers and women after successful placement into A/NTO.

The OA and WB will provide further input orally or in writing, if necessary, within ten (10) working days after the Post-Award Conference.

C. Grant Plan of Action

If revisions have been necessary, no later than ten (10) weeks after an award, the grantees and the OA and the WB will confirm the "plan of action" and detailed time-line for program implementation.

D. Grant Implementation

No later than twelve (12) weeks after an award, the grantee(s) must have begun to recruit, select, train, place, retain, and otherwise prepare women for registered apprenticeships in the construction industry, with progress to be measured in terms of placement and retention in registered apprenticeships.

E. Veterans Priority

The Jobs for Veterans Act (Pub. L. 107-288) provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. In circumstances where the WANTO grant recipient must choose between two qualified candidates for training, one of whom is a veteran, the Jobs for Veterans Act requires that WANTO grant recipients give the veteran priority of service by admitting her into the program. Please note that to obtain priority of service a veteran must meet the program's eligibility requirement. ETA Training and Employment Guidance Letter (TEGL) No. 5-03 (September 16, 2003) provides guidance on the scope of the Job for Veterans Act and its effect on current employment and training programs. TEGL No. 5-03, along with additional guidance, is available at the "Jobs for Veterans Priority of Service" Web site (<http://www.doleta.gov/programs/vets>).

F. OMB Information Collection No. 1205-0458

(Expires September 30, 2009).

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, the OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503. PLEASE DO NOT RETURN YOUR COMPLETED APPLICATION TO THE OMB. SEND IT TO THE SPONSORING AGENCY AS SPECIFIED IN THIS SOLICITATION.

This information is being collected for the purpose of awarding a grant. The information collected through this "Solicitation for Grant Applications" will be used by the Department of Labor to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise

specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

G. Acronyms and Definitions

The following terms are defined for the convenience of prospective applicants:

A/NTO refers to apprenticeship and nontraditional occupations.

CBO (Community-Based Organization) is a private nonprofit organization, which may be faith-based, that is representative of a community or a significant segment of a community, and which provides job training services and has demonstrated experience administering programs that train women for A/NTO. (A CBO, as defined in the WANTO Act, means a "community-based organization as defined in section 101(7) of WIA (29 U.S.C. 2801(7)), that has demonstrated experience administering programs that train women for apprenticeable occupations or other nontraditional occupations." WIA states, "The term 'community-based organizations' means 'private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services.'" The WIA definition provides examples of organizations which meet the definition, including "union-related organizations" and "employer-related nonprofit organizations.")

CBO/RAP Consortium refers to a group consisting of a minimum of: (1) A construction industry RAP sponsor; and (2) a CBO (which may be faith-based) with demonstrated experience in providing job training services (soft skills and some hard skills), placement and support services to women for construction industry jobs.

Consortium refers to a group formed to undertake a project.

ELU refers to employers and labor unions.

NTO (Nontraditional Occupations) are those where women account for less than 25 percent of all persons employed in a single occupational group. For the most recent listing of nontraditional jobs, see the WB Web site at <http://www.dol.gov/wb/stats/main.htm>.

OA refers to the Office of Apprenticeship, U.S. Department of Labor, Employment and Training Administration.

Pre-Apprenticeship Programs are those programs that prepare individuals for registered apprenticeship. Depending on the apprenticeable occupation for which the program is preparing students, the curriculum would vary. For example, a curriculum

for a construction industry occupation may include pre-vocational identification and use of tools, blueprint reading, basic shop skills, safety procedures, math skills, and physical conditioning. English as a Second Language and team-building skills might also be included.

Registered Apprenticeship is a formal employment relationship designed to promote skill training and learning on the job. "Hands on" learning takes place in conjunction with related theoretical instruction (often in a classroom setting). An apprentice who successfully completes an OA registered program, which usually requires 3 to 5 years, is awarded a certificate of completion of apprenticeship. An OA registered program is one in which employers, or groups of employers, and unions design, organize, manage, and finance apprenticeship programs under the standards developed and registered with OA or an OA-recognized State Apprenticeship Agency. Employers, or groups of employers, and unions also select apprentices who are trained to meet certain predetermined occupational standards. For more information, see the OA Web site at <http://www.doleta.gov/oa/>.

RAP refers to Registered Apprenticeship Program.

Registered Apprenticeship Program Sponsor refers to any person, association, committee, or organization operating an apprenticeship program in whose name the program is (or is to be) registered or approved.

TA refers to technical assistance.

Technology-Based Learning (TBL) is defined as the learning of content via all-electronic technology, including the Internet, intranets, satellite broadcasts, audio and video tape, video and audio conference, Internet conferencing, chat rooms, bulletin boards, web casts, computer-based instruction, and CD-ROM. It encompasses related terms, such as online learning, web-based learning, computer-based learning, and e-learning.

WANTO refers to Women in Apprenticeship and Nontraditional Occupations.

WB refers to the Women's Bureau, U.S. Department of Labor.

Signed at Washington, DC, this 16th day of April, 2008.

James Stockton,
Grant Officer.

[FR Doc. E8-8651 Filed 4-21-08; 8:45 am]

BILLING CODE 4510-FN-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that three meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

National Initiatives/Jazz (application review): May 8, 2008. This meeting, from 3 p.m. to 3:30 p.m. DST, will be closed.

Literature (application review): May 15, 2008 in Room 714. A portion of this meeting, from 12:30 p.m. to 1 p.m., will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 12 p.m. and from 1 p.m. to 6 p.m., will be closed.

Folk and Traditional Arts (application review): May 29-30, 2008 in Room 716. A portion of this meeting, from 2 p.m. to 3 p.m. on May 30th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on May 29th, and from 9 a.m. to 2 p.m. and 3 p.m. to 5 p.m. on May 30th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5691.

Dated: April 16, 2008.

Kathy Plowitz-Worden,

*Panel Coordinator, Panel Operations,
National Endowment for the Arts.*

[FR Doc. E8-8650 Filed 4-21-08; 8:45 am]

BILLING CODE 7537-01-P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 27, 2008, to April 9, 2008. The last biweekly notice was published on April 8, 2008 (73 FR 19106).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-

day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management

System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at hearingdocket@nrc.gov, or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, *Attention: Rulemaking and Adjudications Staff*; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:*

Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to pdr@nrc.gov.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: February 12, 2008.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Sections 2.1, "Limiting Safety System Setting," 3.1, "Reactor Protection System," 3.2, "Protective Instrument Systems," associated Surveillance Requirements, and other TS with similar requirements as these instrumentation TS sections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not significantly affect the design or fundamental operation and maintenance of the plant. Accident initiators or the frequency of analyzed accident events are not significantly affected as a result of the proposed changes; therefore, there will be no significant change to the probabilities of accidents previously evaluated.

The proposed changes do not significantly alter assumptions or initial conditions relative to the mitigation of an accident previously evaluated. The proposed changes continue to ensure process variables, structures, systems, and components (SSCs) are maintained consistent with the safety analyses and licensing basis. The revised technical specifications continue to require that SSCs are properly maintained to ensure operability and performance of safety functions as assumed in the safety analyses. Since the design basis events analyzed in the safety analyses will not change significantly, the consequences of these events will not change as a result of the proposed changes to the TS.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any physical alteration of the plant (no new or different types of equipment being installed) and do not involve a change in the design, normal configuration or basic operation of the plant. The proposed changes do not introduce any new accident initiators. In some cases, the proposed changes impose different or more restrictive requirements; however, these new requirements are consistent with the assumptions in the safety analyses and current licensing basis. Where requirements are relocated to other licensee-controlled documents, adequate controls exist to ensure proper maintenance of the requirements and continued operability of the associated equipment.

The proposed changes do not involve significant changes in the fundamental methods governing normal plant operations and do not require unusual or uncommon operator actions. The proposed changes provide assurance that the plant will not be operated in a mode or condition that violates the essential assumptions or initial conditions in the safety analyses and that SSCs remain capable of performing the intended safety functions as assumed in the same analyses. Consequently, the response of the plant and the plant operator to postulated events will not be significantly different.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. The proposed changes do not significantly affect any of the assumptions, initial conditions or inputs to the safety analyses. Plant design is unaffected by these proposed changes and will continue to provide adequate defense-in-depth and diversity of safety functions as assumed in the safety analyses; therefore no significant reduction in the margin of safety will result.

There are no proposed changes to the Safety Limits and only administrative and one more restrictive change to Limiting System Setting requirements. The proposed changes maintain requirements consistent with safety analyses assumptions and the licensing basis. Fission product barriers will continue to meet their design capabilities without any significant impact to their ability to maintain parameters within acceptable limits. The safety functions are maintained within acceptable limits without any significant decrease in capability.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: February 20, 2008.

Description of amendment request: The amendment request would revise

the technical specifications (TSs) to adopt NRC-approved Revision 1 to TS Task Force (TSTF) Standard Technical Specification Change Traveler TSTF-476, "Improved Banked Position Withdrawal Sequence (BPWS) Control Rod Insertion Process (NEDO-33091)." The amendment would revise an applicability footnote in the TS Table 3.3.2.1-1, "Control Rod Block Instrumentation," to permit use of an improved, optional BPWS reactor shutdown process. Corresponding changes are made to the Bases of TS 3.1.6, "Control Rod Pattern," and the Bases of TS 3.3.2.1, to reference the new BPWS shutdown method.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on May 3, 2006 (71 FR 26118), on possible license amendments adopting TSTF-476 using the NRC's consolidated line item improvement process for amending licensee's TSs, which included a model safety evaluation (SE) and a model no significant hazards consideration (NSHC) determination. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 23, 2007 (72 FR 29004-29010), which included the resolution of public comments on the model SE. The May 23, 2007, notice of availability referenced the May 3, 2006, notice. The licensee has affirmed the applicability of the following NSHC determination in its application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed changes modify the TS to allow the use of the improved banked position withdrawal sequence (BPWS) during shutdowns if the conditions of NEDO-33091-A, Revision 2, "Improved BPWS Control Rod Insertion Process," July 2004, have been satisfied. The staff finds that the licensee's justifications to support the specific TS changes are consistent with the approved topical report and TSTF-476, Revision 1. Since the change only involves changes in control rod sequencing, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident after adopting TSTF-476 are no different than the consequences of an accident prior to adopting TSTF-476. Therefore,

the consequences of an accident previously evaluated are not significantly affected by this change. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The control rod drop accident (CRDA) is the design basis accident for the subject TS changes. This change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change, TSTF-476, Revision 1, incorporates the improved BPWS, previously approved in NEDO-33091-A, into the improved TS. The control rod drop accident (CRDA) is the design basis accident for the subject TS changes. In order to minimize the impact of a CRDA, the BPWS process was developed to minimize control rod reactivity worth for BWR plants. The proposed improved BPWS further simplifies the control rod insertion process, and in order to evaluate it, the staff followed the guidelines of Standard Review Plan Section 15.4.9, and referred to General Design Criterion 28 of Appendix A to 10 CFR part 50 as its regulatory requirement. The TSTF stated the improved BPWS provides the following benefits: (1) Allows the plant to reach the all-rods-in condition prior to significant reactor cool down, which reduces the potential for re-criticality as the reactor cools down; (2) reduces the potential for an operator reactivity control error by reducing the total number of control rod manipulations; (3) minimizes the need for manual scrams during plant shutdowns, resulting in less wear on control rod drive (CRD) system components and CRD mechanisms; and (4) eliminates unnecessary control rod manipulations at low power, resulting in less wear on reactor manual control and CRD system components. The addition of procedural requirements and verifications specified in NEDO-33091-A, along with the proper use of the BPWS will prevent a control rod drop accident (CRDA) from

occurring while power is below the low power setpoint (LPSP). The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop A-GO-15, 76 South Main Street, Akron, OH 44308.
NRC Branch Chief: Russell Gibbs.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 24, 2008.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 3.7.3, "Reactor Equipment Cooling (REC) System," to allow credit for the ability to align the service water (SW) system to the REC system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Four design basis accidents have been previously evaluated at CNS [Cooper Nuclear Station]. These are (1) a control rod drop accident, in which a control rod inserted into the reactor core becomes uncoupled and drops out of the reactor core during operation; (2) a loss-of-coolant accident [LOCA], in which a pipe in the reactor coolant system breaks, resulting in a loss of reactor coolant inventory and the ability to cool the nuclear fuel; (3) a fuel handling accident, in which a fuel assembly is dropped during fuel handling operations and impacts fuel assemblies in the reactor core; and (4) a main steam line break accident, in which a main steam line breaks resulting in the discharge of steam at high pressure and temperature.

The proposed license amendment makes no changes to the design or operation of the control rod drive system. Thus, there is no increase in the probability of a control rod drop accident.

The proposed license amendment makes no changes to the design or operation of the reactor coolant system. Thus, there is no increase in the probability of a loss-of-coolant accident. (The design basis LOCA does not involve a postulated break in the systems associated with the proposed license amendment).

The proposed license amendment makes no changes to the design of the fuel handling

system, or to the method of moving fuel. Thus, there is no increase in the probability of a fuel handling accident.

The proposed license amendment makes no changes to the design of the main steam system or to how the reactor is operated. Thus, there is no increase in the probability of a main steam line break accident.

Based on the above, the proposed changes do not result in a significant increase in the probability of an accident previously evaluated.

The SW System is able to supply sufficient cooling to perform the function of the REC System to remove the heat generated by the ECCS [emergency core cooling system] pumps, as well as providing sufficient cooling to the heat loads in the SW System. Aligning the SW System to the REC System sooner than the current seven days, as will be allowed by the proposed changes to the TS, will not adversely impact the ability of the ECCS pumps to meet their function.

Because the function of the REC System is to remove the heat generated by the ECCS pumps from the rooms in which the pumps are located, the REC system is indirectly involved in the mitigation of an accident.

Based on the above, the change does not involve a significant increase in the consequences of an accident previously evaluated.

NPPD [Nebraska Public Power District] concludes that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license amendment would allow continued plant operation with leakage from the REC System in excess of limits, provided that the required cooling water can be supplied by the SW System. This involves revising the actions for mitigating a LOCA, in that the SW System may need to be aligned to the REC System sooner than 7 days following a LOCA, as is required by the current licensing basis. Allowing leakage from the REC System to exceed limits and requiring that the SW System be aligned to the REC System sooner than what is currently required by the licensing basis does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed license amendment request does not involve physical modification of any system in the plant, nor do they involve a change to how the plant is operated. No new equipment is being added. Use of the SW System to supply water to the REC System in the event of REC leakage is part of the current CNS design and licensing basis.

Based on the above NPPD concludes that these proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

This proposed license amendment would revise TS to allow continued plant operation

with leakage from the REC System in excess of limits, provided that the SW System can be aligned to the REC System and supply the cooling water required by the REC System to meet its safety function. The safety function of the REC System is to remove the heat generated by the ECCS pumps from the rooms in which the pumps are located. This proposed change to TS revises the timing for taking an action involved in mitigating a LOCA, in that the SW System may need to be aligned to the REC System sooner than seven days following a LOCA, as currently allowed by license requirements. It has been demonstrated that this alignment can be made sooner than the current required seven days. Making this alignment sooner than seven days does not adversely impact the ability to mitigate a LOCA.

Based on the above, NPPD concludes that these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602-0499.

NRC Branch Chief: Thomas G. Hiltz.

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: March 19, 2008.

Description of amendment request: The proposed amendment would delete the main control room/emergency switchgear room (MCR/ESGR) bottled air system from Technical Specifications. Operation of the bottled air system will be controlled by the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions of the facility. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their required safety function of mitigating the consequences of an initiating event within the established acceptance limits. The proposed changes to the MCR/ESGR Bottled Air System and Emergency Ventilation

System [EVS] do not affect the probability of an accident previously evaluated because the subject SSCs are not an initiator or precursor to any accident previously evaluated. The Technical Specifications changes noted above will ensure the SSCs are operable to mitigate the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Deletion of the MCR/ESGR Bottled Air System does not create the possibility of a new or different kind of accident. The other proposed changes do not alter the operability requirements of the MCR/ESGR emergency ventilation system or MCR/ESGR isolation. Therefore, the control room habitability systems remain operable to mitigate the consequences of a [design-basis accident] DBA. The changes do not involve a physical alteration of the plant systems credited in the accident analysis (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The MCR/ESGR EVS is maintained in a standby mode and its operation does not generate any new accidents or accident precursors.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The current dose analysis acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in a configuration outside the analyses or design basis. The proposed changes do not adversely affect systems that are required to respond for safe shutdown of the plant and to maintain the plant in a safe operating condition.

Therefore, this change does not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Branch Chief: Melanie C. Wong.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company LLC, Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Duke Power Company LLC, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: February 15, 2008.

Brief description of amendment request: The amendments authorized a change to the UFSAR requiring an inspection of each ice condenser within 24 hours of experiencing a seismic event greater than or equal to an operating basis earthquake within the five (5) week period after ice basket replenishment has been completed to confirm that adverse ice fallout has not occurred which could impede the ability of the ice condenser lower inlet doors to open. This action would be taken, in lieu of requiring a five week waiting period following ice basket replenishment, prior to beginning ascension to power operations.

*Date of publication of individual notice in **Federal Register**:* February 26, 2008 (73 FR 10302).

Expiration date of individual notice: April 28, 2008.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the

Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to pdr@nrc.gov.

Dominion Energy Kewaunee, Inc. Docket No. 50-305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of application for amendment: June 12, 2007, as supplemented on December 12, 2007.

Brief description of amendment: The amendment revised the P-7 and P-10 nuclear instrumentation system permissive setpoints in Technical Specification (TS) Table 3.5-2, "Instrument Operation Conditions for Reactor Trip," revised the Table format and added a footnote explaining that the turbine impulse pressure setting limit is converted to an equivalent turbine

impulse pressure, and revised TS 2.3, "Instrumentation System," concerning reactor trip interlocks to be consistent with the proposed changes to TS Table 3.5-2.

Date of issuance: March 28, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 195.

Facility Operating License No. DPR-43: Amendment revised the License and Technical Specifications.

*Date of initial notice in **Federal Register**:* August 28, 2007 (72 FR 49570)

The December 12, 2007, letter provided clarifying information that did not change the scope of the proposed amendment as described in the original notice of proposed action published in the **Federal Register** (72 FR 49570) and did not change the initial proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 2008.

No significant hazards consideration comments received: No.

Dominion Energy Kewaunee, Inc. Docket No. 50-305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of application for amendment: September 24, 2007, as supplemented on January 18, 2008.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to add a reference to Dominion Topical Report DOM-NAF-5, "Application of Dominion Nuclear Core Design and Safety Analysis Methods to the Kewaunee Power Station (KPS)," to the list of approved analytical methods. The amendment permits the application of the Dominion nuclear core design and safety analysis methods, including the methodology to perform core thermal-hydraulic analysis to predict critical heat flux and departure from nucleate boiling ratio for the Westinghouse 422 V+ fuel design. In addition, the amendment: (1) Accommodates the use of the methodologies in DOM-NAF-5; (2) deletes one approved analytical method that will no longer be used; and (3) deletes date and revision numbers from the current TS list of approved analytical methods, consistent with TS Task Force (TSTF) Change Traveler TSTF-363-A, Revision 0, "Revise Topical Report References in ITS [improved TSs] 5.6.5, COLR [Core Operating Limits Report]," dated August 4, 2003, and adds a TS that requires complete identification of those analytical methods in the COLR.

Date of issuance: March 28, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 196.

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications and the License.

Date of initial notice in Federal Register: October 23, 2007 (72 FR 60034). The January 18, 2008, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 2008.

No significant hazards consideration comments received: No.

Dominion Energy Kewaunee, Inc. Docket No. 50-305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of application for amendment: March 17, 2006, as supplemented on April 17 and September 17, 2007, and February 1 and March 10, 2008.

Brief description of amendment: The amendment revised Appendix B, "Special Design Procedures," of the Updated Safety Analysis Report (USAR) to modify the design criteria for internal flooding evaluations. The revisions included modifications to Section B.5, "Protection of Class I Items," and Section B.11, "Internal Flooding."

Date of issuance: March 28, 2008.

Effective date: As of the date of issuance and will be implemented by incorporating the revisions into the next update of the USAR, as required by 10 CFR 50.71(c).

Amendment No.: 197.

Facility Operating License No. DPR-43: Amendment revised the USAR and License.

Date of initial notice in Federal Register: April 25, 2006 (71 FR 23954). The letters dated April 17 and September 17, 2007, and February 1 and March 10, 2008, provided clarifying information that did not change the scope of the proposed amendment as described in the original notice of proposed action published in the **Federal Register** and did not change the initial proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 2008.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50-336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: March 28, 2007, as supplemented by letter dated March 10, 2008.

Brief description of amendment: The amendment modifies the Technical Specification Surveillance Requirement 4.6.2.1.1.e to allow performance of testing for nozzle blockage to be based on the occurrence of activities that could potentially result in nozzle blockage rather than a fixed periodic basis.

Date of issuance: March 31, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 303.

Renewed Facility Operating License No. DPR-65: Amendment revised the License and Technical Specifications.

Date of initial notice in Federal Register: January 15, 2008 (73 FR 2549). The March 10, 2008, supplement contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 2008.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: February 15, 2008.

Brief description of amendments: The amendments would authorize a change to the Updated Final Safety Analysis Report (UFSAR) requiring an inspection of each ice condenser unit within 24 hours of experiencing a seismic event greater than or equal to an operating basis earthquake within the 5-week period after ice basket replenishment has been completed to confirm that adverse ice fallout has not occurred which could impede the ability of the ice condenser lower inlet doors to open. This action would be taken, in lieu of requiring a 5-week waiting period following ice basket replenishment, prior to beginning ascension to power operations.

Date of issuance: April 2, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 246, 226.

Renewed Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the licenses.

Date of initial notice in Federal Register: February 26, 2008 (73 FR 10302). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 2, 2008.

No significant hazards consideration comments received: No.

Duke Power Company LLC, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Duke Power Company LLC, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Duke Power Company LLC, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Oconee Nuclear Station Independent Spent Fuel Storage Installation License No. SNM-2503, Docket No. 72-4, Oconee County, South Carolina

Date of application for amendments: March 14, 2007.

Brief description of amendments: The amendments would revise the licenses to reflect the change in the name of the licensee from Duke Power Company LLC to Duke Energy Carolinas, LLC. The proposed amendments are a name change only. There is no change in the state of incorporation, registered agent, registered office, rights, or liabilities of the company. Nor is there a change in the function of the licensee or the way in which it does business.

Date of issuance: March 28, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 240, 234.

Renewed Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the licenses.

Amendment Nos.: 245, 225.

Renewed Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the licenses.

Amendment Nos.: 361, 363, 362.

Renewed Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: Amendments revised the licenses.

Amendment No.: 9.

Independent Spent Fuel Storage Installation License No. SNM-2503: Amendment revised the license.

Date of initial notice in Federal Register: December 4, 2007 (72 FR 68210).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 28, 2008.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: July 31, 2007, as supplemented by letters dated July 31, 2007, and March 11, 2008.

Brief description of amendment: The proposed changes revised Technical Specification 6.6.5, "Core Operating Limits Report (COLR)," which would add new analytical methods to support the implementation of Next Generation Fuel.

Date of issuance: March 26, 2008.

Effective date: As of the date of issuance and shall be implemented prior to startup following the spring 2008 refueling outage.

Amendment No.: 276.

Renewed Facility Operating License No. NPF-6: Amendment revised the Technical Specifications, Facility Operating License, and the Final Safety Analysis Report.

Date of initial notice in Federal Register: August 28, 2007 (72 FR 49576). The supplemental letters dated July 31, 2007, and March 11, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 2008.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: April 24, 2007.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.2.1, "Fuel Assemblies," to add Optimized ZIRLO™ as an acceptable fuel rod cladding material.

Date of issuance: March 26, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 277.

Renewed Facility Operating License No. NPF-6: Amendment revised the Technical Specifications/license.

Date of initial notice in Federal Register: June 5, 2007 (72 FR 31099).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 2008.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: October 5, 2007, as supplemented by letter dated February 19, 2008.

Brief description of amendment: The amendment revised the Technical Specifications (TS) 3.6.2.2, "Containment Sump Buffering Agent Trisodium Phosphate (TSP)" and its associated Surveillance Requirement 4.6.2.2 to replace references to TSP with the sodium tetraborate (NaTB) buffering agent. The required volume of NaTB has also been changed to reflect the new buffer. In addition, the title has been changed to remove the reference to TSP.

Date of issuance: March 31, 2008.

Effective date: As of the date of issuance and shall be implemented following completion of the 2R19 refueling outage in spring 2008.

Amendment No.: 278.

Renewed Facility Operating License No. NPF-6: Amendment revised the Technical Specifications/license.

Date of initial notice in Federal Register: November 6, 2007 (72 FR 62688). The supplemental letter dated February 19, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 2008.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: October 22, 2007.

Brief description of amendment: The amendment revised Technical Specification (TS) Limiting Condition for Operation (LCO) 3.0.4 and Surveillance Requirement 4.0.4 to adopt the provisions of Industry/TS Task Force (TSTF) change TSTF-359, "Increased Flexibility in Mode Restraints." This operating license improvement was made available by the U.S. Nuclear Regulatory Commission on April 4, 2003, as part of the consolidated line item improvement process.

Date of issuance: April 2, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: Unit 1—232.

Renewed Facility Operating License No. DPR-51: Amendment revised the Technical Specifications/license.

Date of initial notice in Federal Register: December 18, 2007 (72 FR 71709). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 2, 2008.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 8, 2007, as supplemented by letter dated March 28, 2008.

Brief description of amendment: The amendment modified the Arkansas Nuclear One, Unit 2, Technical Specification 3.1.1.4, "Moderator Temperature Coefficient (MTC)." Specifically, the change modified the surveillance frequency to be based on effective full power days instead of boron concentration.

Date of issuance: March 31, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 279.

Renewed Facility Operating License No. NPF-6: Amendment revised the Technical Specifications/license.

Date of initial notice in Federal Register: June 5, 2007 (72 FR 31099). The supplemental letter dated March 28, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 2008.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station (Braidwood), Units 1 and 2, Will County, Illinois

Date of application for amendment: April 4, 2007, as supplemented by letters dated October 10, 2007, January 31, and February 26, 2008.

Brief description of amendment: The amendments revise Technical

Specification 5.5.16, "Containment Leakage Rate Testing Program," to reflect a one-time, 5-year extension of the current containment Type A test (containment integrated leakage rate test (ILRT)) interval requirement, under Title 10 of the Code of Federal Regulations, Part 50, Appendix J, Option B, from 10 years to 15 years. The amendments allow the next Type A ILRT to be performed within 15 years of the most recent Type A test at Braidwood, but no later than October 5, 2013, for Unit 1, and no later than May 4, 2014, for Unit 2.

Date of issuance: April 2, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: Unit 1–149; Unit 2–149.

Facility Operating License Nos. NPF–72 and NPF–77: The amendment revised the Technical Specifications and License.

Date of initial notice in Federal Register: June 5, 2007 (72 FR 31100). The October 10, 2007, January 31, and February 26, 2008, supplemental letters contained clarifying information and did not change the NRC staff's original proposed no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 2, 2008.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit No. 2, Beaver County, Pennsylvania.

Date of application for amendment: June 14, 2006, as supplemented by letters dated July 20, July 26, December 21, 2007, and March 11, 2008.

Brief description of amendment: The amendment will revise Technical Specifications (TSs) to incorporate the results of a new spent fuel pool (SFP) criticality analysis documented in WCAP–16518–P, "Beaver Valley Unit 2 Spent Fuel Pool Criticality Analysis," Revision 2 for BVPS–2. The new criticality analysis will permit utilization of vacant storage locations dictated by the existing TS storage configurations in the BVPS–2 SFP.

Date of issuance: March 27, 2008.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 165.

Facility Operating License No. NPF–73. Amendment revised the License and TS.

Date of initial notice in Federal Register: August 15, 2006 (71 FR 46935). The supplements dated July 20, July 26, December 21, 2007, and March 11, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission (NRC) staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 2008.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 29, 2007, as supplemented by letter dated January 9, 2008.

Description of amendment request: The amendment revises the Seabrook Station, Unit No 1, Technical Specifications to increase the power level required for a reactor trip following a turbine trip (P–9 setpoint).

Date of issuance: March 27, 2008.

Effective date: As of its date of issuance, and shall be implemented within 90 days.

Amendment No.: 117.

Facility Operating License No. NPF–86: The amendment revised the License and Technical Specifications.

Date of initial notice in Federal Register: July 31, 2007 (72 FR 41785). The licensee's January 9, 2008, supplement provided clarifying information that did not change the scope of the proposed amendment as described in the original notice of proposed action published in the **Federal Register**, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 2008.

No significant hazards consideration comments received: No.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: April 10, 2007, as supplemented by letters dated July 31, August 16, November 15 (two letters), and November 19, 2007, and February 11, March 6, March 13, and March 26, 2008.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.1, "Reactivity Control Systems," TS 3.2, "Power Distribution Limits," TS 3.3, "Instrumentation," and TS 5.6.5b, "Core Operating Limits Report (COLR)," to incorporate standard Westinghouse-developed and NRC-approved analytical methods into the list of methodologicals used to establish the core operating limits.

Date of issuance: April 2, 2008.

Effective date: As of the date of issuance and shall be implemented prior to startup from refueling outage 10 for Comanche Peak Steam Electric Station, Unit 2.

Amendment Nos.: Unit 1–144; Unit 2–144.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: August 14, 2007 (72 FR 45461). The supplemental letters dated July 31, August 16, November 15 (two letters), and November 19, 2007, and February 11, March 6, March 13, and March 26, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on August 14, 2007 (72 FR 45461). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 2, 2008.

No significant hazards consideration comments received: No.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: August 16, 2007, as supplemented by letter dated December 13, 2007.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.1.4, "Rod Group Alignment Limits," Table 3.3.1–1, "Reactor Trip System Instrumentation," Table 3.3.2–1, "Engineered Safety Feature Actuation System Instrumentation," TS 3.4.10, "Pressurizer Safety Valves," TS 3.7.1, "Main Steam Safety Valves (MSSVs)," and Table 3.7.1–1, "Operable Main Steam Safety Valves Versus Maximum Allowable Power." The change to the TS is to reflect cycle-specific safety analysis assumptions and the results associated with the adoption of

Westinghouse accident analyses methodologies.

Date of issuance: April 3, 2008.

Effective date: As of the date of issuance and shall be implemented prior to startup from the fall 2008 refueling outage for Unit 1, and prior to startup from the spring 2008 refueling outage for Unit 2.

Amendment Nos.: Unit 1—145; Unit 2—145.

Facility Operating License Nos. NPF-87 and NPF-89: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in Federal Register: September 25, 2007 (72 FR 54482). The supplemental letter dated December 13, 2007, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on September 25, 2007 (72 FR 54482). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 3, 2008

No significant hazards consideration comments received: No.

National Aeronautics and Space Administration, Docket Nos. 50-30 and 50-185, Plum Brook Reactor Facility, Sandusky, Ohio (TAC NOS. J60622 and J60626)

Date of application for amendments: February 9, 2007.

Brief description of amendments: The amendments to facility licenses include revisions to the Technical Specifications, and incorporates Final Status Survey Plan (Revision 1). The same Technical Specifications apply equally to both licenses.

Date of issuance: March 24, 2008.

Effective date: As of the date of issuance.

Amendment Nos.: 13 and 9.

Facility License Nos. TR-3 and R-93: The amendments revise the facility licenses.

Date of initial notice in Federal Register: August 20, 2007 (72 FR 46521).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation enclosed with the amendment dated March 24, 2008.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2 (NMP2), Oswego County, New York

Date of application for amendment: October 22, 2007.

Brief description of amendment: The amendment revises the NMP2 Technical Specifications (TSs) by deleting the requirements related to the hydrogen recombiners and hydrogen and oxygen monitors. A notice of availability for this TS improvement using the consolidated line item improvement process was published in the **Federal Register** on September 25, 2003 (68 FR 55416). In addition, the amendment revises Operating License No. NPF-69 by deleting paragraph 2.C.(11a) from the operating license, and retaining the current licensing basis hydrogen monitoring requirements in the NMP2 Updated Final Safety Analysis Report.

Date of issuance: April 8, 2008.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 124.

Renewed Facility Operating License No. NPF-69: Amendment revises the License and Technical Specifications.

Date of initial notice in Federal Register: December 4, 2007 (72 FR 68217). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 2008.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 11, 2007.

Brief description of amendment: The amendment removed the footnote to Technical Specification (TS) 2.3(4), "Containment Sump Buffering Agent Specification and Volume Requirement," and TS 3.6(2)d, "Surveillance Requirements," limiting the applicability of those specifications to operating cycle 24. Additionally, TS 2.3, figure 2-3 was revised to increase the volume of sodium tetraborate due to the selection of a different chemical vendor and an increase in mass to provide additional pH margin.

Date of issuance: March 25, 2008.

Effective date: The license amendment is effective as of its date of issuance and shall be implemented prior to plant startup from the 2008 refueling outage.

Amendment No.: 253.

Renewed Facility Operating License No. DPR-40: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 9, 2007 (72 CFR 57356). The Commission's related evaluation of the amendment is contained in a safety evaluation dated March 25, 2008.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 5, 2007.

Brief description of amendment: The amendment revised emergency diesel generator (DG) surveillance testing in Technical Specification (TS) 3.7, "Emergency Power Systems," to support modification of the DG start circuitry. Currently, TS 3.7 requires the licensee to verify the anticipatory DG start-to-idle speed upon a reactor trip. This amendment deletes the anticipatory DG starting requirement. The amendment also deletes the footnote in TS 3.7.(1)e. that pertains to a one-time extension of surveillance interval for DG-1 that was granted in Amendment No. 112 to the Renewed Facility Operating License.

Date of issuance: March 26, 2008.

Effective date: As of its date of issuance and prior to startup from the 2008 refueling outage.

Amendment No.: 254.

Renewed Facility Operating License No. DPR-40: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 20, 2007 (72 FR 65369). The Commission's related evaluation of the amendment is contained in a safety evaluation dated March 26, 2008.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: February 13, 2008, as supplemented on March 21, and April 3, 2008.

Brief description of amendments: The amendments proposed a one-time steam generator (SG) tubing eddy current inspection interval revision to the Vogtle Electric Generating Plant, Units 1 and 2 (Vogtle 1 and 2) Technical Specifications (TSs) 5.5.9, "Steam Generator (SG) Program," to incorporate an interim alternate repair criterion in the provisions for SG tube repair criteria during the Vogtle 1 inspection performed in Refueling Outage 14 and subsequent operating cycle, and during the Vogtle 2 inspection performed in Refueling Outage 13 and subsequent 18-month SG tubing eddy current inspection interval and subsequent 36-month SG tubing eddy current inspection interval. The amendments also revised TS 5.6.10, "Steam Generator Tube Inspection Report,"

where three new reporting requirements are proposed to be added to the existing seven requirements.

Date of issuance: April 9, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance April 9, 2008.

Amendment Nos.: 150 and 130.

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the licenses and the technical specifications.

Date of initial notice in Federal Register: February 26, 2008 (73 FR 10305) The supplements dated March 21, and April 3, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 9, 2008.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: January 12, 2007, as supplemented by letters dated January 8 and February 8, 2008.

Brief description of amendment: A Change to the Unit 2 Technical Specifications (TS) to include a Steam Generator SG voltage-based repair criteria probability of detection method using plant specific SG tube inspection results. The revised method is referred to as the Probability of Prior Cycle Detection method.

Date of issuance: March 24, 2008.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 309.

Facility Operating License No. DPR-79: Amendment revises the technical specifications.

Date of initial notice in Federal Register: March 13, 2007 (72 FR 11395). The supplemental letters dated January 8 and February 8, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 24, 2008.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 5, 2007.

Brief description of amendments: The technical specifications change will revise the surveillance frequency for the turbine trip functions of the reactor trip system instrumentation.

Date of issuance: April 2, 2008.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 318 and 310.

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revised the technical specifications.

Date of initial notice in Federal Register: May 22, 2007 (72 FR 28723).

The Commission's related evaluation of the amendments is contained in a safety evaluation dated April 2, 2008.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 14, 2007, as supplemented by letters dated December 18, 2007, and February 26, 2008.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.3.2, "Engineered Safety Features Actuation System (ESFAS) Instrumentation," and TS 3.7.3, "Main Feedwater Isolation Valves (MFIVs)," by the addition of the main feedwater regulating valves (MFRVs), and associated MFRV bypass valves, to TS 3.7.3 and to TS Table 3.3.2-1, and changed page numbers in the TS Table of Contents. The application has one last proposed change to the plant, which is the proposed modification of the Main Steam Feedwater Isolation System controls. This will be addressed later in a future letter.

Date of issuance: April 3, 2008.

Effective date: Effective as of its date of issuance and shall be implemented before entry into Mode 3 in the restart from the spring 2008 refueling outage.

Amendment No.: 177.

Facility Operating License No. NPF-42: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in Federal Register: June 19, 2007 (72 FR 33785).

The supplemental letters dated December 18, 2007, and February 26, 2008, provided additional information that clarified the proposed changes in

the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 2008.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 8, 2008, as supplemented by letters dated March 21 and 30, 2008.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.5.9, "Steam Generator (SG) Program," and TS 5.6.10, "Steam Generator Tube Inspection Report." For TS 5.5.9, the amendment would replace the existing alternate repair criteria (ARC) in TS 5.5.9.c.1 for SG tube inspections that was approved in Amendment No. 169 issued October 10, 2006, for refueling outage 15 (the outage for the fall of 2006) and the subsequent operating cycle. The new interim ARC would be for the upcoming refueling outage 16 (the outage for the spring of 2008) and the subsequent 18-month operating cycle, and would apply to service-induced crack-like flaws found below 17 inches from the top of the tubesheet. For TS 5.6.10, three new reporting requirements are added to the existing seven requirements.

Date of issuance: April 4, 2008.

Effective date: Effective as of its date of issuance and shall be implemented prior to the entry into Mode 4 during the startup from refueling outage 16 in the spring of 2008.

Amendment No.: 178.

Facility Operating License No. NPF-42: The amendment revised the Operating License and Technical Specifications.

Date of initial notice in Federal Register: February 21, 2008 (73 FR 9602). The supplemental letters dated March 21 and 30, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 2008.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 14th day of April 2008.

For The Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8-8388 Filed 4-21-08; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[EA-07-256]

In the Matter of Wackenhut Nuclear Services, a Division of the Wackenhut Corporation; Confirmatory Order (Effective Immediately)

I

Wackenhut Nuclear Services (WNS), a division of The Wackenhut Corporation, provides security related services to the Turkey Point Nuclear Plant (Turkey Point), operated by Florida Power & Light Company (FPL or Licensee). FPL holds License No. DPR-31 and DPR-41, issued by the Nuclear Regulatory Commission (NRC or Commission) on July 19, 1972, and April 10, 1973, respectively, pursuant to 10 CFR Part 50. The license authorizes the operation of Turkey Point, Units 3 and 4, in accordance with the conditions specified therein. Turkey Point is located on the Licensee's site in Florida City, Florida.

II

On December 13, 2006, the Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) completed an investigation of security-related matters at FPL's Turkey Point Nuclear Plant. The purpose of the investigation was to determine if security officers employed with WNS at Turkey Point were willfully inattentive to duty during 2004-2006. The results of the OI investigation were documented in a letter to WNS dated October 30, 2007, which identified apparent violations involving the activities of WNS employees. The apparent violations involved WNS security officers who were willfully inattentive to duty or served as lookouts such that other security officers could be inattentive while on duty. These actions caused Wackenhut to be in violation of 10 CFR 50.5, and caused the facility (Turkey Point) to be in violation of 10 CFR 73.55(f)(1), because these officers were unable to maintain continuous communication with an individual in each continuously manned alarm station.

III

The results of the NRC's preliminary conclusions, as discussed in Section II, were provided to WNS by NRC letter dated October 30, 2007. The NRC's letter informed WNS that the NRC was considering the apparent violations for escalated enforcement action in accordance with the NRC Enforcement Policy, and offered WNS a choice to: (1) Attend a Pre-decisional Enforcement Conference; (2) provide a written response; or (3) request ADR with the NRC in an attempt to resolve any disagreement on whether violations occurred, the appropriate enforcement action, and the appropriate corrective actions. In response, WNS requested ADR to resolve the matter. WNS and the NRC participated in an ADR session in Atlanta, Georgia, on January 22, 2008. As a result of the ADR session, WNS and the NRC reached an Agreement in Principle, which consisted of the following elements:

1. The NRC and WNS agreed that during 2004-2006, several security officers employed by Wackenhut Corporation engaged in deliberate misconduct in violation of WNS' policies and procedures and which caused Florida Power and Light Company's Turkey Point Nuclear Plant to be in violation of 10 CFR 73.55(f)(1). Specifically, the security officers were deliberately inattentive to duty or served as lookouts such that other security officers would be allowed to be inattentive while on duty. These actions caused FPL to be in violation of 10 CFR 73.55(f)(1), because these officers were, while inattentive, unable to maintain continuous communication with an individual in each continuously manned alarm station.

2. The NRC and WNS were in complete agreement that deliberately inattentive security officers is an egregious matter that cannot be tolerated in the nuclear industry.

3. The NRC acknowledged that, to its knowledge, during the time the security officers engaged in deliberate misconduct, there was no actual need for a security response by the WNS security force staff to a security-related threat at Turkey Point. In addition, the facility retained its ability to implement its protective strategy because of the redundancy required by NRC security regulations.

4. The parties incorporated by reference the security enhancements as documented in the NRC's Confirmatory Order of January 22, 2008.

5. In addition to the above, WNS has completed or agreed to complete the

following activities in response to the events as discussed in Item 2 above:

(1) Safety Conscious Work Environment (SCWE) activities:

a. Issuance of a new SCWE Policy on February 5, 2007.

b. Issuance of a new SCWE Handbook in February 2007.

c. Training of all on-site WNS supervisory personnel on the above SCWE Policy and Handbook initially completed in February 2007, and to be proceduralized and conducted annually (Training Module).

(2) Continuous Behavioral Observation Program (CBOP):

a. Implement a Management and Supervisor Oversight procedure to include CBOP evaluations of on-shift security force members' fitness for duty (FFD).

b. CBOP training of officers regarding behavior identifiers and actions to be taken in response to aberrant issues.

c. CBOP training of supervisors and officers to include communication of expectations to self-declare potential FFD issues.

d. To ensure officers are fit-for-duty at the beginning of each shift, WNS has also enhanced its FFD processes to include FFD questioning of officers prior to each shift. In addition, WNS will reinforce its expectations that officers may declare potential FFD issues at any time.

(3) Training and development activities:

a. Continued implementation of Supervisory Requirements and Expectations at FPL's Turkey Point facility, as discussed in WNS' memo of 10/24/06, and for other facilities supported by WNS as described in WNS' objective and One-on-One procedure.

b. Implementation of Attentiveness Refresher Training in November 2006, and continued training on an annual frequency.

c. Professional development training for newly hired security officers at sites currently serviced by WNS. Periodic professional development training will be performed at sites supported by any WNS's successor organization.

d. Feedback mechanism to determine effectiveness of training (Ideal Facility Performance Metrics).

(4) Process and Program Improvements:

a. Analysis of post rotation frequency and radio check frequency and enhancements made as appropriate.

b. Performance of pre-hire security officer profile testing and third party evaluation.

c. Implementation of Work Hour controls with consideration of the NRC's Work Hours Requirement.

6. The NRC and WNS agreed to communications on the above activities at the same frequency as discussed in the NRC's Confirmatory Order of January 22, 2008.

7. In consideration of the above commitments, the NRC agreed to forego issuance of a Notice of Violation or other enforcement action in this matter.

8. The NRC and WNS agree that the above elements will be incorporated into issuance of a Confirmatory Order.

9. This agreement is binding upon successors and assigns of WNS.

IV

Because WNS has agreed to take actions to address the NRC's concerns, as set forth in Section II above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that WNS' commitments set forth in Section V below are acceptable and necessary, and I conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that WNS' commitments be confirmed by this Order. Based on the above and WNS' consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 104, 161b, 161i, 161o, and 186 of the Atomic Energy Act of 1954, as amended, the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *it is hereby ordered, effective immediately, that:*

WNS has completed or agrees to complete the following activities in response to the events as discussed in Item II above:

1. Safety Conscious Work Environment (SCWE) activities:

a. Issuance of a new SCWE Policy (issued on February 5, 2007).

b. Issuance of a new SCWE Handbook (issued in February 2007).

c. Training of all on-site WNS supervisory personnel on the above SCWE Policy and Handbook initially completed in February 2007, and to be proceduralized and conducted annually (Training Module).

2. Continuous Behavioral Observation Program (CBOP):

a. Implement a Management and Supervisor Oversight procedure to include CBOP evaluations of on-shift security force members' fitness for duty (FFD).

b. CBOP training of officers regarding behavior adverse to the safety and security of the facility, and actions to be taken in response to adverse conditions.

c. CBOP training of supervisors and officers to include communication of

requirements to self-declare potential FFD issues.

d. To ensure officers are fit-for-duty at the beginning of each shift, WNS has also enhanced its FFD processes to include FFD questioning of officers prior to each shift. In addition, WNS will reinforce its expectations that officers should declare potential FFD issues at any time the need arises.

3. Training and development activities:

a. Continued implementation of Supervisory Requirements and Expectations at FPL's Turkey Point facility, as discussed in WNS' memo of 10/24/06, and for other facilities supported by WNS as described in WNS' objective and One-on-One procedure.

b. Implementation of Attentiveness Refresher Training in November 2006, and continued training on an annual frequency.

c. Professional development training for newly hired security officers at sites currently serviced by WNS. Periodic professional development training will be performed at sites supported by any WNS successor organization.

d. Feedback mechanism to determine effectiveness of training (Ideal Facility Performance Metrics).

4. Process and Program Improvements:

a. Analysis of post rotation frequency and radio check frequency and enhancements made as appropriate.

b. Performance of pre-hire security officer profile testing and third party evaluation

c. Implementation of Work Hour controls with consideration of the NRC's Work Hours Requirement.

5. WNS agrees to communications on the above activities at the same frequency as discussed in the NRC's Confirmatory Order of January 22, 2008.

6. This agreement is binding upon successors and assigns of WNS.

The Regional Administrator, NRC Region II, may relax or rescind, in writing, any of the above conditions upon a showing by WNS of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than WNS, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the

Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address; to the Regional Administrator, NRC Region II, 61 Forsyth Street, SW., Suite 23T85, Atlanta, GA 30303-8931; and to WNS. Because of the possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than WNS requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.
Dated this 9th day of April 2008.

Victor M. McCree,

Acting Regional Administrator.

[FR Doc. E8-8659 Filed 4-21-08; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATES: Weeks of April 21, 28; May 5, 12, 19, 26, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 21, 2008

There are no meetings scheduled for the Week of April 21, 2008.

Week of April 28, 2008—Tentative

Monday, April 28, 2008

9:30 a.m.

Briefing on Reactor Materials Issues (Public Meeting) (Contact: Ted Sullivan, 301-415-2796).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Tuesday, April 29, 2008

9:30 a.m.

Discussion of Management Issues (Closed—Ex. 2).

1:25 p.m.

Affirmation Session (Public Meeting) (Tentative)

a. AmerGen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station), Docket No. 50-219-LR, Citizens' Petition for Review of LBP-07-17 and Other Interlocutory Decisions in the Oyster Creek Proceeding (Tentative).

b. Oyster Creek, Indian Point, Pilgrim, and Vermont Yankee License Renewals, Docket Nos. 50-219-LR, 50-247-LR, 50-286-LR, 50-293-LR, 50-271-LR, Petition to Suspend Proceedings (Tentative).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

1:30 p.m.

Meeting with Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Ashley Tull, 918-488-0552).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Wednesday, April 30, 2008

9:30 a.m.

Briefing on Materials Licensing and Security (Public Meeting) (Contact: Tomas Herrera, 301-415-7138).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

1:30 p.m.

Periodic Briefing on New Reactor Issues (Public Meeting) (Contact: Robert Schaaf, 301-415-1312).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Week of May 5, 2008—Tentative

There are no meetings scheduled for the Week of May 5, 2008.

Week of May 12, 2008—Tentative

Friday, May 16, 2008

9 a.m.

Briefing on NRC Infrastructure (Public Meeting) (Contact: Peter Rabideau, 301-415-7323).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

Week of May 19, 2008—Tentative

There are no meetings scheduled for the Week of May 19, 2008.

Week of May 26, 2008—Tentative

Tuesday, May 27, 2008

1:30 p.m.

NRC All Hands Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852.

Wednesday, May 28, 2008

9:30 a.m.

Briefing on Equal Employment Opportunity (EEO) and Workforce Planning (Public Meeting) (Contact: Sandra Talley, 301-415-8059).

This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292.

Contact person for more information: Michelle Schroll, (301) 415-1662.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/about-nrc/policy-making/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301-492-2279, TDD: 301-415-2100, or by e-mail at REB3@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in

receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: April 17, 2008.

R. Michelle Schroll,

Office of the Secretary,

[FR Doc. 08-1171 Filed 4-18-08; 10:21 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28238; 812-13246]

U.S. Bank National Association, et al.; Notice of Application

April 16, 2008.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under sections 6(c), 12(d)(1)(J), 17(b) and 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 thereunder for an exemption from sections 12(d)(1)(A) and (B) of the Act, sections 17(a)(1) and (2) of the Act, and section 17(e) of the Act, and for an order permitting certain joint transactions pursuant to rule 17d-1 under the Act.

Applicants: U.S. Bank National Association ("Bank"), FAF Advisors, Inc. ("FAF Advisors"), Mount Vernon Securities Lending Trust ("Fund"), and First American Investment Funds, Inc. ("FAIF").

Summary of Application: Applicants request an order to permit (i) Certain registered management investment companies and their series ("Other Lending Funds") that participate as lenders in a securities lending program ("Program") administered by FAF Advisors or an entity controlling, controlled by, or under common control with FAF Advisors ("Lending Agent") to pay, and Lending Agent to accept, fees based on a share of revenue generated from securities lending transactions under the Program; (ii) the Bank and any entity controlled or under common control with the Bank ("U.S. Bank Entity") to engage in principal transactions with, and receive fees or commissions for acting as broker or agent in connection with the purchase or sale of securities for, the Other Lending Funds, irrespective of any affiliation that may arise solely because of an investment by an Other Lending Fund of cash collateral derived from loaned securities under the Program ("Cash Collateral") in shares of any series of the Fund ("Investment Funds"); and (iii) the Other Lending Funds, FAIF and any other registered

management investment company or series thereof advised by FAIF Advisors or any other entity controlling, controlled by, or under common control with the Bank that may participate as a lender in the Program¹ (“Affiliated Lending Funds,” and together with the Other Lending Funds, “Registered Lending Funds”), and any entity relying on section 3(c)(1) or 3(c)(7) that may participate as a lender in the Program (“Private Lending Funds,” and together with the Registered Lending Funds, “Lending Funds”), to invest Cash Collateral in existing and future Investment Funds that are short-term bond funds (“Non Money Market Investment Funds”).

FILING DATES: The application was filed on November 14, 2005, and amended on November 6, 2006, November 16, 2007, and March 13, 2008.

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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 12, 2008, and should be accompanied by proof of service on the applicants, 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 may request notification of a hearing by writing to the Commission’s Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: FAF Advisors, 800 Nicollet Mall, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Nadya Roytblat, Assistant Director, at (202) 551–6823 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission’s Public Reference Branch, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–8090).

Applicants’ Representations

1. The Bank is a national banking association and the largest subsidiary of U.S. Bancorp, a multi-state financial

holding company headquartered in Minneapolis, Minnesota. The Bank serves as custodian for several of the Lending Funds. FAF Advisors is a wholly owned subsidiary of the Bank and is registered as an investment adviser under the Investment Advisers Act of 1940. FAF Advisors currently serves as Lending Agent administering the Program. FAIF is a Maryland corporation and is registered under the Act as an open-end management investment company. Certain of the series of FAIF are Affiliated Lending Funds.²

2. The Fund is a Delaware statutory trust organized in 2005 and is registered as an open-end management investment company under the Act. The Fund currently offers two Investment Funds, one of which is a money market fund and the other a Non Money Market Investment Fund, a short-term bond fund that seeks current income consistent with the preservation of capital by investing in fixed-income securities and maintaining a dollar-weighted average portfolio maturity of three years or less. Any future Non Money Market Investment Fund will be a short term bond fund. The Investment Funds are offered exclusively to the Lending Funds as low expense investment vehicles for Cash Collateral. Shares of the Investment Funds are not subject to any sales charge or service fee. FAF Advisors serves as the investment adviser, transfer agent and administrator of the Fund. The Bank serves as custodian of the Fund.

3. Under the Program, the Lending Agent enters into an agreement with a Lending Fund (“Lending Agreement”) whereby the Lending Fund appoints the Lending Agent to serve as its agent to lend its portfolio securities and authorizes the Lending Agent to enter into a master borrowing agreement (“Borrowing Agreement”) with each person designated by the Lending Fund as eligible to borrow some or all of such securities (“Borrower”). All securities lent under a Borrowing Agreement are exchanged for cash or other types of collateral from the Borrower. When the collateral delivered is cash, the Lending Agreement authorizes and instructs the Lending Agent, as agent for the Lending Fund, to invest the cash in accordance with specific guidelines provided by the Lending Fund. With respect to loans involving cash collateral, the Lending Agent is compensated for its services under the Program indirectly through

the income earned on the collateral. Pursuant to the Borrowing Agreement, the Lending Fund commits to pay the Borrower a negotiated return on the collateral for the term of the loan (“Borrower’s Rebate”). The return on the Lending Fund’s investment of the Cash Collateral during the term of the loan is intended to satisfy that commitment. The difference between the Borrower’s Rebate and the actual return on the investment of the collateral (“Securities Lending Revenue”) is divided between the Lending Fund and the Lending Agent in accordance with the terms of the Lending Agreement. In the case of collateral other than cash, the Borrower will pay a loan fee to the Lending Fund. The amount of the loan fee (also “Securities Lending Revenue”) is divided between the Lending Fund and the Lending Agent in accordance with the terms of the Lending Agreement.

Applicants’ Legal Analysis

Applicants request an order (i) Pursuant to section 17(d) of the Act and rule 17d–1 thereunder to permit the Other Lending Funds to pay, and a Lending Agent to accept, fees based on a share of the Securities Lending Revenue; (ii) pursuant to sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) and 17(e) of the Act to permit any U.S. Bank Entity to engage in principal transactions in securities and other property with the Other Lending Funds and receive fees or commissions from the Other Lending Funds for acting as a broker or agent in connection with the purchase or sale of securities for the Other Lending Funds; (iii) pursuant to section 12(d)(1)(j) of the Act to permit the Lending Funds to invest Cash Collateral in shares of the Non Money Market Funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act; and (iv) pursuant to sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and pursuant to section 17(d) of the Act and rule 17d–1 thereunder, to permit the Non Money Market Funds to sell their shares to and redeem their shares from the Registered Lending Funds in connection with the investment of Cash Collateral, and the Non Money Market Funds, the Lending Funds and the Lending Agent to effect certain transactions incident to such investment in the Non Money Market Funds.³

¹ The Affiliated Lending Funds participate in the Program pursuant to a prior Commission order. First American Investment Funds, Inc., Investment Company Act Release Nos. 22181 (Aug. 28, 1996) (notice) and 22245 (Sep. 24, 1996) (order).

² All existing Affiliated Lending Funds that currently intend to rely on the requested order are named as applicants. Any other existing or future entity may rely on the order only in accordance with the terms and conditions of the application.

³ The duties to be performed by a Lending Agent with respect to any Registered Lending Fund will not exceed the parameters set forth in Norwest Bank, Minnesota, N.A., SEC No-Action Letter (pub. avail. May 25, 1995) (“Norwest Bank”). The

Lending Agent Fee

1. Section 17(d) of the Act and rule 17d-1 under the Act, in relevant part, prohibit any affiliated person or any affiliated person of an affiliated person ("Second Tier Affiliate") of a registered investment company, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates, without an order of the Commission.

2. Section 2(a)(3) of the Act defines an affiliated person to include, in relevant part, (i) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (ii) any person 5% or more of whose outstanding voting securities is owned, controlled or held with power to vote by the other person, (iii) any person directly or indirectly controlling, controlled by, or under common control with the other person, and (vi) an investment adviser to an investment company.

3. As investment adviser to an Investment Fund, FAF Advisors is an affiliated person of the Investment Fund. Applicants state that, if an Other Lending Fund acquires 5% or more of an Investment Fund's outstanding voting securities, the Other Lending Fund will become an affiliated person of the Investment Fund and a Second Tier Affiliate of the Lending Agent. Applicants also state that the Lending Agent may be a Second Tier Affiliate of an Other Lending Fund if the Other Lending Fund is a series of a registered investment company and FAF Advisors or another entity controlling, controlled by, or under common control with the Bank serves as investment adviser to another series of the same registered investment company.

4. Due to these possible affiliations, applicants state that section 17(d) and rule 17d-1 may prohibit a Lending Agent from receiving a fee from the Other Lending Funds based on a share of the Securities Lending Revenue, and request an order pursuant to rule 17d-1 to permit the arrangement. Under rule 17d-1, in passing on applications for orders under section 17(d), the Commission considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which such

applicants are not requesting, and the Commission is not passing on, any relief from sections 15, 17(d) or 17(e) of the Act with respect to any duties of the lending agent that are not enumerated in Norwest Bank.

participation is on a basis different from or less advantageous than that of other participants. Applicants state that each Other Lending Fund has its own investment adviser that is not an affiliated person or Second Tier Affiliate of the Lending Agent, and that any fee arrangement between a Lending Agent and an Other Lending Fund with respect to the Program will be the product of arms length bargaining. Therefore, applicants submit that the proposed arrangement satisfies the standards for an order under rule 17d-1.

Transactions Between the Other Lending Funds and U.S. Bank Entities

1. Sections 17(a)(1) and (2) of the Act generally prohibit, in relevant part, an affiliated person or Second Tier Affiliate of a registered investment company, acting as principal, from selling to or purchasing from the registered company, or any company controlled by the registered company, any security or other property. Section 17(e)(1) of the Act makes it unlawful, in relevant part, for any affiliated person of a registered investment company or Second Tier Affiliate, when acting as agent, to accept from any source compensation for the purchase or sale of any property to or for such registered investment company, except in the course of such person's business as an underwriter or broker. Section 17(e)(2) of the Act makes it unlawful, in relevant part, for any affiliated person of a registered investment company or Second Tier Affiliate, when acting as broker, in connection with the sale of securities to or by such registered investment company, to receive from any source a commission, fee or other remuneration for effecting such transaction which exceeds the limits set forth in section 17(e)(2).

2. Applicants state that FAF Advisors, controlled by U.S. Bancorp, may be deemed to control the Investment Funds, and that each U.S. Bank Entity may be deemed to be under common control with, and thus an affiliated person of, the Investment Funds. If an Other Lending Fund acquires 5% or more of an Investment Fund's outstanding voting securities, the Other Lending Fund will become an affiliated person of the Investment Fund and a Second Tier Affiliate of the U.S. Bank Entities. Therefore, applicants seek an exemption under sections 6(c) and 17(b) of the Act from the prohibitions in sections 17(a)(1) and (2) of the Act and section 17(e) of the Act.

3. Section 17(b) of the Act provides that the Commission, upon application, may exempt a transaction from the

provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair, and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that no element of self-dealing would be involved in the principal transactions between a U.S. Bank Entity and an Other Lending Fund because, in each instance, no U.S. Bank Entity has any influence over the decisions made by any Other Lending Fund. Applicants state that each Other Lending Fund has its own investment adviser that is not an affiliated person or Second Tier Affiliate of any U.S. Bank Entity and that, in economic reality, may be a competitor of the Bank. The applicants submit that each transaction between an Other Lending Fund and a U.S. Bank Entity would therefore be a product of arms length bargaining, and that the standards of sections 6(c) and 17(b) are met.

5. With respect to section 17(e), applicants state that certain U.S. Bank Entities may rely on rule 17e-1 under the Act in effecting transactions for the Other Lending Funds, whereas other U.S. Bank Entities that do not meet the definition of "broker" in section 2(a)(5) of the Act, may not rely on rule 17e-1. Applicants request relief under section 6(c) from section 17(e)(1) solely to the extent that a U.S. Bank Entity may not meet the definition of "broker" under the Act, and from section 17(e)(2), provided that the U.S. Bank Entity complies with rule 17e-1 under the Act except for the requirements in rule 17e-1(b)(3) and 17e-1(d)(2) concerning quarterly board review and the related recordkeeping requirements. Applicants submit that the requested relief is consistent with a similar exemption provided in rule 12d1-1 under the Act for affiliations analogous to those between an Other Lending Fund and a U.S. Bank Entity.

Investment by the Lending Funds of Cash Collateral in the Non Money Market Investment Funds

1. Section 12(d)(1)(A) of the Act provides, in relevant part, that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company, any principal underwriter thereof, or any broker or dealer may sell securities of the investment company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors.

2. Applicants request an exemption under section 12(d)(1)(J) to permit the Lending Funds to invest Cash Collateral in shares of the Non Money Market Investment Funds in excess of the limits imposed by section 12(d)(1)(A), and each Non Money Market Investment Fund to sell its shares to the Lending Funds in excess of the limits in section 12(d)(1)(B).

3. Applicants state that none of the abuses meant to be addressed by sections 12(d)(1)(A) and (B) of the Act will be created by the proposed investment of Cash Collateral in the Non Money Market Investment Funds. Applicants represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Non Money Market Investment Funds will not be subject to a sales charge or service fee. Applicants further represent that there will not be any duplicative advisory fees. Applicants also represent that no Non Money Market Investment Fund will acquire shares of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act other than as permitted by rule 12d1-1 under the Act, so that there will not be any complex fund structure.

4. Applicants also request an exemption under sections 6(c) and 17(b) of the Act, and an order pursuant to rule

17d-1 under the Act, to permit the Non Money Market Investment Funds to sell their shares to the Registered Lending Funds, the Registered Lending Funds to redeem shares from the Non Money Market Funds, and the Lending Agent to effectuate the investment of Cash Collateral in the Non Money Market Funds.

5. Applicants state that the Affiliated Lending Funds and the Non Money Market Investment Funds may be deemed to be under common control and therefore affiliated persons of each other. Applicants also state that if any Other Lending Fund acquires 5% or more of a Non Money Market Investment Fund's shares, the Other Lending Fund and the Non Money Market Investment Fund may be deemed affiliated persons of each other. Therefore, the sale of shares of the Non Money Market Investment Fund to the Registered Lending Funds, and the redemption of such shares in connection with the investment of Cash Collateral may be prohibited under sections 17(a)(1) and (2) of the Act. Applicants also state that the Lending Funds (by purchasing and redeeming shares of the Non Money Market Investment Funds), FAF Advisors (by managing the portfolio securities of the Affiliated Lending Funds and the Non Money Market Investment Funds at the same time that the Affiliated Lending Funds' Cash Collateral is invested in the Non Money Market Investment Funds, and serving as lending agent and receiving a portion of the Securities Lending Revenue), and the Non Money Market Investment Funds (by selling their shares to and redeeming shares from the Lending Funds) could be deemed to be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) of the Act and rule 17d-1 under the Act.

6. Applicants state that the requested relief satisfies the standards of sections 6(c) and 17(b) of the Act and rule 17d-1 under the Act. Applicants state that shares of the Non Money Market Funds will be purchased and redeemed by the Lending Funds at net asset value, on the same basis as the shares are purchased and redeemed by all other shareholders of the Non Money Market Funds.

Applicants' Conditions

The applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The securities lending program of each Registered Lending Fund, including the investment of Cash Collateral, will comply with all present and future guidelines of the

Commission and its staff regarding securities lending arrangements.

2. No Registered Lending Fund will purchase shares of any Investment Fund unless participation in the Program has been approved by a majority of the directors or trustees of the Registered Lending Fund that are not interested persons of the Registered Lending Fund within the meaning of section 2(a)(19) of the Act. Such directors or trustees of each Registered Lending Fund also will evaluate the Program no less frequently than annually and determine that investing Cash Collateral in the Investment Fund is in the best interests of the shareholders of the Registered Lending Fund.

3. Investment in shares of an Investment Fund by a particular Registered Lending Fund will be consistent with the Registered Lending Fund's investment objectives and policies. A Registered Lending Fund's Cash Collateral will be invested in a particular Investment Fund only if the Registered Lending Fund has approved that Investment Fund for investment and if that Investment Fund invests in the types of instruments that the Registered Lending Fund has authorized for the investment of its Cash Collateral.

4. Shares of any Investment Fund will not be subject to a sales charge or service fee, as defined in rules 2830(b)(8) and (9), respectively, of the Conduct Rules of the National Association of Securities Dealers, Inc.

5. No Investment Fund may invest in shares of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act, other than as permitted by rule 12d1-1 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E8-8652 Filed 4-21-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57665; File No. SR-DTC-2007-05]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Restructure Its Rules Relating to Fines and To Harmonize Them With Similar Rules of Its Affiliates

April 15, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ notice is hereby given that on May 15, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on December 10, 2007, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to amend DTC's fine structure relating to participants not providing financial information and notice of significant corporate changes to DTC in a timely manner and to harmonize DTC's rules with similar rules of DTC's affiliates, the National Securities Clearing Corporation ("NSCC") and the Fixed Income Clearing Corporation ("FICC"). NSCC and FICC have filed similar proposed rule changes.² DTC's proposed fine schedule is set forth in Exhibit 5 to its proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Fines Scheduled for Failure to Submit Financial and Other Information

DTC's rules (a) require participants to submit certain financial, regulatory, and other information within certain time frames and (b) enable DTC to levy fines against participants for violations of its rules. However, DTC's rules do not explicitly set forth the amount of the fine with respect to failure to submit such information. As part of the ongoing

effort to harmonize its rules with those of its clearing agency affiliates, DTC is proposing to adopt FICC's fine schedule for such violations.⁴ Pursuant to its filing, participants would be fined \$300, \$600, and \$1,500 for their first, second, and third occasion of failing to timely provide financial and other related information. The determination of the fine amount for the fourth and any subsequent occurrence of a late submission offense within a twelve-month rolling period would be made by management of DTC with the concurrence of the Board of Directors or a committee appointed by the Board.

Often a member that is fined is a common member of DTC and FICC, DTC and NSCC, or DTC, FICC, and NSCC (collectively the "Clearing Agencies"), which would cause the member to incur multiple penalties for the same offense. DTC is proposing that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.⁵

(2) General Continuance Standards

DTC Rule 2 sets forth the basic standards for the admission of DTC participants. The rule states that the admission of a participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character. Rule 2 also requires DTC participants to demonstrate that these standards are met on an ongoing basis. Each applicant, upon approval of its application for DTC participation, signs a letter of representation that outlines the nature of the applicant's business, its DTC settlement projections, and its financial condition at the time of the approval and that requires the applicant to affirm that such representations are accurate. Moreover, the participant acknowledges its obligation to promptly notify DTC whenever there is any anticipated change in the representations given.

Under Rule 10, if a participant fails to continue to adhere to these standards,

then DTC, based on its judgment, may at any time cease to act for the participant with respect to a particular transaction, particular transactions, transactions generally, or a program and may terminate a participant's right to act as a Settling Bank. Both Rule 2 and Rule 10 give DTC the discretion to admit participants or to continue to act for them on a temporary or other conditional basis.

In the interest of harmonizing this provision with a similar FICC provision, DTC is proposing to: (a) Require a member to notify DTC of a member's non-compliance with general member continuance standards within two business days; (b) require the member to notify DTC within the two-day time frame if it becomes subject to a statutory disqualification; and (c) subject the member to a \$1,000 fine for failure to timely notify DTC.

In addition, DTC proposes to add a provision to its fine schedule that would impose a fine in the amount of \$5,000 if a participant fails to notify DTC of a "material change" to its business. A "material change" would include events such as a merger or acquisition involving the participant, a change in corporate form, a name change, a material change in ownership, control or management, and participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the participant's financial condition or ability to conduct its business. The proposed provision would provide that the notification must be provided 90 calendar days prior to the effective date of such event unless the participant demonstrates that it could not have reasonably have given notice within that time frame.

With respect to both fines, DTC is proposing that when a common member's failure to timely notify relates to the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.⁶

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁷ and the rules and regulations thereunder. The proposed rules and fine provisions are intended to protect DTC and its participants from undue risk.

⁶ Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

⁷ 15 U.S.C. 78q-1.

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 57667 (April 15, 2008) [SR-NSCC-2007-07]. Securities Exchange Act Release No. 57666 (April 15, 2008) [SR-FICC-2007-05].

³ The Commission has modified the text of the summaries prepared by DTC.

⁴ NSCC has also proposed to adopt FICC's schedule. See File No. NSCC-2007-07.

⁵ For example, if a firm that is a member of DTC and FICC did not submit its annual audited financial statements within the required time frame, and this was the firm's first failure to meet the deadline, the \$200 fine will be split equally between DTC and FICC.

Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

DTC further states that the proposed changes will assist DTC and its participants in interpreting and understanding its fines. As a result, DTC will be better able to assure the safeguarding of securities in DTC's possession or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change; or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. DTC-2007-05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-DTC-2007-05. This file number should be included on the subject line

if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-05.pdf and http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-05-amendment.pdf. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-DTC-2007-05 and should be submitted on or before May 13, 2008.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.⁸

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-8598 Filed 4-21-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57666; File No. SR-FICC-2007-05]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Restructure the Rules of the Government Securities Division and the Mortgage-Backed Securities Division Relating to Fines and To Harmonize Them With Similar Rules of Its Affiliates and To Restructure the Watch List

April 15, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 30, 2007, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on May 18, 2007, December 10, 2007, and January 31, 2008, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FICC is seeking to (i) restructure the Government Securities Division ("GSD") and the Mortgage-Backed Securities Division ("MBSD") rules related to fines, clearing fund consequences imposed on members for rule violations, and certain aspects of the watch list and (ii) harmonize its rules with similar rules of FICC's clearing agency affiliates, The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC"). DTC and NSCC have filed similar proposed rule changes.² FICC's proposed revisions to its fine schedule are set forth in Exhibit 5 to its proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 57665 (April 15, 2008) [SR-DTC-2007-05]. Securities Exchange Act Release No. 57667 (April 15, 2008) [SR-NSCC-2007-07].

⁸ 17 CFR 200.30-3(a)(12).

rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Fines

(a) Fines Scheduled for Failure To Submit Financial and Other Information

Members of the GSD and MBSD are assessed fines for failure to submit required financial, regulatory, and other information within the time frames set forth in FICC's rules. Often a member that is fined is a common member of FICC and DTC, FICC and NSCC, or FICC, DTC, and NSCC (collectively, the "Clearing Agencies"), which would cause the member to incur multiple penalties for the same offense.⁴ FICC is proposing that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.⁵

In addition, FICC proposes changes to the notes to this section of the fine schedule to make clear that (i) the method by which the reporting requirements will be published and (ii) the determination of the fine amount after the fourth or more occasion of an offense within a twelve-month rolling period will be made by FICC management with the concurrence of the Board or the Credit and Market Risk Management Committee.⁶

³ The Commission has modified the text of the summaries prepared by FICC.

⁴ DTC does not currently maintain a fine in this regard. However, DTC has filed a proposal to adopt a fine schedule similar to the one used by FICC. *Supra* note 2.

⁵ For example, if a firm is a member of FICC and NSCC, did not submit its annual audited financial statements within the required time frame, and this was the firm's first failure to meet the deadline, the \$200 fine will be split equally between FICC and NSCC.

Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

⁶ Under the rules of GSD and MBSD, the terms "Board" or "Board of Directors" mean the Board of Directors of FICC or a committee thereof acting under delegated authority ("Board"). In this situation, the Board would have to concur with the fine.

(b) General Continuance Standards

Both GSD and MBSD currently impose a fine of \$1,000 on a member that fails to notify FICC within two business days of the member's learning of its non-compliance with the general continuance standards for membership or of its becoming subject to a statutory disqualification. Both GSD and MBSD currently impose a \$5,000 fine if a member fails to notify FICC of a "material change" to its business. A material change currently includes events such as a merger or acquisition involving the member, a change in corporate form, a name change, a material change in ownership, control, or management, and participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the member's financial condition or ability to conduct its business.

With respect to both GSD and MBSD, FICC is proposing to amend its rules to reflect that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.⁷

(c) Fine Schedule for Late Clearing/Participants Fund Deficiency Payments

GSD and MBSD Netting and Clearing members are also subject to fines for late payments of clearing fund and participants fund deficiency calls. In order to harmonize its fine schedule with NSCC's, FICC is proposing to adopt the fine amounts utilized by NSCC for this purpose and to adopt other provisions set forth in the notes to NSCC's fine schedule. As proposed, the first occasion lateness would generate a warning letter to the firm for all deficiency amounts.⁸ If the number of occasions of late Clearing Fund deficiency call payments within a three-month rolling period exceeds four, FICC will obtain the Board's concurrence for the fine amount. Furthermore, a late payment of more than one hour will result in a fine equal to the amount applicable to the next highest occasion

⁷ DTC does not currently maintain a fine in this regard. However, DTC has filed a proposal to adopt a fine schedule similar to the one NSCC is proposing to adopt. *Supra* note 2.

⁸ Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

GSD and MBSD currently impose a fine for a first occasion lateness for its highest deficiency amount.

for the specific deficiency amount.⁹ If a member is late for more than one hour and it is the member's fourth occasion in the rolling period, FICC will obtain the Board's concurrence for the fine amount.

(d) Fine Schedule for Late Settlement Payments

The GSD and MBSD currently fine members for late payment of settlement obligations. FICC is proposing the following to harmonize its fine schedule with those of NSCC. The GSD and MBSD would adopt the deficiency and fine amounts of the NSCC fine schedules. As a result, the first occasion would result in a fine rather than a warning letter as under FICC's current fine schedule. Also, FICC would use a rolling three-month period to determine the number of occasions rather than the current 30 days' rolling period. In addition, the fine schedules of GSD and MBSD would be amended to provide that (i) if the number of occasions within the rolling three-month period exceeds four, management would obtain the Board's concurrence of the fine amount and (ii) a payment late by more than one hour would result in a fine equal to the amount applicable for the next highest occasion for the specific deficiency amount. If a member is late for more than one hour and it is the member's fourth occasion in the rolling period, management would obtain the Board's concurrence of the fine amount.

2. Placement on the Watch List and Prohibition Against Return of Excess Clearing Fund as Consequences for Rules Violations

The rules of both GSD and MBSD contain provisions requiring a member to be placed on the watch list and, in certain instances, prohibiting the return of excess clearing fund collateral as consequences for certain rules violations or certain member actions. For example, the FICC rules require that a member be placed on the watch list and prohibited from receiving the return of excess clearing fund collateral for failure to timely submit a required financial report or other information to FICC. FICC is proposing the deletion of all these provisions because the placement of a member on the watch list and the prohibiting of the return of a member's excess of clearing fund

⁹ For example, if a firm's deficiency amount is under \$1,000,000, it is the firm's second occurrence of late satisfaction of a deficiency call in the rolling three-month period, and the firm is late by more than one hour, the firm would be fined \$200 (*i.e.*, the fine for a third occasion) instead of \$100 (*i.e.*, the fine for a second occasion) pursuant to the proposed fine schedule.

collateral should result from management's monitoring of the member and should not automatically occur because of rules violations.¹⁰

3. Consequences for Being on the Watch List

Currently, the GSD rules contain a very specific amount by which the clearing fund requirement of a netting member that is placed on the watch list may be increased.¹¹ The MBSD and NSCC rules contain provisions that are more general in this regard.¹² FICC believes the GSD rules are unnecessarily specific in this regard and should be amended to more closely reflect the MBSD and NSCC rules.

FICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act¹³ and the rules and regulations thereunder applicable to FICC because it should assure the safeguarding of securities and funds in FICC's custody or control or for which it is responsible by assisting FICC and its members in interpreting and understanding the rules with regard to fines, clearing fund consequences for rule violations, and certain aspects of the watch list.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments have not been solicited with respect to the proposed rule change, and none have been received. FICC will notify the Commission of any written comments it receives.

¹⁰ FICC currently has and would retain the right to deny the return of excess clearing fund collateral in instances where it is concerned about a particular member's financial or operational capability.

¹¹ The GSD rules currently state that GSD "may require a Netting Member that has been placed on the Watch List, to make and maintain a deposit to the Clearing Fund over and above the amount determined in accordance with Section 2 of Rule 4 (which additional deposit shall constitute a portion of the Netting Member's Required Fund Deposit) of up to 200 percent of its highest single Business Day's Required Fund Deposit during the most recent 20 Business Days, or such higher amount as the Board may deem necessary * * *."

¹² For example, MBSD rules state that MBSD "may require a Participant that has been placed on the Watch List to make and maintain a deposit to the Participants Fund over and above the amount determined * * *."

¹³ 15 U.S.C. 78q-1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FICC-2007-05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FICC-2007-05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549 on official business days

between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at http://www.dtcc.com/downloads/legal/rule_filings/2007/ficc/2007-05.pdf, http://www.dtcc.com/downloads/legal/rule_filings/2007/ficc/2007-05-amendment.pdf, http://www.dtcc.com/downloads/legal/rule_filings/2007/ficc/2007-05-amendment-2.pdf, and http://www.dtcc.com/downloads/legal/rule_filings/2007/ficc/2007-05-amendment3.pdf. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2007-05 and should be submitted on or before May 13, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E8-8599 Filed 4-21-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57667; File No. SR-NSCC-2007-07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Restructure Its Rules Relating to Fines and To Harmonize Them With Similar Rules of Its Affiliates

April 15, 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 April 30, 2007, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on December 10, 2007, and February 12, 2008, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to restructure the NSCC rules related to fines and where practicable or beneficial to harmonize them with similar rules of NSCC's affiliates, The Depository Trust Company ("DTC") and the Fixed Income Clearing Corporation ("FICC"). DTC and FICC have filed similar proposed rule changes.³ NSCC's proposed revisions to its fine schedule are set forth in Exhibit 5 to its proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.⁴

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Fines Scheduled for Failure To Submit Financial and Other Information

NSCC members are assessed fines for failure to submit required financial, regulatory, and other information within the time frame established by NSCC. As part of the effort to harmonize its rules with its affiliates, NSCC is proposing to adopt the fine schedule currently utilized by FICC for this purpose. Pursuant to its filing, members would be fined \$300, \$600, and \$1,500 for their first, second, and third occasion of failing to timely provide financial, regulatory, and other related information. NSCC is also proposing changes to the footnotes of this section of the applicable fine schedule to make certain clarifications, including that the determination of the fine amount after the fourth or more occasion of an offense within a twelve month rolling period will be made by the Board of Directors.⁵

³ Securities Exchange Act Release No. 57665 (April 15, 2008) [SR-DTC-2007-05]. Securities Exchange Act Release No. 57666 (April 15, 2008) [SR-FICC-2007-05].

⁴ The Commission has modified the text of the summaries prepared by NSCC.

⁵ Under NSCC rules, the terms "Board" or "Board of Directors" mean the Board of Directors of NSCC

Often a member that is fined is a common member of NSCC and FICC, NSCC and DTC, or NSCC, FICC, and DTC, (collectively the "Clearing Agencies") which would cause the member to incur multiple penalties for the same offense.⁶ NSCC is proposing that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies, as appropriate.⁷

(2) General Continuance Standards

NSCC's rules require a member to promptly notify NSCC of the member's non-compliance with general member continuance standards but do not set forth a specific time frame in which to do so and do not provide for the imposition of a fine for not promptly notifying NSCC. In the interest of harmonizing this provision with a similar FICC provision, NSCC is proposing to: (a) Require the member to make such a notification within two business days; (b) require the member to notify NSCC within the two-day time frame if it becomes subject to a statutory disqualification; and (c) subject the member to a \$1,000 fine for failure to timely notify NSCC.

NSCC also currently imposes a fine in the amount of \$5,000 if an applicable member fails to notify NSCC of a material change to its business. Pursuant to NSCC's rules, a material change currently includes a merger or acquisition involving the member; a change in corporate form; a name change; a material change in ownership, control, or management; and participation as a defendant in litigation which reasonably could be anticipated to have a direct negative impact on the member's financial condition or ability to conduct its business. For uniformity with similar FICC provisions, NSCC is proposing to amend its rules so that

or a committee thereof acting under delegated authority.

⁶ DTC does not currently maintain a fine schedule with respect to late submission of required financial, regulatory, or other information. However, DTC has filed a proposal to adopt a fine schedule similar to the one NSCC is proposing to adopt. *Supra* note 3.

⁷ For example, if a firm is a member of NSCC and FICC, did not submit its annual audited financial statements within the required time frame, and this was the firm's first failure to meet the deadline, the \$200 fine will be split equally between NSCC and FICC.

Where the member is a participant of DTC and also a member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among the other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member of NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

notice of such events must be provided at least ninety calendar days prior to the effective date of such event unless the member demonstrates that it could not have reasonably given notice within that time frame.

With respect to both fines, NSCC is proposing to amend its rules to reflect that when a common member of the Clearing Agencies is late in providing the same information to more than one Clearing Agency, the fine amount will be divided equally among the Clearing Agencies.⁸

(3) Fine Schedule for Late Clearing Fund Deficiency Payments

NSCC members are subject to fines for late payments of Clearing Fund deficiency calls. NSCC is proposing to amend the footnote to this section of its fine schedule to correspond with that of FICC's fine schedule as proposed by FICC in a separate rule filing.⁹ As proposed, if the number of occasions of late Clearing Fund deficiency call payments within a three-month rolling period exceeds four, NSCC will obtain the Board's concurrence for the fine amount. Furthermore, a late payment of more than one hour will result in a fine equal to the amount applicable to the next highest occasion for the specific deficiency amount.¹⁰ If a member is late for more than one hour and it is the member's fourth occasion in the rolling period, NSCC will obtain the Board's concurrence for the fine amount.

(4) Fine Schedule for Late Settlement Payments

The Clearing Agencies currently have provisions for fines for late payment of settlement obligations. NSCC is proposing to amend the footnote in this section of its fine schedule to correspond with those of the other Clearing Agencies. As proposed, if the number of occasions of late settlement payments within the rolling three-month period exceeds four, NSCC will

⁸ DTC does not currently maintain a fine in this regard. However, DTC has filed a proposal to adopt a fine schedule similar to the one NSCC is proposing to adopt. *Supra* note 3.

Where the Member is a participant of DTC and is a common member of one or more of the other Clearing Agencies, the fine would be collected by DTC and allocated equally among other Clearing Agencies, as appropriate. If the member is not a DTC participant, but is a common member between NSCC and FICC, NSCC will collect the fine and allocate the appropriate portion to FICC.

⁹ *Supra* note 3.

¹⁰ For example, if a firm's deficiency amount is under \$1,000,000, it is the firm's second occurrence of late satisfaction of a deficiency call in the rolling three-month period, and the firm is late by more than one hour, the firm would be fined \$200 (*i.e.*, the fine for a third occasion) instead of \$100 (*i.e.*, the fine for a second occasion) pursuant to the proposed fine schedule.

obtain the Board's concurrence for the fine amount.¹¹ Furthermore, a payment late by more than one hour will result in a fine equal to the amount applicable to the next highest occasion for the specific deficiency amount. If a member is late by more than one hour and it is the member's fourth occasion in the rolling three-month period, NSCC will obtain the Board's concurrence for the fine amount.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act¹² and the rules and regulations thereunder because the restructuring of existing rules and procedures will assist NSCC members in interpreting and understanding the rules with regard to fines. Members' enhanced ability to interpret and understand the rules with regard to fines will assist NSCC in meeting its Section 17A obligations to safeguard the funds and securities in its control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period:

(i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSCC-2007-07 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-NSCC-2007-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at http://www.dtcc.com/downloads/legal/rule_filings/2007/nscc/2007-07-amendment.pdf and http://www.dtcc.com/downloads/legal/rule_filings/2007/nscc/2007-07-amendment2.pdf. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2007-07 and should be submitted on or before May 13, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-8600 Filed 4-21-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57671; File No. SR-NYSE-2008-27]

Self-Regulatory Organizations: New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Amending NYSE Rule Interpretation 344/02 (Research Analysts and Supervisory Analysts)

April 16, 2008.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 11, 2008, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend, retroactively effective to April 7, 2008, NYSE Rule Interpretation 344/02 (Research Analysts and Supervisory Analysts) concerning research analysts employed by a member organization's foreign affiliate who contribute to the preparation of the member organization's research reports. The proposed rule change conforms NYSE's version of Rule Interpretation 344/02 to approved amendments filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") to its incorporated version of NYSE Rule Interpretation 344/02. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange, and at

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹¹ This change requires the removal of language granting NSCC discretion over the fine amount upon consultation with the settling bank only member, member, mutual fund/insurance services member, or fund member.

¹² 15 U.S.C. 78q-1.

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. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 30, 2007, NASD and NYSE Regulation, Inc. consolidated their member firm regulation operations into a combined organization, FINRA.⁴ Pursuant to FINRA's new regulatory responsibilities, FINRA amended FINRA's incorporated NYSE Rule Interpretation 344/02 concerning research analysts employed by a member organization's foreign affiliate who contribute to the preparation of the member organization's research reports.⁵ The NYSE proposes to amend its version of Rule Interpretation 344/02 in order to ensure it remains consistent with the recently approved changes to FINRA's incorporated NYSE Rule Interpretation 344/02. The effective date

⁴ Pursuant to Rule 17d-2 under the Act, NYSE, NYSE Regulation, Inc., and NASD entered into an agreement (the "Agreement") to reduce regulatory duplication for firms that are members of FINRA and also members of NYSE on or after July 30, 2007 ("Dual Members"), by allocating to FINRA certain regulatory responsibilities for selected NYSE rules. The Agreement includes a list of all of those rules ("Common Rules") for which FINRA has assumed regulatory responsibilities. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4-544) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules are the same NYSE rules that FINRA has incorporated into its rulebook. See Securities Exchange Act Release No. 56417 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR-NASD-2007-054) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct). Paragraph 2(b) of the 17d-2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

⁵ See Securities Exchange Act Release No. 57278 (February 6, 2008), 73 FR 8086 (February 12, 2008) (SR-FINRA-2007-010). See also Securities Exchange Act Release No. 57622 (April 4, 2008), 73 FR 19916 (April 11, 2008) (SR-FINRA-2008-012) (discussing further non-substantive, technical amendments to the text for incorporated NYSE Rule Interpretation 344/02).

of the proposed rule change is April 7, 2008, which is the operative date of FINRA's identical amendments to its incorporated version of NYSE Rule Interpretation 344/02.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,⁶ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2008-27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2008-27. 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

⁶ 15 U.S.C. 78f(b)(5).

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 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2008-27 and should be submitted on or before May 13, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the Exchange's rules 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.

The proposed rule change would make the Exchange's NYSE Rule Interpretation 344/02 identical to the version that FINRA administers. The FINRA version was approved by the Commission.⁹ The Commission also believes that the proposed rule change comports with the provisions of the

⁷ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See *supra* note 5.

17d-2 Agreement, as approved by the Commission. In this Agreement, FINRA and NYSE agreed to promptly propose conforming changes, absent a disagreement about the substance of a proposed rule change, to ensure that such rules continue to be Common Rules as defined in the Agreement. In this regard, the Commission believes it is appropriate for the proposed rule to be effective retroactively as of April 7, 2008, which is the date FINRA's identical amendments became effective.¹⁰

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹¹ for approving this proposed rule change before the thirtieth day after publication of notice thereof in the **Federal Register**. This approval allows the proposed rule change to take effect without delay. FINRA's change to its version of NYSE Rule Interpretation 344/02 was published for comment and approved by the Commission.¹² Interested persons were provided the opportunity to submit comments on rule text that is identical to the Exchange's proposal, and FINRA responded to those comments that were received. The Commission believes that the Exchange's proposal raises no new regulatory or substantive issues.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NYSE-2008-27), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-8601 Filed 4-21-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57672; File No. SR-NYSE-2008-28]

Self-Regulatory Organizations: New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Amending NYSE Rule 472 (Communications With the Public)

April 16, 2008.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 11, 2008, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend, retroactively effective to April 7, 2008, NYSE Rule 472 (Communications with the Public) concerning member organization disclosure and supervisory review obligations when distributing or making available third-party research reports. The proposed rule change conforms NYSE's version of Rule 472 to approved amendments filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") to its incorporated version of NYSE Rule 472. The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange, 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. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 30, 2007, NASD and NYSE Regulation, Inc. consolidated their member firm regulation operations into a combined organization, FINRA.⁴ Pursuant to FINRA's new regulatory responsibilities, FINRA amended FINRA's incorporated NYSE Rule 472 regarding member organization disclosure and supervisory review obligations when distributing or making available third-party research reports.⁵ In order to maintain Rule 472 as a Common Rule, the NYSE proposes to amend its version of the Rule to conform to the recently approved changes to FINRA's incorporated NYSE Rule 472. The effective date of the proposed rule change is April 7, 2008, which is the operative date of FINRA's identical amendments to its incorporated version of NYSE Rule 472.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,⁶ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

⁴ Pursuant to Rule 17d-2 under the Act, NYSE, NYSE Regulation, Inc., and NASD entered into an agreement (the "Agreement") to reduce regulatory duplication for firms that are members of FINRA and also members of NYSE on or after July 30, 2007 ("Dual Members"), by allocating to FINRA certain regulatory responsibilities for selected NYSE rules. The Agreement includes a list of all of those rules ("Common Rules") for which FINRA has assumed regulatory responsibilities. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4-544) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities). The Common Rules are the same NYSE rules that FINRA has incorporated into its rulebook. See Securities Exchange Act Release No. 56417 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR-NASD-2007-054) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Incorporate Certain NYSE Rules Relating to Member Firm Conduct). Paragraph 2(b) of the 17d-2 Agreement sets forth procedures regarding proposed changes by either NYSE or FINRA to the substance of any of the Common Rules.

⁵ See Securities Exchange Act Release No. 57279 (February 6, 2008), 73 FR 8089 (February 12, 2008) (SR-FINRA-2007-011).

⁶ 15 U.S.C. 78f(b)(5).

¹⁰ FINRA Regulatory Notice 08-15 (April 2008).

¹¹ 15 U.S.C. 78s(b)(2).

¹² See *supra* note 5.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2008-28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2008-28. 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 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at

the NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2008-28 and should be submitted on or before May 13, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the Exchange's rules 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.

The proposed rule change would make the Exchange's NYSE Rule 472 identical to the version that FINRA administers. The FINRA version was approved by the Commission.⁹ The Commission also believes that the proposed rule change comports with the provisions of the 17d-2 Agreement, as approved by the Commission. In this Agreement, FINRA and NYSE agreed to promptly propose conforming changes, absent a disagreement about the substance of a proposed rule change, to ensure that such rules continue to be Common Rules as defined in the Agreement. In this regard, the Commission believes it is appropriate for the proposed rule to be effective retroactively as of April 7, 2008, which is the date FINRA's identical amendments became effective.¹⁰

The Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹¹ for approving this proposed rule change before the thirtieth day after publication of notice thereof in the **Federal Register**. This approval allows the proposed rule change to take effect

⁷ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See *supra* note 5.

¹⁰ FINRA Regulatory Notice 08-16 (April 2008).

¹¹ 15 U.S.C. 78s(b)(2).

without delay. FINRA's change to its version of NYSE Rule 472 was published for comment and approved by the Commission.¹² Interested persons were provided the opportunity to submit comments on rule text that is identical to the Exchange's proposal, and FINRA responded to those comments that were received. The Commission believes that the Exchange's proposal raises no new regulatory or substantive issues.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NYSE-2008-28), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-8602 Filed 4-21-08; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11202]

Arkansas Disaster Number AR-00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment 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.

EFFECTIVE DATE: 04/09/2008.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Arkansas, dated 03/26/2008, is hereby amended to

¹² See *supra* note 5.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

include the following areas as adversely affected by the disaster.

Primary Counties: Monroe, Perry.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8-8604 Filed 4-21-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11206 and #11207]

Arkansas Disaster Number AR-00018

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA-1751-DR), dated 03/28/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/18/2008 and continuing.

EFFECTIVE DATE: 04/14/2008.

Physical Loan Application Deadline Date: 05/27/2008.

EIDL Loan Application Deadline Date: 12/29/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Arkansas, dated 03/28/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Boone, Carroll, Clay, Craighead, Cross, Franklin, Fulton, Greene, Izard, Lonoke, Pulaski, Saline.

Contiguous Counties:

Arkansas: Crittenden, Faulkner, Garland, Grant, Hot Spring, Jefferson, Mississippi, Perry.
Missouri: Butler, Dunklin, Howell, Stone.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8-8606 Filed 4-21-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

Region VII Regulatory Fairness Board

AGENCY: U.S. Small Business Administration, Office of the National Ombudsman.

ACTION: Notice of Federal Regulatory Fairness Hearing.

SUMMARY: The SBA is issuing this notice to advise the public of a Federal Regulatory Fairness Hearing in St. Louis, MO. The hearing is open to the public; however, advance notice of attendance is requested.

DATES: The hearing will be held on Tuesday, May 6, 2008 from 9 a.m. to 12 noon Central Standard Time.

ADDRESSES: The hearing will be held at the Center for Emerging Technology, 4041 Forest Park Avenue, St. Louis, MO 63108.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA Regional Regulatory Fairness Board and the Office of the National Ombudsman hold Regulatory Fairness hearings across the nation. Issues addressed at these hearings will be directed to the appropriate Federal regulatory agency for a high-level review of fairness of the enforcement action.

The purpose of the hearing is for Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

FOR FURTHER INFORMATION CONTACT: Christina Marinos, Special Assistant, SBA, Office of the National Ombudsman, 409 3rd Street, SW., Suite 7125, Washington, DC 20416, telephone: (202) 401-8254, fax: (202) 292-3423, e-mail: Christina.marinos@sba.gov. Anyone wishing to testify and/or make a presentation to the Regulatory Fairness Board must contact Christina Marinos by May 5, by fax or e-mail in order to be placed on the agenda.

Additionally, if you need accommodations because of a disability or require additional information, please contact Christina Marinos at the information above.

For more information, please visit our Web site at <http://www.sba.gov/ombudsman>.

Cherylyn Lebon,

SBA Committee Management Officer.

[FR Doc. E8-8692 Filed 4-21-08; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 6195]

Culturally Significant Objects Imported for Exhibition Determinations: "Joseph Wright of Derby in Liverpool"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Joseph Wright of Derby in Liverpool", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Yale Center of British Art, New Haven, Connecticut, from on or about May 22, 2008, until on or about August 31, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453-8050). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: April 15, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8-8693 Filed 4-21-08; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6180]

Advisory Committee on Private International Law Study Group Public Meeting

U.S. Department of State Advisory Committee on Private International Law Study Group will be holding a public meeting on the United Nations Commission on International Trade Law (UNCITRAL) Draft Legislative Guide on Secured Transactions and its treatment of security rights in intellectual property (IP).

The Department of State Advisory Committee on Private International Law (ACPIL) Study Group will be holding a public meeting to discuss the treatment of IP-secured financing practices in the UNCITRAL Draft Legislative Guide on Secured Transactions (Guide). At the 40th Session of the UNCITRAL (held June 25 through July 12, 2007), the Commission adopted a portion of the draft Guide, and scheduled adoption of the remaining portion for a second meeting of the Commission to take place in Vienna, Austria, December 10–14, 2007. The Commission at its July 2007 session adopted recommendations dealing with the scope of the draft Guide as it relates to IP law and secured financing, as well as the inclusion in the commentary to the Guide of explanatory statements on the treatment of IP as secured financing. The Commission also tentatively approved a new work project on IP law matters as they relate to secured financing law, which would be initiated after conclusion of the Guide in its present scope. The first meeting on the new IP-related project may occur in the spring of 2008. A top priority for the resumed Session is final adoption of the revised commentary and draft Guide. The ACPIL will use this public meeting to exchange thoughts on the draft Guide as it relates to IP-secured financing matters with a view to determining what areas would need to be addressed in UNCITRAL's second phase of work. The draft UNCITRAL Legislative Guide on Secured Transactions and relevant information can be obtained at <http://www.uncitral.org/english/commission/sessions>.

Time: The public meeting will take place at the Department of State, Office of Private International Law, 2430 E Street, NW., Washington, DC on Wednesday May 7, 2008 from 10 a.m. EST to 2 p.m. EST. Public Participation: Advisory Committee Study Group meetings are open to the public, subject to the capacity of the meeting room. Access to the meeting building is

controlled; persons wishing to attend should contact Tricia Smeltzer or Niesha Toms of the Department of State's Legal Adviser's Office at SmeltzerTK@State.gov or TomsNN@State.gov and provide your name, e-mail address and mailing address to get admission into the meeting or to get directions to the office. Additional meeting information can also be obtained from Rachel Wallace at WallaceRA@state.gov or telephone (202) 647–2324. Persons who cannot attend but who wish to comment on any of the proposals are welcome to do so by e-mail to Michael Dennis at DennisMJ@state.gov. If you are unable to attend the public meeting and you would like to participate by teleconferencing, please contact Tricia Smeltzer or Maya Garrett at 202–776–8420 to receive the conference call-in number and the relevant information.

Dated: April 17, 2008.

Rachel Wallace,

Attorney-Adviser, Office of IP Enforcement, Department of State.

[FR Doc. E8–8690 Filed 4–21–08; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice: 6179]

U.S. National Commission for UNESCO Notice of Teleconference Meeting

The U.S. National Commission for UNESCO will hold a conference call on Friday, May 2, 2008, beginning at 11 a.m. Eastern Time. The teleconference meeting will be closed to the public to allow the Commission to discuss applications for the U.S. National Commission for UNESCO Laura W. Bush Traveling Fellowship, a fellowship funded through privately donated funds. This call will be closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(6) because it is likely to involve discussion of information of a personal nature regarding the relative merits of individual applicants where disclosure would constitute a clearly unwarranted invasion of personal privacy.

For more information contact Susanna Connaughton, Executive Director of the U.S. National Commission for UNESCO, Washington, DC 20037. Telephone: (202) 663–0026; Fax: (202) 663–0035; E-mail: DCUNESCO@state.gov.

Dated: April 14, 2008.

Susanna Connaughton,

Executive Director, U.S. National Commission for UNESCO, Department of State.

[FR Doc. E8–8687 Filed 4–21–08; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Notice Before Waiver With Respect to Land at Lonesome Pine Airport, Wise, VA**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of approximately 27.07 acres of land at the Lonesome Pine Airport, Wise, Virginia to Wise County (Portions of Property Map Parcels 4, 5, 6). The release of land will provide a location for a regional business & technology park and an emergency services training facility. Releasing the land does not adversely impact the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land has been assessed and will be provided to The Cumberlands Airport Commission for Airport and Commission development expenses.

DATES: Comments must be received on or before May 22, 2008.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Donnie Rose, Cumberlands Airport Commission, at the following address: Donnie Rose, Chairman, Cumberlands Airport Commission, PO Box 1752, Wise, Virginia 24293.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, e-mail Terry.Page@faa.gov.

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30-day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia on April 4, 2008.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. E8-8580 Filed 4-21-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Franklin and Warren Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed improvements to Route 47 between Route 94 in Warren County and Fifth Street in the city of Washington in Franklin County, Missouri.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Casey, Environmental Projects Engineer, FHWA Division Office, 3220 West Edgewood, Suite H, Jefferson City, MO 65109, Telephone: (573) 636-7104; or Mr. Kevin Keith, Chief Engineer, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751-2803.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS for the replacement of the existing bridge over the Missouri River and relocation or reconstruction of Route 47 between Route 94 in Warren County and Fifth Street in the city of Washington in Franklin County, Missouri. A location study will run concurrently with the preparation of the EIS and will provide definitive alternatives for evaluation in the EIS. The EIS will fully analyze the issues, problems, and potential social and environmental impacts associated with improving or realigning Route 47 and constructing a new bridge. The goals of the proposed action are to improve safety, reduce congestion, and improve the reliability of Route 47 during Missouri River flood events.

The proposed project is located between Route 94 on the north in Warren County and Fifth Street on the south in the city of Washington in Franklin County. The project is approximately 4 miles in length.

Alternatives under consideration include (1) no build; (2) bridge replacement on existing location with

improvements to the existing alignment; and (3) new alignments.

To date, preliminary information has been issued to local officials. As part of the scoping process, an interagency coordination meeting will be held with federal and state resource agencies. In addition, informational meetings with the public and community representatives will be held to solicit input on the project and reasonable range of alternatives. A location public hearing will be held to present the findings of the draft EIS (DEIS). Public notice will be given announcing the time and place of all public meetings and the hearing. The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the addresses provided above. Concerns in the study area include potential impacts to natural resources, cultural resources, and neighborhoods at the southern end of the study area. Improvements to the existing alignment could impact cultural resources and adjacent residences. Realignment of Route 47 with a new bridge location would have increased cost and natural (floodplain, wetland) and human impacts.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 16, 2008.

Peggy J. Casey,

Environmental Projects Engineer, Jefferson City.

[FR Doc. E8-8664 Filed 4-21-08; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2008-0038]

Agency Information Collection Activities; New Information Collection: Survey of Over-the-Road Bus Companies About Accessible Transportation for Individuals With Disabilities

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FMCSA invites comments about our intention to request the Office of Management and Budget (OMB) to approve a new Information Collection Request (ICR). The new ICR is associated with a review of the Americans with Disabilities Act of 1990 (ADA) implementing regulations for over-the-road bus companies, contained in 49 CFR part 37 subpart H. The regulatory review is required by section 37.215. The collected information would assist DOT with the decision to modify or retain the requirements contained in the ADA regulations. This notice is required by the Paperwork Reduction Act of 1995.

DATES: Comments must be submitted on or before June 23, 2008.

ADDRESSES: You may submit comments bearing the Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA Docket Number FMCSA-2008-0038 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1-202-493-2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below:

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** on April 11, 2000 (65 FR 19477-78; Apr. 11, 2000). This information is also available at <http://Docketinfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Chandler, Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Commercial Passenger Carrier Safety Division, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366-5763, or e-mail peter.chandler@dot.gov.

SUPPLEMENTARY INFORMATION:

Background: On September 28, 1998, DOT issued final regulations, in response to the ADA, which required operators of over-the-road buses to provide service accessible (OTRBs) to persons with disabilities and to ensure that all new OTRBs were accessible to such persons, including those who use wheelchairs. DOT is required by 49 CFR 37.215 to review the various requirements within the ADA regulations for OTRB companies. As part of this review, DOT is required to consider certain factors, including the percentage of accessible OTRBs in the fleets of OTRB companies, the success of such companies at meeting the requests of passengers with disabilities for accessible OTRBs in a timely manner, ridership of OTRBs by passengers with disabilities, volume of complaints by passengers with disabilities, and the cost and service impacts of these requirements. After the review, DOT is required to decide whether it is appropriate to revise the ADA regulations for OTRB companies (i.e. whether certain provisions of the ADA regulations should be removed,

modified, or made more stringent). DOT has a currently approved information collection under control number 2100-0019 to provide the Agency with data for use in its review of the ADA-related requirements and to monitor compliance by OTRB companies. Such data are reported to FMCSA. For the section 37.215 review, FMCSA is providing data and analytical support to the DOT's Office of the Secretary. Additional data collection from OTRB companies is necessary in order for DOT to conduct an effective review and make an informed regulatory policy decision. Specifically, data about bus fleet accessibility, fulfillment of accessible bus requests, and ridership and volume of complaints by passengers with disabilities, are needed from OTRB companies. FMCSA would send letters to approximately 3,800 registered OTRB companies that will be requested to complete and submit an enclosed form.

Title: Survey of Over-the-Road Bus Companies about Accessible Transportation for Individuals with Disabilities.

Type of Information Collection

Request: New information collection.

Respondents: Private entities that operate OTRBs, are primarily in the business of transporting people, and whose operations affect commerce.

Estimated Number of Respondents: 3,800.

Estimated Time per Response: The estimated average burden per response is 15 minutes.

Estimated Total Annual Burden: 950 hours [3,800 responses × 15 minutes/60 minutes per response = 950 hours].

Frequency of Response: This proposed information collection is planned to be conducted only once in a year. FMCSA may request the information be reported a second time 12 months after the initial request for a second 12-month period of data. A decision to request the information for a second time will be based upon the number of responses and the content of such responses to the initial request.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including but not limited to: (1) Whether the proposed collection is necessary for the performance of DOT's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the

request for OMB's clearance for this information collection.

Issued on: April 14, 2008.

Michael S. Griffith,

Acting Associate Administrator, Research and Information Technology.

[FR Doc. E8-8670 Filed 4-21-08; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

BNSF Railway Company

(Docket Number FRA-2008-0034)

BNSF Railway Company (BNSF) has submitted a waiver petition to extend the deadline established by 49 CFR 236.18(b) for the complete implementation of their Software Management Control Plan (SMCP), pursuant to 49 CFR 211.7.

BNSF's development and implementation of software tools to handle the gathering of office and field information has taken significantly longer than anticipated. Once those systems were built, the metadata (data used to define hardware and software configurations) to describe the types of units, modules, software, and other parameters has also taken much longer than anticipated. While BNSF is continuing to develop software, gather metadata on processor-based software and modules, gather field software information, and resolve differences in office and field data, much of the needed information has required suppliers to perform extensive searches through their archives, reformat the data, and populate the metadata.

Since many processor-based units actually need to be powered down to verify the software, BNSF is gathering additional hardware information at the same time to minimize the impact of operations. Gathering hardware modification level information on cabinets and modules goes beyond the requirements of 49 CFR 236.18 (unless software related); but BNSF asserts that this safety improvement is required.

With this information, BNSF should be able to uniformly address any necessary manufacturer bulletins and updates at the same time while gathering software and hardware information.

The software development time, the time it has taken to gather manufacturer information, the training time, the time for field personnel to gather information, the time for resolution of differences, and the time needed for verification of modification levels, all place BNSF's timeline to comply with 49 CFR 236.18(b) significantly beyond the required date of June 6, 2008. To that extent, BNSF requests a waiver for relief from the June 6, 2008, deadline established by 49 CFR 236.18(b), and asserts that it will need a 12-month extension to allow for the complete implementation of their SMCP no later than June 5, 2009. BNSF does identify specific milestones of an intended percentage of completion during the 12-month extension period.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. All communications concerning these proceedings should identify the appropriate Docket Number (Docket Number FRA-2008-0034) and may be submitted by one of the following methods:

- *Web site:* <http://www.regulations.gov>.

Follow the online instructions for submitting comments.

- *Fax:* 202-493-2251.

• *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the

comment period and specify the basis for their request.

Communications received within 30 days of the date of this notice will be considered by FRA before final action being taken. Comments received after this period will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the DOT Docket Management Facility, 1200 New Jersey Avenue, SE., Room W12-140, in Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Issued in Washington, DC on April 16, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8-8669 Filed 4-21-08; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special

permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. Their applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before May 7, 2008.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue SE., Washington DC or at <http://dms.dot.gov>.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 14, 2008.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
8495-M .....	.....	Kidde Aerospace, Wilson, NC.	49 CFR 173.304(a)(1); 178.47; 175.3.	To modify the special permit to authorize the use of stainless steel in the manufacture of pressure vessels
12412-M	RSPA006827	Maumee Valley Bottlers, Inc., Napoleon, OH.	49 CFR 177.834(h); 172.203(a); 172.302(c).	To modify the special permit to authorize the transportation in commerce of IBCs equipped with pressure hoses without draining those hoses
13583-M	RSPA0418507	Structural Composites Industries, Pomona, CA.	49 CFR 178.35	To modify the special permit to authorize an alternative pressure test

MODIFICATION SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
14562-M	PI-11MSA080046	The Lite Cylinder Company, Franklin, TN.	49 CFR 173.304a(a) ..	To modify the special permit to authorize an increase in the water capacity of Lite's cylinders and to authorize an alternative drop test

[FR Doc. E8-8439 Filed 4-21-08; 8:45 am]
 BILLING CODE 4909-60-M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of

Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 22, 2008.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in

triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue, SE., Washington, DC or at <http://dms.dot.gov>.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 15, 2008.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14671-N	SGL Carbon LLC, Charlotte, NC.	49 CFR 173.240	To authorize the transportation of Class 9 hazardous materials in an open flat-bed railcar. (mode 2)
14676-N	Pacific Bio-Material Management, Inc. dba Pacific Scientific Transport, Fresno, CA.	49 CFR 173.196(b); 173.196(e)(2)(ii).	To authorize the transportation in commerce of certain Category A infectious substances in specially designed packaging (freezers). (mode 1)
14677-N	Axiom Inc., Maple Plains, N/IN.	49 CFR 173.213	To authorize the transportation in commerce of Celluloid sheet, Division 4.1, in a non-DOT specification fiberboard box. (mode 1)
14678-N	LND, Inc., Oceanside, NY	49 CFR 172.101, Co. 9; 173.306; 175.3.	To authorize the transportation in commerce of non-DOT specification containers (neutron detectors) containing boron trifluoride. (mode 1)
14679-N	Southwest Airlines Dallas, TX.	49 CFR 175.10 (a)(17)	To authorize the transportation in commerce of spare lithium ion batteries for use in electronic devices used by the crew as part of their job function within an aircraft cabin. (mode 5)
14680-N	Arkema, Inc., Philadelphia, PA.	49 CFR 177.834(i)(3)	To authorize the use of video cameras and monitors to observe the loading and unloading operations meeting the definition of "loading incidental to movement" or "unloading incidental to movement" as those terms are defined in § 171.8 of the Hazardous Materials Regulations from a remote control station in place of personnel remaining within 25 feet of a cargo tank motor vehicle. (mode 1)

NEW SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14681-N	King Technology, Inc., Hopkins, MN.	49 CFR 173.153	To authorize the transportation in commerce of Trichloroi-socyanuric acid, dry in packages of 2.4375 pounds each as Consumer commodity, ORM-D when transported by highway. (mode 1)
14683-N	A.O. Smith Corporation	49 CFR 173.306(g)	To authorize an alternative design equation in the Milwaukee, WI manufacture, mark and sale of cylinders of deep-drawn dome design for use in transporting compressed air or compressed nitrogen. (mode 1)

[FR Doc. E8-8437 Filed 4-21-08; 8:45 am]

BILLING CODE 4909-60-M

Corrections

Federal Register

Vol. 73, No. 78

Tuesday, April 22, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

RIN 3150-AF12

Fitness for Duty Programs

Correction

In rule document E8-4998 beginning on page 16966, in the issue of Monday, March 31, 2008, make the following correction:

PART 26-[CORRECTED]

On page 17177, the table of contents for Subparts N and O are corrected to read as follows:

* * * * *

Subpart N—Recordkeeping and Reporting Requirements

- 26.709 Applicability.
26.711 General provisions.

- 26.713 Recordkeeping requirements for licensees and other entities.
26.715 Recordkeeping requirements for collection sites, licensee testing facilities, and laboratories certified by the Department of Health and Human Services.
26.717 Fitness-for-duty program performance data.
26.719 Reporting requirements.

Subpart O—Inspections, Violations, and Penalties

- 26.821 Inspections.
26.823 Violations.
26.825 Criminal penalties.

* * * * *

[FR Doc. Z8-4998 Filed 4-21-08; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. OCC-2007-0018]

RIN 1557-AC91

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-1261]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AC73

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 559, 560, 563, and 567

[Docket No. OTS 2007-0021]

RIN 1550-AB56

Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II

Correction

In rule document C7-5729 beginning on page 69288 in the issue of Friday, December 7, 2007, make the following correction:

1. On page 69396, in the third column, under the heading **Text of Common Appendix (All Agencies)**, in the first paragraph, in the first line, “agencies” should read “agencies”.

2. On page 69410, in the third column, in the first full paragraph, in the second line from the bottom, “agencies” should read “agencies”.

3. On page 69422, in the first column, in the second line from the top, “NRSROs” should read “NRSROs”.

[FR Doc. C7-5729 Filed 4-21-08; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Tuesday,
April 22, 2008**

Part II

Environmental Protection Agency

40 CFR Part 745

**Lead; Renovation, Repair, and Painting
Program; Lead Hazard Information
Pamphlet; Notice of Availability; Final
Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA-HQ-OPPT-2005-0049; FRL-8355-7]

RIN 2070-AC83

Lead; Renovation, Repair, and Painting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final rule under the authority of section 402(c)(3) of the Toxic Substances Control Act (TSCA) to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint in target housing and child-occupied facilities. "Target housing" is defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. Under this rule, a child-occupied facility is a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in public or commercial buildings or in target housing. This rule establishes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. Interested States, Territories, and Indian Tribes may apply for and receive authorization to administer and enforce all of the elements of these new renovation requirements.

DATES: This final rule is effective June 23, 2008.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2005-0049. All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated

and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

For technical information contact: Mike Wilson, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 566-0521; e-mail address: wilson.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you perform renovations of target housing or child-occupied facilities for compensation or dust sampling. "Target housing" is defined in section 401 of TSCA as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling.

Under this rule, a child-occupied facility is a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in public or commercial buildings or in target housing. Potentially affected entities may include, but are not limited to:

- Building construction (NAICS code 236), e.g., single family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS code 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.
- Real estate (NAICS code 531), e.g., lessors of residential buildings and dwellings, residential property managers.
- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS code 611519), e.g., training providers.
- Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350), e.g., dust sampling technicians.

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

II. Background

A. What Action is the Agency Taking?

EPA is issuing a final rule under the authority of section 402(c)(3) of the

Toxic Substances Control Act (TSCA) to address lead-based paint hazards created by renovation, repair, and painting activities (hereinafter also referred to as renovation activities or renovation projects) that disturb lead-based paint in target housing and child-occupied facilities. "Target housing" is defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. Under this rule, a child-occupied facility is a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in public or commercial buildings or in target housing. This rule establishes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. Interested States, Territories, and Indian Tribes may apply for and receive authorization to administer and enforce all of the elements of these new renovation requirements.

1. *Information on lead and its health effects.* Lead is a soft, bluish metallic chemical element mined from rock and found in its natural state all over the world. Lead is virtually indestructible, is persistent, and has been known since antiquity for its adaptability in making various useful items. In modern times, it has been used to manufacture many different products, including paint, batteries, pipes, solder, pottery, and gasoline. Through the 1940's, paint manufacturers frequently used lead as a primary ingredient in many oil-based interior and exterior house paints. Usage gradually decreased through the 1950's and 1960's as titanium dioxide replaced lead and as latex paints became more widely available.

Lead has been demonstrated to exert "a broad array of deleterious effects on multiple organ systems via widely diverse mechanisms of action." This array of health effects, the evidence for which is comprehensively described in EPA's Air Quality Criteria for Lead document (Ref. 1), includes heme

biosynthesis and related functions; neurological development and function; reproduction and physical development; kidney function; cardiovascular function; and immune function. There is also some evidence of lead carcinogenicity, primarily from animal studies, together with limited human evidence of suggestive associations.

Of particular interest for present purposes is the delineation of lowest observed effect levels for those lead-induced effects that are most clearly associated with blood lead less 10 $\mu\text{g}/\text{dL}$ in children and/or adults and are, therefore, of greatest public health concern (Ref. 1, at 8-60). As evident from the Criteria Document, neurotoxic effects in children and cardiovascular effects in adults are among those best substantiated as occurring at blood-lead concentrations as low as 5 to 10 $\mu\text{g}/\text{dL}$ (or possibly lower); and these categories of effects are currently clearly of greatest public health concern. Other newly demonstrated immune and renal system effects among general population groups are also emerging as low-level lead-exposure effects of potential public health concern. (Ref. 1, at 8-60)

The overall weight of the available evidence provides clear substantiation of neurocognitive decrements being associated in young children with blood lead concentrations in the range of 5–10 micrograms per deciliter ($\mu\text{g}/\text{dL}$), and possibly somewhat lower. Some newly available analyses appear to show lead effects on the intellectual attainment of preschool and school age children at population mean concurrent blood-lead levels ranging down to as low as 2 to 8 $\mu\text{g}/\text{dL}$. A decline of 6.2 points in full scale IQ for an increase in concurrent blood lead levels from 1 to 10 $\mu\text{g}/\text{dL}$ has been estimated, based on a pooled analysis of results derived from seven well-conducted prospective epidemiologic studies (Ref. 1, at E-9).

Epidemiologic studies have consistently demonstrated associations between lead exposure and enhanced risk of deleterious cardiovascular outcomes, including increased blood pressure and incidence of hypertension. A meta-analysis of numerous studies estimates that a doubling of blood lead level (e.g., from 5 to 10 $\mu\text{g}/\text{dL}$) is associated with ~ 1.0 mm Hg increase in systolic blood pressure and ~ 0.6 mm Hg increase in diastolic pressure. (Ref. 1, at E-10).

Both epidemiologic and toxicologic studies have shown that environmentally relevant levels of lead affect many different organ systems (Ref. 1, at E-8). Please see Ref. 1 for further information.

The nervous system has long been recognized as a target of lead toxicity, with the developing nervous system affected at lower exposures than the mature system. While blood lead levels in U.S. children ages 1 to 5 years have decreased notably since the late 1970's, newer studies have investigated and reported associations of effects on the neurodevelopment of children at population mean concurrent blood lead levels ranging down to as low as 2 to 8 $\mu\text{g}/\text{dL}$ (Ref. 1, at E-9). Functional manifestations of lead neurotoxicity during childhood include sensory, motor, cognitive and behavioral impacts. Investigating associations between lead exposure and behavior, mood, and social conduct of children has been an emerging area of research (see Ref. 1, at 6.2.6). Early studies indicated linkages between lower-level lead toxicity and behavioral problems (e.g., aggression, attentional problems, and hyperactivity) in children.

Effects of lead on neurobehavior have been reported with remarkable consistency across numerous studies of various designs, populations studied, and developmental assessment protocols. The negative impact of lead on IQ and other neurobehavioral outcomes persist in most recent studies following adjustment for numerous confounding factors including social class, quality of caregiving, and parental intelligence. Moreover, these effects appear to persist into adolescence and young adulthood. Cognitive effects associated with lead exposures that have been observed in some studies include decrements in intelligence test results, such as the widely used IQ score, and in academic achievement as assessed by various standardized tests as well as by class ranking and graduation rates. Associations between lead exposure and academic achievement observed in the above-noted studies were significant even after adjusting for IQ, suggesting that lead-sensitive neuropsychological processing and learning factors not reflected by global intelligence indices might contribute to reduced performance on academic tasks (Ref. 1, at 8–29).

Other cognitive effects observed in studies of children have included effects on attention, executive functions, language, memory, learning and visuospatial processing with attention and executive function effects observed. The evidence for the role of lead in this suite of effects includes experimental animal findings. These animal toxicology findings provide strong biological plausibility in support of the concept that lead may impact one or more of these specific cognitive

functions in humans (Ref. 1, at 8–30). Further, lead-induced deficits observed in animal and epidemiological studies, for the most part, have been found to be persistent in the absence of markedly reduced environmental exposures. It is additionally important to note that there may be long-term consequences of such deficits over a lifetime. Studies examining aspects of academic achievement related to lead exposure indicate the association of deficits in academic skills and performance, which in turn lead to enduring and important effects on objective parameters of success in real life (Ref. 1, at 6–76).

Lead bioaccumulates, and is only slowly removed, with bone lead serving as a blood lead source for years after exposure and may serve as a significant source of exposure. Bone accounts for more than 90% of the total body burden of lead in adults and 70% in children (Ref. 1, at 4–42). In comparison to adults, bone mineral turns over much more quickly in children as a result of growth. Changes in blood lead concentration in children are thought to parallel more closely to changes in total body burden. Therefore, blood lead concentration is often used in epidemiologic and toxicological studies as an index of exposure and body burden for children.

Paint that contains lead can pose a health threat through various routes of exposure. House dust is the most common exposure pathway through which children are exposed to lead-based paint hazards. Dust created during normal lead-based paint wear (especially around windows and doors) can create an invisible film over surfaces in a house. Children, particularly younger children, are at risk for high exposures of lead-based paint dust via hand-to-mouth exposure, and may also ingest lead-based paint chips from flaking paint on walls, windows, and doors. Lead from exterior house paint can flake off or leach into the soil around the outside of a home, contaminating children's play areas. Cleaning and renovation activities may actually increase the threat of lead-based paint exposure by dispersing lead dust particles in the air and over accessible household surfaces. In turn, both adults and children can receive hazardous exposures by inhaling the dust or by ingesting lead-based paint dust during hand-to-mouth activities.

2. Statutory and regulatory background. In 1992, Congress found that low-level lead poisoning was widespread among American children, affecting, at that time, as many as 3,000,000 children under age 6; that the ingestion of household dust containing

lead from deteriorating or abraded lead-based paint was the most common cause of lead poisoning in children; and that the health and development of children living in as many as 3,800,000 American homes was endangered by chipping or peeling lead paint, or excessive amounts of lead-contaminated dust in their homes. Congress further determined that the prior Federal response to this threat was insufficient and enacted Title X of the Housing and Community Development Act of 1992, Public Law 102–550 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992) (“the Act” or “Title X”). Title X established a national goal of eliminating lead-based paint hazards in housing as expeditiously as possible and provided a leadership role for the Federal government in building the infrastructure necessary to achieve this goal.

Subsequently, President Clinton created the President's Task Force on Environmental Health Risks and Safety Risks to Children. Co-chaired by the Secretary of the Department of Health and Human Services (HHS) and the Administrator of EPA, the Task Force consisted of representatives from 16 Federal departments and agencies. The Task Force set a Federal goal of eliminating childhood lead poisoning by the year 2010 (Ref. 2). In October 2001, President Bush extended the work of the Task Force for an additional 18 months beyond its original charter. Reducing lead poisoning in children was the Task Force's top priority. Although more work remains to be done, significant progress has been made towards reducing lead poisoning in children. The estimated percentage of children with blood lead levels above the CDC level of concern declined from 4.4% between 1991 and 1994 to 1.6% between 2003 and 2004. More information on Federal efforts to address lead poisoning, including the responsibilities of EPA and other Federal Agencies under Title X, can be found in Units III.A. and III.B. of the preamble to the 2006 Lead; Renovation, Repair, and Painting Program Proposed Rule (“2006 Proposal”) (Ref. 3).

The Act added a new title to TSCA entitled “Title IV—Lead Exposure Reduction.” Most of EPA's responsibilities for addressing lead-based paint hazards can be found in this title, with section 402 of TSCA being one source of the rulemaking authority to carry out these responsibilities. TSCA section 402(a) directs EPA to promulgate regulations covering lead-based paint activities to ensure persons performing these activities are properly trained, that training programs are

accredited, and that contractors performing these activities are certified. These regulations must contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. On August 29, 1996, EPA promulgated final regulations under TSCA section 402(a) that govern lead-based paint inspections, lead hazard screens, risk assessments, and abatements in target housing and child-occupied facilities (also referred to as the Lead-based Paint Activities Regulations). These regulations, codified at 40 CFR part 745, subpart L, contain an accreditation program for training providers and training and certification requirements for lead-based paint inspectors, risk assessors, project designers, abatement supervisors, and abatement workers. Work practice standards for lead-based paint activities are included. Pursuant to TSCA section 404, provision was made for interested States, Territories, and Indian Tribes to apply for and receive authorization to administer their own lead-based paint activities programs.

On June 9, 1999, the Lead-based Paint Activities Regulations were amended to include a fee schedule for training programs seeking EPA accreditation and for individuals and firms seeking EPA certification (Ref. 5). These fees were established as directed by TSCA section 402(a)(3), which requires EPA to recover the cost of administering and enforcing the lead-based paint activities requirements in unauthorized States. The most recent amendment to the Lead-based Paint Activities Regulations occurred on April 8, 2004, when notification requirements were added to help EPA monitor compliance with the training and certification provisions and the abatement work practice standards (Ref. 5).

Another of EPA's responsibilities under Title X is to require that purchasers and tenants of target housing and occupants of target housing undergoing renovation are provided information on lead-based paint and lead-based paint hazards. As directed by TSCA section 406(a), the Consumer Products Safety Commission (CPSC), the Department of Housing and Urban Development (HUD), and EPA, in consultation with the Centers for Disease Control and Prevention (CDC), jointly developed a lead hazard information pamphlet entitled *Protect Your Family From Lead in Your Home* (“PYF”) (Ref. 7). This pamphlet was designed to be distributed as part of the disclosure requirements of section 1018 of Title X and TSCA section 406(b), to provide home purchasers, renters,

owners, and occupants with the information necessary to allow them to make informed choices when selecting housing to buy or rent, or deciding on home renovation projects. The pamphlet contains information on the health effects of lead, how exposure can occur, and steps that can be taken to reduce or eliminate the risk of exposure during various activities in the home.

TSCA section 406(b) directs EPA to promulgate regulations requiring persons who perform renovations for compensation in target housing to provide a lead hazard information pamphlet to owners and occupants of the home being renovated. These regulations, promulgated on June 1, 1998, are codified at 40 CFR part 745, subpart E (Ref. 8). The term "renovation" is not defined in the statute, but the regulation, at 40 CFR 745.83, defines a "renovation" as the modification of any existing structure, or portion of a structure, that results in the disturbance of painted surfaces. The regulations specifically exclude lead-based paint abatement projects as well as small projects that disturb 2 square feet or less of painted surface per component, emergency projects, and renovations affecting components that have been found to be free of lead-based paint, as that term is defined in the regulations, by a certified inspector or risk assessor. These regulations require the renovation firm to document compliance with the requirement to provide the owner and the occupant with the PYF pamphlet. TSCA section 404 also allows States to apply for, and receive authorization to administer, the TSCA section 406(b) requirements.

TSCA section 403 directs EPA to promulgate regulations that identify, for the purposes of Title X and Title IV of TSCA, dangerous levels of lead in paint, dust, and soil. These regulations were promulgated on January 5, 2001, and codified at 40 CFR part 745, subpart D (Ref. 9). These hazard standards define lead-based paint hazards in target housing and child-occupied facilities as paint-lead, dust-lead, and soil-lead hazards. A paint-lead hazard is defined as any damaged or deteriorated lead-based paint, any chewable lead-based painted surface with evidence of teeth marks, or any lead-based paint on a friction surface if lead dust levels underneath the friction surface exceed the dust-lead hazard standards. A dust-lead hazard is surface dust that contains a mass-per-area concentration of lead equal to or exceeding 40 micrograms per square foot ($\mu\text{g}/\text{ft}^2$) on floors or 250 $\mu\text{g}/\text{ft}^2$ on interior windowsills based on wipe samples. A soil-lead hazard is bare soil that contains total lead equal to or

exceeding 400 parts per million (ppm) in a play area or average of 1,200 ppm of bare soil in the rest of the yard based on soil samples.

TSCA section 402(c) addresses renovation and remodeling. For the stated purpose of reducing the risk of exposure to lead in connection with renovation and remodeling activities, section 402(c)(1) of TSCA requires EPA to promulgate and disseminate guidelines for the conduct of such activities that may create a risk of exposure to dangerous levels of lead. In response to this statutory directive, EPA developed the guidance document entitled *Reducing Lead Hazards when Remodeling Your Home* in consultation with industry and trade groups (Ref. 10). This document has been widely disseminated to renovation and remodeling stakeholders through the National Lead Information Center, EPA Regions, and EPA's State and Tribal partners and is available at <http://www.epa.gov/lead/pubs/rrpamph.pdf>.

TSCA section 402(c)(2) directs EPA to study the extent to which persons engaged in various types of renovation and remodeling activities are exposed to lead during such activities or create a lead-based paint hazard regularly or occasionally. EPA conducted this study in four phases. Phase I, the Environmental Field Sampling Study (Ref. 11), evaluated the amount of leaded dust released by the following activities:

- Paint removal by abrasive sanding.
- Removal of large structures, including demolition of interior plaster walls.
- Window replacement.
- Carpet removal.
- HVAC repair or replacement, including duct work.
- Repairs resulting in isolated small surface disruptions, including drilling and sawing into wood and plaster.

Phase II, the Worker Characterization and Blood Lead Study (Ref. 12), involved collecting data on blood lead and renovation and remodeling activities from workers. Phase III, the Wisconsin Childhood Blood-Lead Study (Ref. 13.), was a retrospective study focused on assessing the relationship between renovation and remodeling activities and children's blood-lead levels. Phase IV, the Worker Characterization and Blood-Lead Study of R&R Workers Who Specialize in Renovations of Old or Historic Homes (Ref. 14), was similar to Phase II, but focused on individuals who worked primarily in old historic buildings. More information on the results of these peer-reviewed studies can be found in Unit

III.C.1. of the preamble to the 2006 Proposal.

3. *Summary of 2006 Proposal.* TSCA section 402(c)(3) directs EPA to revise the Lead-based Paint Activities Regulations to apply to renovation or remodeling activities that create lead-based paint hazards. In the 2006 Proposal, EPA proposed to conclude that any renovation activity that disturbs lead-based paint can create significant amounts of leaded dust, that most activities created lead-based paint hazards, and that some activities can be reasonably anticipated to create lead-based paint hazards. Accordingly, on January 10, 2006, EPA issued a Notice of Proposed Rulemaking covering renovation performed for compensation in target housing (Ref. 3). The 2006 Proposal contained requirements designed to address lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint. The 2006 Proposal included requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. The 2006 Proposal would have made the rule effective in two stages. Initially, the rule would have applied to all renovations for compensation performed in target housing where a child with an increased blood lead level resided and rental target housing built before 1960. The rule would also have applied to owner-occupied target housing built before 1960, unless the person performing the renovation obtained a statement signed by the owner-occupant that the renovation would occur in the owner's residence and that no child under age 6 resided there. As proposed, the rule would take effect 1 year later in all rental target housing built between 1960 and 1978 and owner-occupied target housing built between 1960 and 1978. EPA also proposed to allow interested States, Territories, and Indian Tribes the opportunity to apply for and receive authorization to administer and enforce all of the elements of the new renovation provisions.

4. *Summary of 2007 Supplemental Proposal.* EPA received approximately 250 comments on its 2006 Proposal. These comments came from a wide variety of commenters, including State and local governments, industry groups, and local governments, industry groups, advocacy groups, renovation contractors, training providers, and individuals. A significant number of these commenters observed that the

proposal did not cover buildings where children under age 6 spend a great deal of time, such as day care centers and schools. Commenters noted that the risk posed to children from lead-based paint hazards in schools and day care centers is likely to be equal to, if not greater than, the risk posed from these hazards at home. These commenters suggested that EPA expand its proposal to include such places, and several suggested that EPA use the existing definition of "child-occupied facility" in 40 CFR 745.223 to define the expanded scope of coverage. EPA felt that these comments had merit, and, because adding child-occupied facilities was beyond the scope of the 2006 Proposal, an expansion of the 2006 Proposal was necessary to give this issue full and fair consideration. Accordingly, on June 5, 2007, EPA issued a Supplemental Notice of Proposed Rulemaking (2007 Supplemental Proposal) to add child-occupied facilities to the universe of buildings covered by the 2006 Proposal (Ref. 15).

EPA proposed to use the definition of "child-occupied facility" from 40 CFR 745.223 with some modifications to make it consistent with the statutory focus on children under age 6 and to better describe the applicability of the term in target housing and in public or commercial buildings. The 2007 Supplemental Proposal would apply all of the accreditation, training, certification, work practice, and recordkeeping requirements to renovations in child-occupied facilities in the same way that the requirements would apply to renovations in target housing. In addition, EPA proposed to extend the lead hazard information distribution requirements of the Pre-Renovation Education Rule, 40 CFR part 745, subpart E, to renovations in child-occupied facilities. Specifically, EPA proposed that persons performing renovations in child-occupied facilities in public or commercial buildings would have to provide a lead hazard information pamphlet to the owner of the building and to the proprietor of the child-occupied facility. In addition, general information about the renovation would have to be provided to parents and guardians of children under age 6 using the child-occupied facility. The 2007 Supplemental Proposal further provided that a lead hazard information pamphlet would have to be provided to parents and guardians or made available upon request. EPA received 12 comments on its 2007 Supplemental Proposal.

5. *2007 Notice of Data Availability.* After the 2006 proposal, two new studies assessing hazards associated

with renovation activities were completed. On March 16, 2007, EPA announced the availability of these new studies in the docket for this rulemaking (Ref. 16). EPA requested comment on how these studies might inform provisions of the final rule. EPA received nearly 100 comments in response to its notice. Comments specifically on the studies are discussed below. Comments on how the studies might affect the final rule are discussed along with the provisions of the final rule in Unit III.E. of this preamble.

a. *Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities.* EPA conducted a field study (Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities) (the "Dust Study") to characterize dust lead levels resulting from various renovation, repair, and painting activities (Ref. 17). This study, completed in January 2007, was designed to compare environmental lead levels at appropriate stages after various types of renovation, repair, and painting preparation activities were performed on the interiors and exteriors of target housing units and child-occupied facilities. All of the jobs disturbed more than 2 square feet of lead-based paint, so they would not have been eligible for the minor maintenance exception from the 2006 Proposal. The renovation activities were conducted by local professional renovation firms, using personnel who received lead safe work practices training using the curriculum developed by EPA and HUD, "Lead Safety for Remodeling, Repair, and Painting" (Ref. 18). The activities conducted represented a range of activities that would be permitted under the 2006 Proposal, including work practices that are restricted or prohibited for abatements under 40 CFR 745.227(e)(6). Of particular interest was the impact of using specific work practices that renovation firms would be required to use under the proposed rule, such as the use of plastic to contain the work area and a multi-step cleaning protocol, as opposed to more typical work practices.

The design of the Dust Study was peer-reviewed by experts in fields related to the study. They reviewed the design and quality assurance plan independently and provided written comments to EPA. The results of this peer-review are summarized in Unit 2 of the Dust Study report (Ref. 17). In addition, the record of this peer-review, which includes the comments from the reviewers and EPA's responses, has been placed into the public docket for this action.

In the Dust Study, 12 different interior and 12 different exterior renovation activities were performed at 7 vacant target housing units in Columbus, Ohio, and 8 vacant target housing units (including four apartments) in Pittsburgh, Pennsylvania. Three different interior and three different exterior renovation activities were conducted at a building representing a child-occupied facility, a vacant school in Columbus. The presence of lead-based paint was confirmed by laboratory analysis before a building was assigned a particular renovation activity or set of activities. Before interior renovation activities were performed, the floors and windowsills in the work area and adjacent rooms were cleaned. In most cases, pre-work cleaning resulted in dust lead levels on floors of less than 10 $\mu\text{g}/\text{ft}^2$; nearly all floors were less than 40 $\mu\text{g}/\text{ft}^2$ before work started. Most windowsills that would be used for later sampling were cleaned to dust lead levels less than 250 $\mu\text{g}/\text{ft}^2$. In the few cases where that level was not achieved on a windowsill needed for sampling, dust collection trays were used. Interior renovation activities included the following jobs:

- Making cut-outs in the walls.
- Replacing a window from the inside.
- Removing paint with a high temperature (greater than 1100 degrees Fahrenheit) heat gun.
- Removing paint with a low temperature (less than 1100 degrees Fahrenheit) heat gun.
- Removing paint by dry scraping.
- Removing kitchen cabinets.
- Removing paint with a power planer.

To illustrate the impact of the containment plastic and the specialized cleaning and cleaning verification protocol that would be required by the 2006 Proposal, each activity was performed a minimum of four times:

- With the plastic containment described in the 2006 Proposal followed by the cleaning protocol described in the proposal.
- With the plastic containment described in the 2006 Proposal followed by dry sweeping and vacuuming with a shop vacuum.
- With no plastic containment followed by the cleaning protocol described in the 2006 Proposal.
- With no plastic containment followed by dry sweeping and vacuuming with a shop vacuum.

Dust samples were collected after the renovation work was completed, after cleaning, and after cleaning verification. If a building was being used again for the same job under different work

practices, or for a completely different job, the unit was re-cleaned and retested prior to starting the next job. All buildings were cleaned and tested after the last job.

Geometric mean post-work, pre-cleaning floor dust lead levels in the work room were as follows (in $\mu\text{g}/\text{ft}^2$):

- Cut-outs--422.
- Kitchen cabinet removal--958.
- Low temperature heat gun--2,080.
- Dry scraping--2,686.
- Window replacement--3,993.
- High temperature heat gun--7,737.
- Power planing--32,644.

Power planing is an activity very similar to power sanding in which a machine that operates at high speed generating large quantities of dust is used.

Where baseline practices, i.e., no containment, dry sweeping, and vacuuming with a shop vacuum, were used, the geometric mean post-job floor dust lead levels in the work room were as follows (in $\mu\text{g}/\text{ft}^2$):

- Cut-outs--22.
- Kitchen cabinet removal--58.
- Low temperature heat gun--41.
- Dry scraping--66.
- Window replacement--135.
- High temperature heat gun--445.
- Power planing--450.

The package of proposed rule requirements, i.e., containment, specialized cleaning, and cleaning verification, resulted in the lowest geometric mean dust lead levels in the work room at the end of a job. These results were as follows (in $\mu\text{g}/\text{ft}^2$):

- Cut-outs--5.
- Kitchen cabinet removal--12.
- Low temperature heat gun--24.
- Dry scraping--30.
- Window replacement--33.
- High temperature heat gun--36.
- Power planing--148.

Windowsill sample results were similar; the geometric mean dust lead levels after renovation activities performed in accordance with the proposed rule exceeded $250 \mu\text{g}/\text{ft}^2$ only where power planing or a high temperature heat gun were used. When baseline practices were used, the geometric mean dust lead levels on the windowsills exceeded $250 \mu\text{g}/\text{ft}^2$ for kitchen cabinet removal, window replacement, high temperature heat gun use, and power planing.

Exterior renovation activities performed as part of the study included the following:

- Replacing a door and doorway.
- Replacing fascia boards, soffits, and other trim.
- Removing paint with a high temperature (greater than 1100 degrees Fahrenheit) heat gun.

- Removing paint with a low temperature (less than 1100 degrees Fahrenheit) heat gun.

- Removing paint by dry scraping.
- Removing paint with a needle gun.
- Removing paint with power sanding or grinding.
- Removing paint with a torch or open flame.

For the exterior jobs, plastic sheeting was placed on the ground to catch the debris and dust from the job, in accordance with the requirements of the proposed rule. Additional plastic sheeting was laid out beneath and beyond the "proposed rule" plastic. Trays to collect dust and debris were placed on top of and underneath the "proposed rule" plastic. Trays were also placed just outside of the "proposed rule" plastic to assess how far the dust was spreading. A vertical containment, as high as the work zone, was erected at the end of the additional plastic.

The use of the "proposed rule" plastic as a ground covering captured large amounts of leaded dust. For all job types except removing paint with a torch, there was a substantial difference between the amount of lead captured by the "proposed rule" plastic and the amount under the "proposed rule" plastic. Including both bulk debris and dust, geometric mean lead levels in exterior samples from the collection trays on top of the "proposed rule" plastic ranged from a low of $60,662 \mu\text{g}/\text{ft}^2$ for the door replacement activity to a high of $7,216,358 \mu\text{g}/\text{ft}^2$ for removing paint with a high temperature heat gun. Geometric mean lead levels from the collection trays under the "proposed rule" plastic ranged from a low of $32 \mu\text{g}/\text{ft}^2$ for door replacement to $8,565 \mu\text{g}/\text{ft}^2$ for removing paint with a torch.

This regulatory action was supported by the Dust Study discussed above. Therefore, EPA conducted a peer review in accordance with OMB's Final Information Quality Bulletin for Peer Review. EPA requested this review from the Clean Air Scientific Advisory Committee (CASAC) Lead Review Panel. The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under the Clean Air Act as an independent scientific advisory committee. The CASAC's comments on the Dust Study, along with EPA's responses, have been placed into the public docket for this action. More information on the CASAC consultation process, along with background documents, is available on EPA's website at <http://www.epa.gov/lead/pubs/casac.htm>.

According to the peer review report, the CASAC Panel found

... that the [Dust Study] was reasonably well-designed, considering the complexity of the problem, and that the report provided information not available from any other source. The study indicated that the rule cleaning procedures reduced the residual lead (Pb) remaining after a renovation more than did the baseline cleaning procedures. Another positive aspect of the Dust Study was that it described deviations from the protocol when they occurred.

The CASAC Panel also contended that the limited data from residential housing units and child-occupied facilities included in the Dust Study, most likely do not represent a statistically valid sample of housing at the national level. They noted that there are aspects of the study that would underestimate the levels of lead-loadings while other aspects of the study would overestimate the loadings. EPA agrees that the Dust Study is not nationally representative of all housing. EPA notes that there are several reasons why this is the case, including the fact that all of the housing studied was built during 1925 or earlier, and a large number of the floors were in poor condition. A major purpose of the Dust Study was to assess the proposed work practices. A statistically valid sample of housing at the national level is not needed to assess the work practices. If anything, the Dust Study is conservative with respect to the age of housing because it studied older houses and therefore is appropriate for assessing the effectiveness of the work practices.

In addition to the Dust Study which directly supported this regulatory action, several other studies are discussed throughout the preamble which may or may not have been peer reviewed.

b. Lead-Safe Work Practices Survey Project. The National Association of Home Builders (NAHB) conducted a survey that assessed renovation and remodeling activities to measure levels of lead dust generated by home improvement contractors (Ref. 19). The stated objective of this survey, completed in November 2006, was to measure the amount of lead dust generated during typical renovation and remodeling activities and assess whether routine renovation and remodeling activities increased lead dust levels in the work area and on the property.

The activities evaluated during the survey were selected in consultation with remodeling contractors. NAHB believes that these activities represent the most common jobs performed by renovation and remodeling firms. The renovations were performed by professional renovation and remodeling

contractors from each of the communities where the properties were located. All of the workers who participated in this project had previously attended and successfully completed the EPA/HUD curriculum for *Lead Safety for Remodeling, Repair, & Painting*.

According to the NAHB survey, an EPA-certified lead-based paint inspector confirmed the presence of lead-based paint in all of the properties considered for this survey. Previous inspection reports were consulted if the inspections conformed to the HUD Guidelines for lead-based paint inspections. Properties used in this survey included a single family home in Illinois, two single-family homes and a duplex in Connecticut, and an apartment above a storefront in Wisconsin.

The NAHB survey evaluated the following activities:

- Wall and ceiling removal (demolition).
- Wall and ceiling modification.
- Window and door removal and/or replacement (no sanding).
- Window and door alteration (no sanding).
- Sanding on windows and doors.
- Kitchen or bath cabinet removal.
- Baseboard and stair removal.
- Surface preparation (sanding).
- Sawing into wood and plaster.

Activities were performed in one of three ways: Using the work practices presented in the EPA/HUD curriculum, using modified work practices (one or more of the dust control or cleanup methods discussed in the EPA/HUD curriculum), or routine renovation practices.

Area air samples were collected before, during and after the work activity. Personal breathing zone air samples were collected during the work activity. Dust wipe samples were collected before work started and after final clean-up. Dust wipe samples were routinely collected from floors near the work activity and in some cases collected from a windowsill and/or window well.

In comparing the mean dust lead levels before the activities with the mean dust lead levels after the activities, the NAHB concluded that the renovation activities surveyed did not create new lead dust hazards overall. However, even after clean-up was conducted, over half of the 60 individual renovation activities studied resulted in an increase in dust lead levels on at least one surface. In most cases, the increase was considerably greater than the regulatory dust-lead hazard standard for that surface.

6. *Statutory finding and regulatory approach—TSCA section 402(c)(3) determination.* TSCA section 402(c)(3) directs EPA to revise the regulations issued under TSCA section 402(a), the Lead-based Paint Activities Regulations, to apply to renovation or remodeling activities that create lead-based paint hazards. EPA finds that renovation, repair, and painting activities that disturb lead-based paint create lead-based paint hazards. This finding is based upon EPA's Environmental Field Sampling Study and corroborated by the Dust Study and the NAHB survey (Refs. 11, 17, and 19).

In the 2006 Proposal, EPA proposed to conclude that any renovation activity that disturbs lead-based paint can create significant amounts of leaded dust, that most activities created lead-based paint hazards, and that some activities can be reasonably anticipated to create lead-based paint hazards. EPA's proposed conclusions were based upon the results of the Environmental Field Sampling Study, which examined, on a variety of components using a variety of tools and methods, activities that EPA had determined were representative of the paint-disturbing activities that typically occur during renovations. The activities were:

- Paint removal by abrasive sanding.
- Window replacement.
- HVAC duct work.
- Demolition of interior plaster walls.
- Drilling into wood.
- Drilling into plaster.
- Sawing into wood.
- Sawing into plaster.

Specifically, EPA proposed to conclude that all of the activities studied in the Environmental Field Sampling Study, with the exception of drilling into plaster, can create lead-based paint hazards. With respect to drilling into plaster, where lead-based paint is present, EPA proposed to conclude that this activity can reasonably be anticipated to create lead-based paint hazards. The Environmental Field Sampling Study found that, with the exception of drilling into plaster, all renovation and remodeling activities, when conducted where lead-based paint is present, generated lead loadings on floors at a distance of 5 to 6 feet from the activity that exceeded EPA's dust-lead hazard standard of 40 $\mu\text{g}/\text{ft}^2$. However, upon further review, it is apparent that the study also found that drilling into plaster created dust lead levels in the immediate vicinity of the activity that exceeded the dust-lead hazard standard. Thus, all the activities studied did in fact create lead-based paint hazards.

The 2006 Proposal cited the other phases of the TSCA section 402(c)(2) renovation and remodeling study to support EPA's proposed determination that any renovation, remodeling, or painting activity that disturbs lead-based paint can be reasonably anticipated to create lead-based paint hazards. Phase III, the Wisconsin Childhood Blood-Lead Study, found that children who live in homes where renovation and remodeling activities were performed within the past year are 30% more likely to have a blood lead level that equals or exceeds 10 $\mu\text{g}/\text{dL}$, the level of concern established by CDC, than children living in homes where no such activity has taken place recently. Phases II and IV of the study, which evaluated worker exposures from renovation and remodeling activities, provide additional documentation of the significant and direct relationship between blood-lead levels and the conduct of certain renovation and remodeling activities. Phase II found a statistically significant association between increased blood lead levels and the number of days spent performing general renovation and remodeling activities, paint removal, and cleanup in pre-1950 buildings in the past month. Phase IV of the study found that persons performing renovation and remodeling activities in old historic buildings are more likely to have elevated blood lead levels than persons in the general population of renovation and remodeling workers.

In light of EPA's proposed determination, the 2006 Proposal included revisions to the existing Lead-based Paint Activities Regulations to extend them to renovation, remodeling, and painting activities in target housing, with certain exceptions. In proposing to extend these regulations to renovation, remodeling, and painting activities in child-occupied facilities, the 2007 Supplemental Proposal incorporated the proposed TSCA section 402(c)(3) determination.

Since the 2006 Proposal, EPA conducted the Dust Study and NAHB submitted the results of their survey. The results of the Dust Study confirm that renovation and remodeling activities that disturb lead-based paint create lead-based paint hazards. The Dust Study evaluated a number of common renovation activities, including replacing windows, removing kitchen cabinets, cutting into walls, and removing paint by high and low temperature heat guns, power tools, and dry scraping. The geometric mean post-work dust lead levels on work room floors ranged from a low of 422 $\mu\text{g}/\text{ft}^2$, or 10 times the dust-lead hazard

standard for floors, for cut-outs, to a high of 32,644 $\mu\text{g}/\text{ft}^2$ for power planing. Thus, all of the activities evaluated in the Dust Study created floor dust lead levels that exceeded 40 $\mu\text{g}/\text{ft}^2$, one of the measures that, in 40 CFR 745.65, defines a lead-based paint hazard. It is more difficult to evaluate the effect of disturbing lead-based paint in the NAHB Survey, since the survey did not involve collecting samples after work had been performed but before the post-renovation cleaning had begun. Nevertheless, even after post-renovation cleaning using a variety of methods, in more than half of the 60 experiments performed in this survey, the post-cleaning dust wipe sample results for at least one surface showed an increase greater than the TSCA section 403 hazard standard over pre-work levels. These experiments showing increased dust lead levels cover the range of activities evaluated in the NAHB Survey.

Therefore, in this action, EPA is issuing its determination that renovation, repair, and painting activities that disturb lead-based paint create lead-based paint hazards. Because the evidence shows that all such activities in the presence of lead-based paint create lead-based paint hazards, EPA is modifying its proposed finding, which distinguished between activities that create lead-based paint hazards and those that can reasonably be anticipated to create lead-based paint hazards, and instead concludes that renovation activities that disturb lead-based paint create lead-based paint hazards. Indeed, no commenter submitted data indicating that any renovation, repair, or painting activity should be exempt from regulation because it does not create lead-based paint hazards.

EPA received a large number of comments on this proposed finding. Many expressed support for EPA's determination that any renovation, repair, or painting activity that disturbs lead-based paint creates lead-based paint hazards. Some commenters, while expressing their support for this determination, also opined that the regulatory dust-lead hazard standards for floors and windowsills are too high. These commenters argued that recent scientific evidence shows that children experience adverse health effects at lower blood lead levels than previously thought, and since EPA's regulatory dust-lead hazard standards were set with reference to a blood lead level of 10 $\mu\text{g}/\text{dL}$, the CDC level of concern, the dust-lead hazard standards must be lowered. EPA agrees that recent studies demonstrate that neurocognitive effects occur at blood lead levels below the

current CDC level of concern. In fact, EPA's most recent Air Quality Criteria for Lead document, issued in October, 2006, describes several epidemiologic studies published in the last 5 years that observed significant lead-induced IQ decrements in children with some effects observed at blood lead levels of 5 $\mu\text{g}/\text{dL}$ and lower (Ref. 1). The document also notes that other recent studies observed significant associations at low blood-lead levels for other neurotoxicity endpoints in addition to IQ, such as arithmetic and reading scores, attentional behavior, and neuromotor function. However, EPA is not addressing the appropriateness of the existing dust-lead hazard standards in this rulemaking. The original hazard standards were set through a separate rulemaking process under TSCA section 403 that allowed for input from all of the parties that would be affected by the standards. Furthermore, EPA is concerned that a full review of the available evidence and other considerations affecting the hazard standards as part of this rulemaking would result in a significant delay in promulgating training, certification, and work practice standards for renovation activities. EPA did not propose to modify the TSCA section 403 hazard standard levels in this rulemaking and has not undertaken the significant analyses that would need to be performed in order to establish different standards. Accordingly, EPA is not able, in this final rule, to modify the regulatory hazard standard. In any event, since EPA finds that renovation activities that disturb lead-based paint create lead-paint hazards, lowering the hazard standard would not affect EPA's finding.

Some commenters objected to EPA's proposed determination that renovation, repair, or painting activities that disturb lead-based paint create lead-based paint hazards. Some commenters interpreted EPA's statutory authority to regulate renovation and remodeling under TSCA section 402(c)(3) as being limited to those renovation and remodeling activities for which EPA can prove a link between the activity and the blood lead action level established by CDC for public health intervention. These commenters contend that the failure to prove such a link means that renovation and remodeling activities do not create lead-based paint hazards. This interpretation is not supported by the plain language of the statute. TSCA section 402(c)(3) requires EPA to regulate renovation and remodeling activities that create lead-based paint hazards. The term "lead-based paint

hazard" is defined in TSCA section 401 as "any condition that causes exposure to lead from lead-contaminated dust . . . that would result in adverse human health effects as established by the Administrator under this subchapter." TSCA section 403 directs EPA to promulgate regulations which "identify, for purposes of this subchapter and the Residential Lead-Based Paint Hazard Reduction Act of 1992, lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil." The TSCA section 403 regulations define dust-lead hazards as levels that equal or exceed 40 $\mu\text{g}/\text{ft}^2$ of lead on floors or 250 $\mu\text{g}/\text{ft}^2$ of lead on interior windowsills. Therefore, EPA interprets TSCA as directing it to regulate renovation and remodeling activities if such activities create dust lead levels that exceed the standards for dust-lead hazards established under TSCA section 403. Again, the Environmental Field Sampling Study, the Dust Study, and the NAHB survey all demonstrate that renovation and remodeling activities that disturb lead-based paint create dust lead levels that exceed the hazard standards in 40 CFR 745.65.

EPA also interprets the scientific evidence for a link between renovations and the CDC blood lead action level differently than do these commenters. EPA's Wisconsin Childhood Blood-Lead Study, described more fully in Unit III.C.1.c. of the preamble to the 2006 Proposal, provides ample evidence of a link between renovation activities and elevated blood lead levels in resident children (Ref. 13). This peer-reviewed study concluded that general residential renovation and remodeling is associated with an increased risk of elevated blood lead levels in children and that specific renovation and remodeling activities are also associated with an increase in the risk of elevated blood lead levels in children. In particular, removing paint (using open flame torches, using heat guns, using chemical paint removers, and wet scraping/sanding) and preparing surfaces by sanding or scraping significantly increased the risk of elevated blood lead levels. Some of the commenters on this rule focused on Table 3-13 in the study report and cited that as evidence that work performed by paid professional renovators does not create a statistically significant risk of an elevated blood-lead level in a resident child. EPA agrees that this table, which presents the results of analyses using one of the sets of models used to interpret study data, indicates that, with respect to the persons performing the work, the only statistically significant result associated with increased risk of

elevated blood lead levels was work performed by a relative or friend not in the household. Work performed by professional renovators was associated with an increased risk of an elevated blood lead level, but the association was not statistically significant. As explained more fully in a memorandum summarizing additional analyses of the data from this study (Ref. 20), this table does not indicate that professional contractors were not responsible for creating lead exposure hazards. Rather, it indicates that renovation activities performed by professional contractors are no more or less hazardous than renovation activities performed by most of the other categories of persons identified in the survey responses collected as part of the study. It is also important to note that, while these commenters focus on a blood-lead level of 10 µg/dL as a threshold, this level is not and has not been considered by CDC or EPA as a threshold for adverse effects.

One commenter also dismissed the two studies from New York that EPA cited as supporting the findings of the Wisconsin Childhood Blood-Lead Study. In 1995, the New York State Department of Health assessed lead exposure among children resulting from home renovation and remodeling in 1993–1994. A review of the health department records of children with blood lead levels equal to or greater than 20 µg/dL identified 320, or 6.9%, with elevated blood lead levels that were attributable to renovation and remodeling (Ref. 21). The commenter noted that this study suffered from a number of limitations, including the fact that it was not a case-control study; i.e., the group of children with elevated blood lead levels attributed to renovation and remodeling was not compared with a similar group of households that had not undergone renovation during the period. EPA agrees that this is an important limitation of this study. However, with respect to the other limitations noted by this commenter, the authors of the report felt that most of these limitations would likely result in an underestimation of the burden of lead exposure associated with renovation and remodeling.

The other study cited by EPA as supporting the Wisconsin Childhood Blood-Lead Study conclusions was a case-control study that assessed the association between elevated blood lead levels in children younger than 5 years and renovation or repair activities in homes in New York City (Ref. 22). EPA notes that the authors show that when dust and debris was reported (by

respondents via telephone interviews) to be “everywhere” following a renovation, the blood lead levels were significantly higher than children at homes that did not report remodeling work. On the other hand, when the respondent reported either “no visible dust and debris” or that “dust and debris was limited to the work area,” there was no statistically significant effect on blood lead levels relative to homes that did not report remodeling work. Although the study found only a weak and nonsignificant link between a report of any renovation activity and the likelihood that a resident child had an elevated blood-lead level, the link to the likelihood of an elevated blood-lead level was statistically significant for surface preparation by sanding and for renovation work that spreads dust and debris beyond the work area. The researchers noted the consistency of their results with EPA’s Wisconsin Childhood Blood-Lead Study (Ref. 13, at 509). EPA notes that this confirms that keeping visible dust and debris contained to the work area is important for limiting children exposures to lead dust, rather than providing substantial arguments for the effectiveness of visual inspection.

In sum, EPA’s finding that renovation and remodeling activities create lead-based paint hazards is not dependent upon establishing a correlation between such activities and elevated blood lead levels. Rather, it rests on the fact that, as demonstrated by EPA’s Environmental Field Sampling Study, EPA’s Dust Study, and by the NAHB Survey, such activities create lead-based paint hazards as defined by EPA regulations. Moreover, EPA disagrees that there is no scientific support for establishing a relationship between elevated blood lead levels in children and renovation activities. While EPA interprets these studies as supporting such a relationship and believes these studies further support its finding, it is not a determinative factor.

b. *EPA’s approach to this final rule.* Given EPA’s determination that renovation, repair, and painting activities that disturb lead-based paint create lead-based paint hazards, TSCA section 402(c)(3) directs EPA to revise the Lead-based Paint Activities Regulations to apply to these activities. EPA does not interpret its statutory mandate to require EPA to apply the existing TSCA section 402(a) regulations to renovations without change. By using the word “revise,” and creating a separate subsection of the statute for renovation, EPA believes that Congress intended that EPA make revisions to those existing regulations to adapt them

to a very different regulated community. As discussed below, there are significant differences between renovations and abatements. Accordingly, this final rule does not merely expand the scope of the current abatement requirements to cover renovation and remodeling activities. Rather, EPA has carefully considered the elements of the existing abatement regulations and revised them as necessary to craft a rule that is practical for renovation, remodeling and painting businesses and their customers, taking into account reliability, effectiveness, and safety as directed by TSCA section 402(a). Specifically, the Agency concludes that the training, containment, cleaning, and cleaning verification requirements in this final rule achieve the goal of minimizing exposure to lead-based paint hazards created during renovation, remodeling and painting activities, taking into account reliability, effectiveness, and safety.

In taking safety into account, EPA looked to the statutory directive to regulate renovation activities that create lead-based paint hazards. Although there is no known level of lead exposure that is safe, EPA does not believe the intent of Congress was to require elimination of all possible risk arising from a renovation. Nor does TSCA explicitly require EPA to eliminate all possible risk from lead, nor would it be feasible to do so since lead is a component of the earth. Rather, it directs EPA to regulate renovation and remodeling activities that create lead-based paint hazards. Given that the trigger for regulating renovation and remodeling activities is the creation of lead-based paint hazards—which EPA has identified in a separate rulemaking pursuant to TSCA section 403—EPA believes taking safety into account in this context is best interpreted with reference to those promulgated hazard standards. If taking safety into account required a more stringent standard, as suggested by some commenters, the potential would be created for a scheme under which any renovation activities found not to create hazards are not regulated at all, whereas renovation activities found to create hazards trigger requirements designed to leave the renovation site cleaner than the unregulated renovations. EPA’s interpretation is supported by the broad Congressional intent that the section 403 hazard standards apply for purposes of subchapter IV of TSCA. It is also consistent with EPA’s approach in its abatement regulations, which require post-abatement cleaning to dust-lead

clearance levels that are numerically equal to the TSCA section 403 hazard standards levels. It would be anomalous to impose a more stringent safety standard in the renovation context than in the abatement context, where the express purpose of the regulated activities is to abate lead-based paint hazards. Therefore, in taking into account safety, this final rule regulates renovation and remodeling activities relative to the TSCA section 403 hazard standard, with the purpose of minimizing exposure to such hazards created during renovation and remodeling activities.

Additionally, EPA has interpreted practicality in implementation to be an element of the statutory directive to take into account effectiveness and reliability. In particular, EPA believes that given the highly variable nature of the regulated community, the work practices required by this rule should be simple to understand and easy to use. EPA is very aware that this regulation will apply to a whole range of individuals from day laborers to property maintenance staff to master craftsmen performing a whole range of activities from simple drywall repair to window replacement to complete kitchen and bath renovations to building additions and everything in between. Work practices that are easy and practical to use are more likely to be followed by all of the persons who perform renovations, and, therefore, more likely to be reliable and effective in minimizing exposure to lead-based paint hazards created by renovation activities.

One of the biggest challenges facing EPA in revising the TSCA section 402(a) Lead-based Paint Activities Regulations is how to effectively bridge the differences between abatement and renovation and remodeling while acknowledging that many of the dust generating activities are the same. Abatement is generally performed in three circumstances. First, an abatement may be performed in the residence of a child who has been found to have an elevated blood lead level. Second, abatements are performed in housing receiving HUD financial assistance when required by HUD's Lead-Safe Housing Rule. Third, state and local laws and regulations may require abatements in certain situations associated with rental housing. Typically, when an abatement is performed, the housing is either unoccupied or the occupants are temporarily relocated to lead-safe housing until the abatement has been demonstrated to have been properly completed through dust clearance

testing. Carpet in the housing is usually removed as part of the abatement because it is difficult to demonstrate that it is free of lead-based paint hazards. Uncarpeted floors that have not been replaced during the abatement may need to be refinished or sealed in order to achieve clearance. Abatements have only one purpose--to permanently eliminate lead-based paint and lead-based paint hazards.

On the other hand, renovations are performed for a myriad of reasons, most having nothing to do with lead-based paint. Renovations involve activities designed to update, maintain, or modify all or part of a building. Renovations may be performed while the property is occupied or unoccupied. If the renovation is performed while the property is occupied, the occupants do not typically relocate pending the completion of the project.

Further, performing abatement is a highly specialized skill that workers and supervisors must learn in training courses accredited by EPA or authorized States, Territories, and Tribes. In contrast, EPA is not interested in teaching persons how to be painters, plumbers, or carpenters. Rather, EPA's objective is to ensure that persons who already know how to perform renovations perform their typical work in a lead-safe manner.

Nevertheless, as pointed out by some commenters, abatement and renovation have some things in common. For example, as noted by one commenter, window replacement may be performed as part of an abatement to remove the lead-based paint and lead-based paint hazards on the existing window, or it may be performed as part of a renovation designed to improve the energy efficiency of the building. In many cases, the window replacement as abatement and the window replacement as renovation will generate the same amount of leaded dust.

Another consideration is that while renovation activities undoubtedly create lead-based paint hazards, without results from dust wipe samples collected immediately before the renovation commences, there is no way to tell what portion of the lead dust remaining on the surface was contributed by the renovation. In addition, as a practical matter, once dust-lead hazards commingle with pre-existing hazards, there is no functional way to distinguish between those created by the renovation activity and any pre-existing dust-lead hazards. However, the Dust Study shows that the combination of training, containment, cleaning and cleaning verification required by this rule is effective at

reducing dust lead levels below the dust-lead hazard standard. While the requirements of this rule will, in some cases, have the ancillary benefit of removing some pre-existing dust-lead hazards, these requirements are designed to effectively clean-up the lead-based paint hazards created during renovation activities without changing the scope of the renovation activity itself. The intent of this final rule is not to require cleanup of pre-existing contamination.

For example, the rule does not require cleaning of dust or any other possible lead sources in portions of target housing or child-occupied facilities beyond the location in and around the work area. Nor does this rule require the replacement of carpets in the area of the renovation or the refinishing or sealing of uncarpeted floors. The approach in this final rule is designed to address the lead-based paint hazards created during the renovation while not requiring renovators to remediate or eliminate hazards that are beyond the scope of the work they were hired to do.

In addition, EPA has made a concerted effort to keep the costs and burdens associated with this rule as low as possible, while still providing adequate protection against lead-based paint hazards created by renovation activities. Indeed, as part of this rulemaking EPA has, as directed by TSCA section 2(c), considered the environmental, economic, and social impact of this rule. Nonetheless, many commenters expressed concerns over the potential unintended consequences of this rulemaking. These commenters argued that too-burdensome rule will result in more renovations by noncompliant renovators, and more do-it-yourself renovations, both of which are likely to be more hazardous than renovations by certified professional renovation firms using certified renovators who follow the work practice requirements of the rule. These commenters were also concerned about deferred property maintenance which can be hazardous for many reasons, including lead-based paint issues. For example, one commenter pointed out that a renovation project that replaces old lead-based paint covered windows with new ones that have no lead-based paint may, as a by-product, reduce lead hazards, and the rule should not work to discourage this activity.

On the other hand, one commenter argued that increased do-it-yourself activity is an unlikely byproduct of this rule because consumers are not only opting to hire or not hire contractors based on factors such as cost, convenience, and perceived quality, but,

even more importantly, their own proclivity towards performing renovation work. According to the commenter, the fact that the work practices required by this rule may result in slight cost increases is unlikely to motivate homeowners to perform their own renovations. This commenter also felt that the sooner that protective approaches become the accepted standard of care for renovation work by contractors receiving compensation, the sooner do-it-yourselfers and the do-it-yourself literature and training supports will adopt the same protective approaches.

It is difficult to determine with any amount of certainty whether this final rule will have unintended consequences. However, EPA agrees that it is important to minimize disincentives for using certified renovation firms who follow the work practices required by this rule. EPA also agrees that practicality is an important consideration. Given the relatively low estimated overall average per-job cost of this final rule, which is \$35, and the relatively easy-to-use work practices required by this final rule, EPA does not expect the incremental costs associated with this rule to be a determinative factor for consumers. However, that relatively low cost has resulted in part from EPA's efforts to contain the costs of this rule in order to avoid creating disincentives to using certified renovation firms, and EPA has viewed the comments received with those considerations in mind.

With respect to the comment regarding the standard of care for do-it-yourselfers, EPA also plans to conduct an outreach and education campaign aimed at encouraging homeowners and other building owners to follow work practices while performing renovations or hire a certified renovation firm to do so.

7. Summary of the final rule. This section summarizes the final rule in general terms. For more information, consult Unit III. below, which describes each provision in detail, discusses any changes from the proposal, and reviews the comments received.

a. Definitions and scope. This final rule applies to renovations for compensation in target housing and child-occupied facilities. TSCA section 401 defines "target housing" as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

This rule contains the following definition of "child-occupied facility":

Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

TSCA does not define the terms "renovation" or "remodeling," but this final rule builds upon the definition of "renovation" already established by the regulations promulgated under TSCA section 406(b). This rule defines "renovation" as follows:

"Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

This final rule excludes some of the same projects that are excluded by the

TSCA section 406(b) regulations, such as lead-based paint abatement projects and renovations affecting components that have been found to be free of lead-based paint. To be eligible for the latter exception, the components must be determined to be free of lead-based paint by a certified inspector or risk assessor, or by a certified renovator using an EPA-approved test kit. Emergency projects would continue to be exempt from the lead hazard information distribution requirements, but the clean-up after the project must meet the requirements of this regulation, and compliance with the training, certification, warning sign, and containment requirements of this regulation is required to the extent practicable. Minor maintenance projects that disturb no more than 6 square feet of painted surface per room for interiors or no more than 20 square feet of painted surface for exteriors are also exempt, so long as no work practices prohibited or restricted by this final rule are used, the renovation does not involve window replacement and there is no demolition of painted areas. Finally, this regulation contains an exception for renovations in owner-occupied target housing where no child under age 6 or pregnant woman resides, so long as the housing does not meet the definition of "child-occupied facility." To claim this exception, the renovation firm must obtain, before beginning the renovation, a signed statement from the owner of the housing that states that the person signing is the owner of the housing to be renovated, that he or she resides there, that no child under age 6 or pregnant woman resides there, that the housing is not a child-occupied facility, and that the owner understands that the renovation firm will not be required to use the work practices contained in this rule.

b. Pre-Renovation Education Rule. As described in greater detail in a separate notice published elsewhere in today's **Federal Register**, EPA has developed a new renovation-specific lead hazard information pamphlet intended for use in fulfilling the requirements of the Pre-Renovation Education Rule, 40 CFR part 745, subpart E. This final rule requires firms performing renovations for compensation in target housing and child-occupied facilities to distribute this new pamphlet before beginning renovations to the owners and occupants of target housing, owners of public or commercial buildings that contain a child-occupied facility, and the proprietor of the child-occupied facility, if different, and to provide general information on the renovation

and the pamphlet to, or make it available to, parents or guardians of children under age 6 using the child-occupied facility. This can be accomplished by mailing or hand-delivering the general information on the renovation and the pamphlet to the parents and guardians or by posting informational signs containing general information on the renovation in areas where the signs can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. For renovations in the common areas of multi-unit target housing, similar notification options are available to firms. They must provide tenants with general information regarding the nature of the renovation by mail, by hand-delivery, or by posting signs, and must also make this new pamphlet available upon request. Firms must maintain documentation of compliance with these requirements.

c. Training, accreditation, and certification. This final rule contains training requirements leading to certification for “renovators”—individuals who perform and direct renovation activities—and “dust sampling technicians”—individuals who perform dust sampling not in connection with an abatement. Requirements for each of these courses of study are described in detail, and a hands-on component is required. Training providers who wish to provide training to renovators and dust sampling technicians for Federal certification purposes must apply for and receive accreditation from EPA following the same procedures that training providers who offer lead-based paint activities training now use to become accredited by EPA. Providers of renovation training must follow the same requirements for program operation as training providers who offer lead-based paint activities training. For example, renovation training programs must have adequate facilities and equipment for delivering the training, a training manager with experience or education in a construction or environmental field, and a principal instructor with experience or education in a related field and education or experience in teaching adults. To become accredited to provide training for renovators and dust sampling technicians, a provider must submit an application for accreditation

to EPA. The application must include the following items:

- The course materials and syllabus, or a statement that EPA model materials or materials approved by an authorized State or Tribe will be used.
- A description of the facilities and equipment that will be used.
- A copy of the test blueprint for each course.
- A description of the activities and procedures that will be used during the hands-on skills portion of each course.
- A copy of the quality control plan.
- The correct amount of fees.

Training programs that submit a complete application and meet the requirements for faculty, facilities, equipment, and course and test content will be accredited for 4 years. To maintain accreditation, the training program must submit an application and the correct amount of fees every 4 years. EPA is not establishing the required fees in this rulemaking. EPA intends to publish a proposed fee schedule for public comment shortly. Accredited renovation training programs must also comply with the existing notification and recordkeeping requirements for lead-based paint activities training programs at 40 CFR 745.225(c)(13) and 40 CFR 745.225(i), respectively, by notifying EPA before and after providing renovation training and by maintaining records of course materials, course test blueprints, information on how hands-on training is delivered, and the results of the students' skills assessments and course tests.

Each renovation project covered by this final rule must be performed and/or directed by an individual who has become a certified renovator by successfully completing renovator training from an accredited training provider. The certified renovator is responsible for ensuring compliance with the work practice standards of this final regulation. The certified renovator must perform or direct certain critical tasks during the renovation, such as posting warning signs, establishing containment of the work area, and cleaning the work area after the renovation. These and other renovation activities may be performed by workers who have been provided on-the-job training in these activities by a certified renovator. However, the certified renovator must be physically present at the work site while signs are being posted, containment is being established, and the work area is being cleaned after the renovation to ensure that these tasks are performed correctly. Although the certified renovator is not required to be on-site at all times, while

the renovation project is ongoing, a certified renovator must nonetheless regularly direct the work being performed by other workers to ensure that the work practices are being followed. When a certified renovator is not physically present at the work site, the workers must be able to contact the renovator immediately by telephone or other mechanism. In addition, the certified renovator must perform the post-renovation cleaning verification. This task may not be delegated to workers with on-the-job training. To maintain certification, a renovator must successfully complete an accredited renovator refresher training course every 5 years.

Renovations must be performed by certified firms. The certification requirements for renovation firms are identical to the certification requirements for firms that perform lead-based paint activities, except that renovation firm certification lasts for 5 years instead of 3 years. A firm that wishes to become certified to perform renovations must submit an application, along with the correct amount of fees, attesting that it will assign a certified renovator to each renovation that it performs, that it will use only certified or properly trained individuals to perform renovations, and that it will follow the work practice standards and recordkeeping requirements in this regulation. EPA will certify any firm that meets these requirements unless EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. To maintain certification, the firm must submit an application and the correct amount of fees every 5 years. As noted above, EPA will establish the required fees in a subsequent rulemaking.

d. Work practice standards. This final rule contains a number of work practice requirements that must be followed for every covered renovation in target housing and child-occupied facilities. These requirements pertain to warning signs and work area containment, the restriction or prohibition of certain practices (e.g., high heat gun, torch, power sanding, power planing), waste handling, cleaning, and post-renovation cleaning verification. The firm must ensure compliance with these work practices. Although the certified renovator is not required to be on-site at all times, while the renovation project is ongoing, a certified renovator must nonetheless regularly direct the work being performed by other workers to ensure that the work practices are being

followed. When a certified renovator is not physically present at the work site, the workers must be able to contact the renovator immediately by telephone or other mechanism.

i. *Warning signs and work area containment.* Before beginning a covered renovation, the certified renovator or a worker under the direction of the certified renovator must post signs outside the area to be renovated warning occupants and others not involved in the renovation to remain clear of the area. In addition, the certified renovator or a worker under the direction of the certified renovator must also contain the work area so that dust or debris does not leave the area while the work is being performed. At a minimum, containment for interior projects must include:

- Removing or covering all objects in the work area with plastic or other impermeable material.
- Closing and covering all forced air HVAC ducts in the work area with plastic or other impermeable material.
- Closing all windows in the work area.

- Closing and sealing all doors in the work area with plastic or other impermeable material.

- Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

Doors within the work area that will be used while the job is being performed must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area. In addition, all personnel, tools, and other items, including the exterior of containers of waste, must be free of dust and debris when leaving the work area. There are several ways of accomplishing this. For example, tacky mats may be put down immediately adjacent to the plastic sheeting covering the work area floor to remove dust and debris from the bottom of the workers' shoes as they leave the work area, workers may remove their shoe covers (booties) as they leave the work area, and clothing and materials may be wet-wiped and/or HEPA-vacuumed before they are removed from the work area.

At a minimum, containment for exterior projects must include:

- Covering the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient

distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

- Closing all doors and windows within 20 feet of the outside of the work area on the same floor as the renovation and closing all doors and windows on the floors below that area.

In certain situations, such as where other buildings are in close proximity to the work area, when conditions are windy, or where the work area abuts a property line, the certified renovator or a worker under the direction of the certified renovator performing the renovation may have to take extra precautions to prevent dust and debris from leaving the work area as required by the regulation. This may include erecting a system of vertical containment designed to prevent dust and debris from migrating to adjacent property or contaminating the ground, other buildings, or any object beyond the work area. In addition, doors within the work area that will be used while the job is being performed must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

ii. *Waste management.* The certified renovator or a worker trained and directed by a certified renovator must, at the conclusion of each work day, store any collected lead-based paint waste from renovation activities under containment, in an enclosure, or behind a barrier that prevents release of dust and debris and prevents access to the waste. In addition, the certified renovator or a worker under the direction of the certified renovator transporting lead-based paint waste from a work site must contain the waste to prevent identifiable releases. With regard to the lead-based paint waste generated by renovations in housing units, Unit IV.D.2. of the preamble to the 2006 Proposal describes how a clarification of the hazardous waste exclusion in 40 CFR 261.4(b)(1) means that residential lead-based paint waste may be disposed of in municipal solid waste landfill units, as long as the waste is generated during abatement or renovation and remodeling activities in households. Also discussed in the preamble to the 2006 Proposal is a subsequent amendment to the waste regulations promulgated under the Resource Conservation and Recovery Act (RCRA) that allows construction and demolition (C&D) landfills to accept residential lead-based paint waste.

iii. *Cleaning.* This final rule contains a number of specific cleaning steps that

the certified renovator or a worker under the direction of the certified renovator must follow after performing a covered renovation. Upon completion of renovation activities, all paint chips and debris must be picked up. Protective sheeting must be misted and folded dirty side inward. Sheeting used to isolate the work area from other areas must remain in place until after the cleaning and removal of other sheeting; this sheeting must be misted and removed last. Removed sheeting must either be folded and taped shut to seal or sealed in heavy-duty bags and disposed of as waste.

After the sheeting has been removed from the work area, the entire area must be cleaned, including the adjacent surfaces that are within 2 feet of the work area. The walls, starting from the ceiling and working down to the floor, must be vacuumed with a HEPA vacuum or wiped with a damp cloth. This final rule requires that all remaining surfaces and objects in the work area, including floors, furniture and fixtures, be thoroughly vacuumed with a HEPA-equipped vacuum. When cleaning carpets, the HEPA vacuum must be equipped with a beater bar to aid in dislodging and collecting deep dust and lead from carpets. Where feasible, floor surfaces underneath area rugs must also be thoroughly vacuumed with a HEPA vacuum.

After vacuuming, all surfaces and objects in the work area, except for walls and carpeted or upholstered surfaces, must be wiped with a damp cloth. Uncarpeted floors must be thoroughly mopped using a 2-bucket mopping method that keeps the wash water separate from the rinse water, or using a wet mopping system with disposable absorbent cleaning pads and a built-in mechanism for distributing or spraying cleaning solution from a reservoir onto a floor.

For cleaning following an exterior renovation, this final rule requires all paint chips and debris to be picked up. Protective sheeting must be misted and folded dirty side inward. Removed sheeting must be either folded and taped shut to seal or sealed in heavy-duty bags and disposed of as waste.

iv. *Post-renovation cleaning verification.* This final rule requires a certified renovator to perform a visual inspection of the work area after the cleaning steps outlined in the previous subsection. This visual inspection is for the purpose of determining whether dust, debris, or other residue is present in the work area. If dust, debris, or other residue remains in the work area, the dust, debris, or other residue must be

removed by re-cleaning and another visual inspection must be performed.

When an exterior work area passes the visual inspection, the renovation has been properly completed and the warning signs may be removed. When an interior work area passes the visual inspection, an additional cleaning verification step is required. A certified renovator assigned to the renovation project must use disposable cleaning cloths to wipe the windowsills, countertops, and uncarpeted floors in the work area. These cloths must then be compared to a cleaning verification card. For each cloth that matches or is lighter than the cleaning verification card, the corresponding windowsill, countertop, or floor area is considered to have passed the post-renovation cleaning verification. In contrast to the 2006 Proposal, this final rule limits this requirement to two wet cloths and one dry cloth. After the first dry cloth, that surface will be considered to have passed post-renovation cleaning verification. When all windowsills, countertops, and floor areas in the work area have passed post-renovation cleaning verification, the warning signs may be removed. More information on the post-renovation cleaning verification procedure and the underlying studies can be found in Unit IV.E. of the preamble to the 2006 Proposal and in Unit III.E.7. of this preamble.

In contrast to the 2006 Proposal, this final rule does not allow dust clearance sampling in lieu of post-renovation cleaning verification, except in cases where the contract between the renovation firm and the property owner or another Federal, State, Territorial, Tribal, or local regulation requires dust clearance sampling by a certified sampling professional and requires the renovation firm to clean the work area until it passes clearance.

e. State, Territorial, and Tribal programs. This final rule also contains provisions for interested States, Territories, and Tribes to apply for and receive authorization to administer their own renovation, repair and painting programs in lieu of the proposed regulation. States, Territories and Tribes may choose to administer and enforce just the existing requirements of subpart E, the pre-renovation education elements, the training, certification, accreditation, work practice, and recordkeeping requirements of this final rule, or both. EPA will use the same process used for lead-based paint activities programs, along with proposed specific renovation program elements, to authorize State, Territorial, and Tribal programs.

States, Territories, and Tribes seeking authority to administer and enforce renovation programs must obtain public input and then submit an application to EPA. Applications must contain a number of items, including a description of the State, Territorial, or Tribal program, copies of all applicable statutes, regulations, and standards, and a certification by the State Attorney General, Tribal Counsel, or an equivalent official, that the applicable legislation and regulations provide adequate legal authority to administer and enforce the program. The program description must demonstrate that the State, Territorial, or Tribal program is at least as protective as the Federal program and that it provides for adequate enforcement.

To be eligible for authorization to administer and enforce renovation programs, State, Territorial, and Tribal renovation programs must contain certain minimum elements that are very similar to the minimum elements required for lead-based paint activities programs. In order to be authorized, State, Territorial, or Tribal programs must have procedures and requirements for the accreditation of training programs, the training of renovators, and the certification of renovators or renovation firms. At a minimum, the program requirements must include accredited training for renovators and procedures and requirements for recertification. State, Territorial, and Tribal programs applying for authorization are also required to include work practice standards for renovations that ensure that renovations are conducted only by certified renovators or renovation firms and that renovations are conducted using work practices at least as protective as those of the Federal program.

B. What is the Agency's Authority for Taking this Action?

These training, certification and accreditation requirements; State, Territorial, and Tribal authorization provisions; and work practice standards are being promulgated under the authority of TSCA sections 402(c)(3), 404, 406, and 407, 15 U.S.C. 2682(c)(3), 2684, 2686, and 2687, and in a manner that is consistent with TSCA section 2(c), 15 U.S.C. 2601(c).

III. Provisions of this Final Rule

This unit describes the specific provisions of the final regulation and discusses the major comments received.

A. Scope of the Final Rule

EPA is amending the existing regulations at 40 CFR part 745, subpart

E (the "Pre-Renovation Education Rule"), that implement TSCA section 406(b) to add training and certification requirements, as well as work practice standards, for certain renovation, repair, and painting projects performed for compensation in target housing and in child-occupied facilities.

1. *Buildings covered*—a. *Target housing.* The requirements of this final rule apply to renovations performed for compensation within and on the exteriors of target housing units, including renovations performed for compensation in common areas, such as hallways, stairways, and laundry and recreational rooms, in multi-unit target housing. The term "target housing" is defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling.

Several commenters were concerned about the exclusion of 0-bedroom dwellings from the definition of "target housing." These commenters noted that this effectively excludes a significant subset of housing where children live, particularly studio or efficiency apartments and certain low-income housing such as single-room occupancy hotels. One commenter stated that, in his city, at least 400 families with more than 700 children live in single-room occupancy hotels, and these hotels constitute some of oldest housing in their city. Other commenters were concerned about the exclusion of housing for the elderly (or persons with disabilities) unless any child under age 6 resides or is expected to reside in such housing. These commenters suggested that EPA not exempt such housing because children may be present for a substantial amount of time. One commenter noted that, because some children spend 40 or more hours per week at their grandparents' home, eliminating housing for the elderly from the rule would place an inordinate number of young children at risk. Another commenter observed that unless the building is reserved for elderly residents only, the likelihood of children living in a multi-unit building and being exposed to lead hazards in common areas is high.

EPA understands and shares the concerns of these commenters. However, these exclusions were established by Congress in Title X. The exclusions and limitations in the exclusions appear consistent with a focus on housing where children under age 6 reside. Nonetheless, EPA does wish to point out that this regulation and other existing TSCA regulations

cover activities in common areas that are accessible to residents of target housing units. Thus, renovations in common areas in a building built before 1978 that contains both housing units reserved for the elderly and regular housing units would be covered by this rule. In addition, as described more fully in Unit III.G. of this preamble, States, Territories and Tribes may choose to develop and implement their own lead renovation, repair, and painting programs. Such programs may be more stringent than this Federal regulation and could, therefore, cover 0-bedroom dwellings or housing for the elderly.

Finally, one commenter questioned the existing definition of "multi-family housing" in 40 CFR 745.83, which defines the term as a "housing property consisting of more than four dwelling units." The commenter referred to the definition of "multi-family dwelling" in 40 CFR 745.223 which does not limit the term to a specific number of units, and questioned why smaller multi-family housing such as duplexes should not be included in the definition in 40 CFR 745.83. This commenter and others contended that it is important to cover common areas, including building exteriors, in all multi-unit target housing. In response to these commenters, EPA is deleting the definition of "multi-family housing" from 40 CFR 745.83 because the term is not used in this final rule. This final rule covers renovations in common areas, including building exteriors, of multi-unit buildings regardless of the number of units contained in the building. In addition, the deletion of this definition will also make it clear that the existing Pre-Renovation Education Rule provisions also apply to the same renovations covered by this final rule.

b. *Child-occupied facilities.* The certification, training, recordkeeping, and work practice standards of this final rule also apply to renovations for compensation in child-occupied facilities. As discussed in the preamble to the 2007 Supplemental Proposal, numerous commenters on the 2006 Proposal requested that EPA cover child-occupied facilities under this regulation and suggested that EPA use the existing definition of "child-occupied facility" in 40 CFR 745.223. In response, the 2007 Supplemental Proposal included a definition of "child-occupied facility" that was based upon the existing definition, with modifications to make it consistent with the provisions of the 2006 Proposal. EPA also proposed to modify the definition to clarify, for child-occupied

facilities located in public or commercial buildings, which portions of the building would be considered part of the child-occupied facility for purposes of this rulemaking. EPA received several comments suggesting modifications to the proposed definition, but (with the exception of one small clarification) EPA is retaining the proposed definition for the reasons discussed below. The final rule's definition of "child-occupied facility" is as follows:

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

EPA added the introductory clauses "with respect to common areas" and "with respect to exteriors of" to the sentences describing the applicability of the rule to common areas and exteriors of public or commercial buildings because EPA was concerned that people would be confused about the area defined by the term "child-occupied facility" in those situations.

Most of the commenters on the 2007 Supplemental Proposal expressed support for including child-occupied facilities within the universe of buildings covered by this rulemaking. Several commenters requested that EPA provide a more clear definition of public buildings that contain child-occupied facilities or additional examples of such facilities. However, EPA is not aware of additional examples that could be

included in the definition to make the applicability of this rule clearer. One commenter believed that a definition based upon the amount of time a child spends at a facility would be unworkable.

EPA disagrees with the comment that a time-based definition of child-occupied facility is unworkable. A time-based definition has been a part of the Lead-based Paint Activities Program under TSCA section 402(a) for more than 10 years and EPA is not aware of any significant implementation difficulties. As initially proposed in 1994, the Lead-based Paint Activities Regulations under TSCA section 402(a) would have contained one set of requirements for the training and certification of contractors and the accreditation of training programs, as well as specific work practice standards that would have applied to lead-based paint activities conducted in target housing and public buildings (Ref. 23). A different set of requirements would have applied to lead-based paint activities conducted in commercial buildings and on bridges and other structures. The 1994 proposal would have defined public buildings to include all buildings generally open to the public or occupied or visited by children, such as stores, museums, airports, offices, restaurants, hospitals, and government buildings, as well as schools and day care centers. During the comment period, a significant majority of commenters expressed the concern that applying these regulations to activities in all of the buildings that EPA would consider public would result in significant costs without a comparable reduction in lead-based paint exposures for children under age 6, the population most vulnerable to lead exposures. Many of these commenters recommended that EPA focus its attention on buildings that are frequented by children, rather than on buildings that may be briefly visited by children.

In response to these comments, EPA established, in the final rule, a subset of the buildings EPA had intended to define as public. This subset, called "child-occupied facilities," was delineated in terms of the frequency and duration of visits by children (Ref. 4). These primarily consist of public buildings where young children receive care or instruction on a regular basis, such as child care centers and kindergarten classrooms. The Agency's decision to define child-occupied facilities as a sub-category of public buildings was based on one of the key objectives of the Lead-based Paint Activities Regulations, which was to

prevent lead exposures among young children. The Agency reasoned that children face an equal, if not greater, risk from lead-based paint hazards in schools and day care centers as they do at home. Indeed, EPA was concerned that children could spend more time in a particular classroom or day care room in a given day or week than they might spend in a single room in their homes. With respect to the type of building covered, this regulation will operate in much the same way as the Lead-based Paint Activities Regulations. In most cases, office buildings without child care facilities, museums, stores, airports, and restaurants will not be covered by this rule. Although there may be large numbers of children present at any given time in these kinds of buildings, individual children are not likely to be there often enough and long enough to qualify the building as a child-occupied facility.

Some commenters appeared to be confused about whether the definition of "child-occupied facility" covers housing where informal or unpaid care is provided, such as the homes of relatives and neighbors. Whether or not a building is a child-occupied facility does not depend upon whether the owner or operator of the child-occupied facility is somehow compensated for the child's presence. Indeed, the first sentence of the definition makes this clear in stating that a child-occupied facility is a "building, or portion of a building, constructed prior to 1978, visited regularly by the same child . . ." The word "visited" is very broad, it includes visits to a relative's house or a neighbor's house as well as visits to a child-care facility or school.

Except in owner-occupied target housing, as discussed below, the firm performing the renovation is responsible for determining whether a building is a child-occupied facility. This can be accomplished in any number of ways. A stand-alone child care center is likely to have a name that suggests that it provides child care, and the center's status as a child-occupied facility should be obvious upon entering the center. Child care centers in office buildings are likely to have informational signs posted and the centers are likely to be identified in the building directory. Elementary schools are likely to have kindergarten classrooms. The renovation firm should inquire about the presence of a child-occupied facility when contracting to perform renovation services in a public or commercial building. However, a statement by the building owner or manager that there is no child-occupied facility in the building may not be relied

upon in the face of evidence to the contrary.

Several commenters felt that EPA had inappropriately limited the space encompassed by a child-occupied facility in a public or commercial building. These commenters thought that EPA should follow the approach used for common areas in multi-family housing. Under this approach, the rule would cover renovations for compensation in all areas normally accessible to the children using the child-occupied facility. However, children under age 6 are likely to spend less time in the hallways and stairways of public or commercial buildings than they do in common areas in the buildings where they live. It is also likely that children under age 6 walking to and from a child care center in an office building, or to and from a classroom in a school building, will be closely supervised and will not be permitted to walk through active renovation work sites. Although some exposure is possible in these areas, they are more akin to general public and commercial buildings that children may enter but where they are not expected to spend significant amounts of time than to the exposures associated with child-occupied facilities, and EPA's hazard standards are applicable to residents and residential-type settings. In addition, EPA is concerned that application of this final rule to all common areas of public or commercial buildings that may house a child-occupied facility in a small portion of the building would likely result in minimal benefit to the children at a potentially large cost.

c. Other public or commercial buildings. A number of commenters noted that TSCA section 402(c)(3) directs EPA to address renovation or remodeling activities that create lead-based paint hazards not only in target housing, but also in public buildings constructed before 1978, and commercial buildings. Most of these commenters, commenting on the 2006 Proposal, expressed the greatest concern over EPA's failure to address buildings where young children spend significant amounts of time, or child-occupied facilities. However, a handful of commenters argued that EPA also needed to address other public and commercial buildings under the renovation, repair, and painting program.

TSCA section 402(c)(3) provides authority for EPA to regulate renovation or remodeling activities that create lead-based paint hazards. EPA has, by regulation under TSCA section 403, identified lead-based paint hazards for

purposes of Title IV. These hazard standards were developed by evaluating exposure patterns and hazard information for young children and taking into account costs and benefits. They are only applicable in target housing and child-occupied facilities, places where young children are likely to be present for significant periods of time. Although EPA realizes that lead exposure for older children and adults can result in adverse health effects, effects which are discussed in chapter 5 of the Final Economic Analysis for the Lead Renovation, Repair, and Painting Program ("Final Economic Analysis") (Ref. 24), EPA has not evaluated the exposure and hazard information for these groups in the same way that it has for young children. EPA has not evaluated the potential adverse health effects and associated them with a specific level of surface dust that will result in a blood lead level in an older child or an adult that is likely to cause a particular adverse effect. Nor has EPA evaluated the potential health effects to young children from the less frequent exposures that might arise in public and commercial buildings that are not child-occupied facilities. At this time, EPA does not have sufficient information with which to conclude that renovation and remodeling activities in buildings not frequented by young children, e.g., public or commercial buildings that are not child-occupied facilities, create lead-based paint hazards because EPA's TSCA section 403 hazard standards only apply to target housing and child-occupied facilities. EPA has no hazard standards to apply in other situations. Thus, this rule, like the Lead-based Paint Activities Regulations, only applies in target housing and child-occupied facilities.

*2. Activities covered—*a. *Renovations for compensation.* This rule, like the Pre-Renovation Education Rule, only applies to persons who perform renovations for compensation. As discussed in the preamble to the 2007 Supplemental Proposal, for the purposes of this regulation, compensation includes pay for work performed, such as that paid to contractors and subcontractors; wages, such as those paid to employees of contractors, building owners, property management companies, child-occupied facility operators, State and local government agencies, and non-profits; and rent for target housing or public or commercial building space.

Although the owner of rental property may not be compensated for maintenance and repair work at the time that the work is performed, tenants generally pay rent for the right to

occupy rental space as well as for maintenance services in that space. Thus, renovations performed by renovation contractors and their employees in target housing or child-occupied facilities are covered, as are renovations by owners of rental target housing or child-occupied facilities, if the child-occupied facility leases space.

Renovations in target housing or in child-occupied facilities are covered if they are performed by employees of the renovation contractor, the building owner, the building manager, a State or local government agency, a non-profit organization, or the child-occupied facility operator, and the employees receive wages or other compensation for the work performed. Child care payments, in and of themselves, are not considered compensation for renovations. An agreement to provide child care in exchange for a payment is not a contract for building maintenance services in the same way that a lease or other agreement between a landlord and a tenant generally is.

One commenter requested that EPA consider payments for child care to be compensation for renovations. A number of other commenters expressed a general concern over the fact that EPA was not proposing to cover do-it-yourself renovations in owner-occupied target housing. Some of these commenters cited research or observations suggesting that improperly performed renovations by homeowners, relatives, or friends are equally likely, if not more likely, to cause elevated blood lead levels as renovations performed by professional contractors. The most commonly cited study for this proposition was the Wisconsin Childhood Blood-Lead Study, commissioned by EPA as Phase III of the Renovation and Remodeling Study performed pursuant to TSCA section 402(c)(2). As described more fully in the preamble to the 2006 Proposal, in homes where renovation and remodeling activities had been performed, the analysis of the results of the Wisconsin Study indicated the following ordering of the five possible responses to the question of who performed the renovation and remodeling, in order of highest to lowest risk of increased odds of an elevated blood lead level:

- Relative or friend not in household.
- Paid professional.
- Owner or building superintendent.
- Head of household or spouse.
- Other person in household.

As discussed in the preamble to the 2007 Supplemental Proposal, EPA does not believe that child-care payments

represent compensation for renovations in the same way that rent is.

Furthermore, as discussed in the Final Economic Analysis, the overwhelming majority of child-occupied facilities covered by this final rule are located in target housing. Some of that housing is rental target housing, and renovations in rental target housing are covered by this final rule regardless of whether a child-occupied facility is present. With respect to child-occupied facilities located in owner-occupied target housing and do-it-yourself renovations in owner-occupied target housing in general, EPA believes that it would be inconsistent with Congressional intent to cover these renovations.

EPA has previously determined that Congress was most concerned with the certification and training of contractors, not homeowners. In the preamble to the proposed Lead-based Paint Activities Regulations, EPA reviewed section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, the section that added Title IV to TSCA, and determined that the emphasis under section 402 of TSCA ought to be the certification and training of contractors, not homeowners (Ref. 23). In its review, EPA declared that TSCA section 402(c)(3), the section under which this final rule is being issued, shows that Congressional “focus was on the need to regulate contractors doing renovation and remodeling activities, and not homeowners doing renovation and remodeling of their own homes” (Ref. 23). Specifically, TSCA section 402(c)(3) directs EPA to revise the TSCA section 402(a) Lead-based Paint Activities Regulations to apply to renovation and remodeling activities. In so doing, EPA is to determine “which *contractors* are engaged in such activities.” TSCA section 402(c)(3) (emphasis added). EPA thus interprets the statutory directive to regulate remodeling and renovation activities found in TSCA section 402(c)(3) as applying to contractors and not a broader category of persons, such as homeowners.

With respect to do-it-yourself renovations in child-occupied facilities in target housing, as stated above, although payment is received in exchange for childcare, EPA does not consider this to be a contract for building maintenance. As discussed in the previous paragraph, Congress intended to cover renovation contractors, not homeowners who perform renovations on their own homes.

However, as previously discussed, EPA intends to conduct an outreach and education campaign designed to encourage homeowners and other

building owners to follow lead-safe work practices while performing renovations or hire a certified renovation firm to do so.

b. *Definition of “renovation.”* The universe of renovation activities covered by this rule is virtually identical to the renovation activities already regulated under the Pre-Renovation Education Rule—essentially, activities that modify an existing structure and that result in the disturbance of painted surfaces. All types of repair, remodeling, modernization, and weatherization projects are covered, including projects performed as part of another Federal, State, or local program, if the projects meet the definition of “renovation” already codified in 40 CFR 745.83.

As discussed in Unit IV.B.3. of the preamble to the 2006 Proposal, EPA considered a number of options for defining the term “renovation” for the Pre-Renovation Education Rule, and chose a definition that focuses on the activities of greatest concern to EPA, activities that disturb lead-based paint. This definition also covers virtually all of the types of activities in the Environmental Field Sampling Study that created lead-based paint hazards. In this rulemaking, EPA received several comments requesting clarification on the definition; some of these commenters were particularly interested in the types of jobs that would be covered by this definition. One commenter requested that, if EPA intended to cover maintenance and repair projects and interim control projects, the definition of “renovation” be modified to specifically include those projects. Another commenter requested that EPA specifically mention weatherization projects as an example of the types of projects covered by the rule. Several commenters suggested that the definition should clearly delineate the boundaries between renovation and abatement.

EPA also received several responses to its requests for comment on whether to exclude any category of specialty contractor and whether certain renovation activities, such as HVAC duct work, which may result in the disturbance of limited amounts of lead-based paint, should be specifically included or excluded. A state agency contended that exterior siding projects, HVAC duct work, and wallpaper removal should not be excluded, noting that wallpaper removal was implicated in a lead poisoning case the agency investigated. Another commenter argued that many interior and exterior painting projects involve washing, scuff-sanding, and scraping to remove loose materials, and that such “common” and

“relatively benign” industry practices should not be regulated. Other commenters argued that there should be no categorical exemption for any type of specialty contractor. Most commenters on this issue contended that the amount of lead-based paint disturbed, rather than the type of project or contractor involved, should control the applicability of the rule.

EPA specifically disagrees that scuff-sanding and scraping are “benign,” especially in light of the dust lead levels generated by dry scraping in the Dust Study. The geometric mean post-work, pre-cleaning dust lead levels resulting from dry scraping were 2,686 $\mu\text{g}/\text{ft}^2$. After baseline cleaning procedures, the geometric mean was still 66 $\mu\text{g}/\text{ft}^2$. When the work practices required by the final rule were used, the geometric mean was 30 $\mu\text{g}/\text{ft}^2$. As stated above, all of the renovation activities in the Dust Study and the other studies in the record for this final rule created lead-based paint hazards. Therefore, this regulation will not exempt any category of specialty contractor or any specific type of renovation. EPA notes, however, that it has not prohibited the use of dry scraping or dry hand sanding. More information on prohibited renovation practices can be found in Unit III.E.4. of this preamble. EPA also notes that some small jobs will be exempt from the requirements of this final rule under the minor repair and maintenance exception.

EPA has also determined that, based on the comments, some changes to the proposed definition of the term “renovation” are necessary to ensure that everyone understands that all types of building renovation, repair, and painting projects are covered, so long as painted surfaces are disturbed. The following definition of “renovation” will be incorporated into 40 CFR 745.83.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping),

and interim controls. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

EPA added “repair,” “surface restoration,” “window repair,” “weatherization,” and “interim controls” to the definition to make it clear that all of these activities are covered by this definition if they disturb painted surfaces. EPA also separated the removal and the modification of building components to provide clarity. In addition, EPA provided examples of weatherization activities and building component removal. Finally, EPA added a sentence to ensure that it is clear that renovations performed to turn a building into target housing or a child-occupied facility are covered.

Thus, interim control projects and weatherization projects that disturb painted surfaces are renovations. In addition, under this definition, the line between renovation and abatement is clear. Any renovation, repair, maintenance, or painting project is a renovation potentially covered by this rule unless the purpose of the project is to permanently eliminate lead-based paint or lead-based paint hazards. In that case, the project is an abatement. Covered renovations must be performed in accordance with 40 CFR part 745, subpart E, while covered abatements must be performed in accordance with 40 CFR part 745, subpart L.

3. *Exceptions—a. Owner-occupied target housing that is neither the residence of a child under age 6 or a pregnant woman, nor a child-occupied facility.* The 2006 Proposal proposed to establish an exception that would allow owner-occupants of target housing to opt-out of having renovation firms use the work practices that would be required by the rule. The proposed exception provided that if the owner-occupant signed a statement that no child under 6 resided there, the renovation would be exempt from the training, certification, and work practice requirements of the regulation. The 2007 Supplemental Proposal narrowed this exception. Under the 2007 Supplemental Proposal, owner-occupied target housing where no child under age 6 resides would not be eligible for this exception if the housing meets the definition of “child-occupied facility.” This final rule retains this exception, but further narrows it to exclude housing where pregnant women reside. In addition, to make it clear to the property owner what the effect of

the signed statement is, EPA has modified the requirements to include an acknowledgment by the owner that the renovation firm will not be required to use the lead-safe work practices contained in EPA’s renovation, repair, and painting rule. Thus, unless the target housing meets the definition of a child-occupied facility, if an owner-occupant signed a statement that no child under 6 and no pregnant woman reside there and an acknowledgment that the renovation firm will not be required to use the lead-safe work practices contained in EPA’s renovation, repair, and painting rule, the renovation activity is exempt from the training, certification, and work practice requirements of the rule. Conversely, if the owner-occupant does not sign the certification and acknowledgement (even if no children under 6 or no pregnant women reside there), or if the owner-occupant chooses not to take advantage of the exception for other reasons, the exception does not apply and the renovation is subject to the requirements of this final rule.

EPA asked for and received numerous comments on this aspect of the 2006 Proposal. Several commenters supported EPA’s focus on housing where children under age 6 reside, citing the need to target society’s resources towards the housing that presents the greatest risk. One commenter also noted that this provision would help keep renovation costs down for low-income homeowners without children. Most commenters, however, did not agree with EPA’s proposal to allow homeowners with no children under age 6 who occupy their own homes to opt out of the rule’s requirements. These commenters cited a number of reasons for their position, including the fact that children visit homes where they do not reside, and newly renovated housing may be sold to a family with young children regardless of whether children were in residence when the renovation occurred. Commenters also expressed concern about pregnant women, given that the transplacental transfer of lead in humans is well documented, and infants are generally born with a lead body burden reflecting that of the mother. This led some commenters to suggest that women of child-bearing age and girls between the ages of 6 and 14 also deserve special protection, because any lead body burden that they acquire through uncontrolled renovations will be passed on to any children they may eventually have.

EPA has carefully considered the issues and concerns raised with respect to exceptions to the rule. On the one

hand, EPA agrees with the commenters that believed it was important to focus this regulation on the housing that presents the greatest risk to young children. EPA is mindful of the impacts this regulation may have on the affordability of renovations, particularly for low-income homeowners. EPA believes that primarily focusing society's resources on the housing that presents the greatest risk to children is consistent with Congressional intent. In the Senate report on Title X, Congress noted the need "for a flexible, targeted approach for protecting children from exposure to lead hazards while maintaining housing affordability" (Ref. 25). The report also noted that "exposure to lead is primarily caused by ingesting paint dust or chips," which is the route of exposure of concern primarily for young children, ages 18–27 months. Indeed, in the Congressional findings for Title X, Congress focused on the lead poisoning of children and the need to address this as a national priority. [Sec. 1002, Public Law 102–550]. The focus on children can also be inferred from the very definition of "target housing" which on the one hand excludes housing for the elderly and disabled "unless a child under six resides or is expected to reside" there. Similarly, this final rule focuses on the population most at risk and does not provide any exceptions if a child under age 6 resides in the target housing to be renovated.

On the other hand, EPA understands and shares some of the concerns expressed by those commenters who did not support an exception for owner-occupied target housing where no child under 6 resides. In balancing these countervailing considerations, EPA has further limited this exception to owner-occupied target housing that does not meet the definition of a child-occupied facility because no child under 6 is present on a regular basis and in which no pregnant women reside. This has the effect of focusing this regulation primarily on renovations performed in buildings where children under age 6 reside or spend a great deal of time or in which a pregnant woman resides.

With regard to older children and adults, it is important to remember that the hazards presented by a particular floor or windowsill dust lead level are markedly different for a toddler than for an older child or an adult. As discussed in EPA's most recent Air Quality Criteria for Lead document, hand-to-mouth behavior is an important means of exposure for children. The period of peak exposure, reflected in peak blood lead levels, is around 18–27 months when hand-to-mouth activity is at its

maximum. This leads to a high rate of ingestion of dust at a time when children are believed to be particularly vulnerable to the neurological effects of lead exposure. While lead exposure continues to affect older children and adults, these individuals do not ingest dust at the same high rate that a toddler does. Therefore, the same floor dust level will present a much greater hazard for the young child than it will for the older child or adult. The lead-based paint hazard standards in 40 CFR part 745, subpart D, were established with reference to impacts on childhood blood lead levels based principally on hand-to-mouth activity, and EPA has not assessed the effect of dust lead levels or other potential sources of lead-based paint hazards on older children or adults.

However, EPA is particularly concerned about exposure to pregnant women because while the exposure patterns for small children and older children and adults are different, once exposed a pregnant woman can transfer lead to the developing fetus. Epidemiologic evidence indicates that lead freely crosses the placenta resulting in continued fetal exposure throughout pregnancy. Of particular concern is transfer to the developing brain of the fetus across the poorly developed blood brain barrier. Further, a significant proportion of lead transferred from the mother is incorporated into the developing skeletal system of the offspring, where it can serve as a continuing source of toxic exposure (Ref. 1). Thus, EPA agrees with the commenters who believed it is important to ensure that the work practices required in this final rule are followed in homes where a pregnant woman resides.

EPA also acknowledges the concern expressed by a number of commenters that newly renovated housing will be sold to a family with young children. If the renovation was not performed in accordance with the work practices prescribed by this rule, a dust-lead hazard may be present in the home. However, EPA does not believe it is an effective use of society's resources to impose this final rule requirements on all renovations in order to account for the portion of homes without young children that will be sold to families with young children following renovations. Moreover, the Disclosure Rule, 40 CFR part 745, subpart F, requires sellers of target housing to disclose known lead-based paint or lead-based paint hazard information to purchasers and provide them with a copy of the lead hazard information pamphlet entitled *Protect Your Family*

From Lead in Your Home (Ref. 7). In the situation described by the commenters, the receipt of this information should prompt the family to inquire about potential lead-based paint hazards in the home, particularly if one of the selling points is that areas of the home have been recently renovated. In addition, EPA continues to recommend that purchasers take advantage of their statutory opportunity to have a lead-based paint inspection or risk assessment done while in the process of purchasing target housing.

In response to comments expressing concern about this exception from this final rule, EPA has further considered the proposed owner-occupant acknowledgement statement and concluded that it is important that homeowners understand the effect of the acknowledgement. Accordingly, EPA has clarified and expanded the acknowledgement language to ensure that it is clear and consistent. In addition, EPA would like to make it clear that even if the housing to be renovated qualifies for this exception, the homeowner may always choose to have the renovation firm follow the work practices required by this rule. For example, the homeowner may be concerned about potential exposures for visiting children who do not visit often enough to make the housing a child-occupied facility. The homeowner may also be concerned that she may be pregnant, even though she is not yet certain. EPA has added a statement to the sample acknowledgement form that would allow the homeowner to state that the housing does qualify for the exception, but the homeowner wishes the renovation firm to follow the requirements of this rule anyway.

EPA would like to reiterate that this exception applies only to target housing that is occupied by its owner. For a number of reasons, this exception is not available in rental target housing, whether young children are present or not. First, tenants are likely to have much less control over renovations in their housing than owners. Next, as pointed out by some commenters, there is more turnover in rental housing than in owner-occupied housing. In many cases, renovations are done between tenants and it may not be known who will be occupying the unit next. Finally, as noted by at least two commenters, exempting renovations in rental housing that is not occupied by a child under age 6 could cause discrimination in the rental housing market against families with young children. Nearly all of the commenters on this issue agreed with this approach.

Several commenters expressed reservations about the ability of renovation firms to determine whether housing to be renovated is eligible for this exception. As discussed in both proposals, EPA believes that it could be difficult for a renovation firm to determine whether a child under age 6 resides in a particular unit of target housing or whether the housing is a child-occupied facility or whether a woman is pregnant. EPA will therefore allow renovation firms to rely on a signed statement from the owner of the housing that he or she is the owner of the housing to be renovated, that he or she resides in the housing to be renovated, that no child under 6 or pregnant woman resides there, that the housing does not meet the definition of a child-occupied facility, and that the owner acknowledges that the renovation firm will not be required to use the lead-safe work practices contained in this final rule. In the absence of such a signed statement, the renovation firm must comply with all of the regulation's requirements. If the renovation firm obtains such a statement, the renovation firm is not subject to the work practice and other requirements of this final rule. EPA will not hold the renovation firm responsible for misrepresentations on the part of the owner of the housing. Renovations in common areas of owner-occupied multi-unit target housing, such as condominiums, must be performed in accordance with the requirements of this rule unless the renovation firm obtains a signed statement from each occupant with access to the common area that the occupant is the owner of the housing unit, that he or she resides there, that no child under age 6 or pregnant woman resides there, that the housing does not meet the definition of child-occupied facility, and that the owner understands that the renovation firm will not be required to use the work practices contained in this final rule.

Finally, some commenters argued that TSCA section 402(c)(3) requires EPA to cover all renovations in target housing regardless of whether the housing is the residence of a child under age 6 or a child-occupied facility. This regulation covers all target housing. In order to perfect a claim for the exception for owner-occupied target housing that is not the residence of a child under age 6 or a pregnant woman or a child-occupied facility, the renovation firm must obtain the owner's signature on a form indicating that the housing qualifies for the exception and the owner is opting out of the training, certification, and work practice

requirements of this rule. In addition, the form and regulation provide the option for a homeowner to request that the work conform to the requirements of this final rule even in homes without young children or pregnant women. EPA believes homeowners without young children or who reside in homes without pregnant women should be able to choose whether or not work done in their own homes conforms to the requirements of this final rule. EPA has determined that allowing these owner-occupants to opt out of the training, certification, and work practice requirements of the rule does not significantly compromise the safety and effectiveness of this rule because the limitations on the applicability of the exception with respect to children under 6 and pregnant women serve to minimize the possibility that a young child or a pregnant woman will be exposed to a lead-based paint hazard resulting from a renovation in target housing.

b. *Renovations affecting only components free of regulated lead-based paint*—i. *Determination by certified inspector or risk assessor.* In keeping with the 2006 Proposal and the 2007 Supplemental Proposal, this final rule exempts renovations that affect only components that a certified inspector or risk assessor has determined are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight. These standards are from the definition of lead-based paint in Title X and in EPA's implementing regulations. Nearly all of the commenters that expressed an opinion on this topic favored this exception. The determination that any particular component is free of lead-based paint may be made as part of a lead-based paint inspection of an entire housing unit or building, or on a component-by-component basis.

Some commenters expressed confusion over the mechanics of this exception. The certified inspector or risk assessor determines whether components contain lead-based paint, while the renovation firm is responsible for determining which components will be affected by the renovation. A renovation firm may rely on the report of a past inspection or risk assessment that addresses the components that will be disturbed by the renovation.

ii. *Determination by certified renovator using EPA-recognized test kits.* Also in accordance with both of the proposals, this final rule exempts renovations that affect only components that a certified renovator, using a test kit recognized by EPA, determines are free of lead-based paint. EPA has deleted the

regulatory thresholds for lead-based paint from this definition because they unnecessarily complicate the exception. As discussed in Unit III.C.1. of this preamble, a certified renovator is a person who has taken an accredited course in work practices. This training will include how to properly use the EPA-approved test kits. This final rule also establishes the process EPA will use to recognize test kits.

As discussed in the preamble to the 2006 Proposal, research on the use of currently available kits for testing lead in paint has been published by the National Institute of Standards and Technology (NIST) (Ref. 26). The research indicates that there are test kits on the market that, when used by a trained professional, can reliably determine that regulated lead-based paint is not present by virtue of a negative result. Based on this research, EPA proposed to initially recognize test kits that have, for paint containing lead at or above the regulated level, 1.0 mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time.

Some commenters, representing a variety of interests, supported an exception for renovations affecting components that have been found to be free of regulated lead-based paint by use of a test kit. One commenter cited the need for faster and cheaper methods of accurately checking for lead and expressed the opinion that this approach will expand access to lead screening in homes. Several comments were generally supportive, with some reservations about kit reliability.

However, most commenters did not favor the use of test kits. The most commonly cited reason for not supporting this approach was the potential conflict-of-interest present in having the certified renovator be the one to determine whether or not he or she must use the work practices required by the rule. EPA addressed potential conflicts-of-interest in its lead-based paint program in the preamble to the final Lead-based Paint Activities Regulations. That discussion outlined two reasons for not requiring that inspections or risk assessments, abatements, and post-abatement clearance testing all be performed by different entities. The first was the cost savings and convenience of being able to hire just one firm to perform all necessary lead-based paint activities. The second was the potential regional scarcity of firms to perform the work. These considerations may also be applicable to the renovation sector, given the premium on maintaining a

rule that is simple and streamlined and does not unduly prolong the timeframes for completing renovations. Moreover, it is not unusual in regulatory programs to allow regulated entities to make determinations affecting regulatory applicability and compliance. See, e.g., 40 CFR 262.11 (hazardous waste determinations by waste generators under RCRA). EPA has decided to take an approach that is consistent with the approach taken in the 402(a) lead-based Paint Activities regulation and not require third party testing.

Another commonly cited reason for not supporting the use of test kits by certified renovators was the lack of any sampling protocol in the regulation. A related concern was that the training in sampling techniques and protocols in the lead-based paint inspector course could not be shortened to fit within the 8-hour renovator course and still retain all of the necessary information. EPA wishes to make it clear that the 8-hour renovator course will not train renovators in how to select components for sampling because the certified renovator must use a test kit on each component affected by the renovation. The only exception to this is when the components make up an integrated whole, such as the individual stair treads and risers in a staircase. In this situation, the renovator need test only one such individual component, e.g., a single stair tread, unless it is obvious to the renovator that the individual components have been repainted or refinished separately. As such, a complicated sampling protocol is not necessary. EPA plans to modify the EPA/HUD Lead Safe Work Practices course to include training on how to use a test kit. To ensure that the applicability of the exception is clear, EPA has also modified 40 CFR 745.82(a)(2) to specifically state that the certified renovator must test each of the components that will be affected by the renovation.

iii. *Phased implementation and improved test kits.* Under the proposals, the regulatory requirements would have taken effect in two major stages, based on the age of the building being renovated. The first stage would have applied to renovations in target housing and child-occupied facilities built before 1960. Requirements for renovations in target housing and child-occupied facilities built between 1960 and 1978 would have taken effect 1 year later. The primary reason for this phased implementation was to allow time for the development of improved test kits.

According to the National Survey of Lead and Allergens in Housing, 24% of

the housing constructed between 1960 and 1978 contains lead-based paint (Ref. 27). In contrast, 69% of the housing constructed between 1940 and 1959, and 87% of the housing constructed before 1940 contains lead-based paint. The results of this survey indicate that there is a much greater likelihood of disturbing lead-based paint during a renovation that occurs in a home built before 1960 than in a home built after that date. The NIST research on existing test kits shows that existing test kits cannot reliably determine that lead is present in paint only above the statutory levels because the kits are sensitive to lead at levels below the Federal standards that define lead-based paint, and therefore are prone to a large number of false positive results (i.e., a positive result when regulated lead-based paint is, in fact, not present). The NIST research found that such false positive rates range from 42% to 78%. This means that the currently available kits are not an effective means of identifying the 76% of homes built between 1960 and 1978 that do not contain regulated lead-based paint.

Research conducted by EPA subsequent to the publication of the 2006 Proposal confirms that the sensitivity of test kits could be adjusted for paint testing so that the results from the kits reliably correspond to one of the two Federal standards for lead-based paint, 1.0 mg/cm² and 0.5% by weight. EPA's research and initial contacts with potential kit manufacturers also indicate that this can be accomplished in the near future. As stated in the preamble to the 2006 Proposal, EPA's goal is to foster the development of a kit that can reliably be used by a person with minimal training, is inexpensive, provides results within an hour, and is demonstrated to have a false positive rate of no more than 10% and a false negative rate at 1.0 mg/cm² or 0.5% by weight of less than 5%. EPA is confident that improved test kits meeting EPA's benchmarks will be commercially available by September 2010.

With this in mind, EPA felt that a staged approach would initially address the renovations that present the greatest risks to children under age 6, i.e., the renovations that are most likely to disturb lead-based paint, while allowing additional time to ensure that the improved test kits are commercially available before phasing in the applicability of the rule to newer target housing and child-occupied facilities. However, EPA was concerned about delaying implementation for post-1960 target housing and child-occupied facilities that are occupied or used by

children under age 6 with increased blood lead levels. In order to reduce the possibility that an unregulated renovation activity would contribute to continuing exposures for these children, the 2006 Proposal would have required renovation firms, during the first year that the training, certification, work practice and recordkeeping requirements are in effect, to provide owners and occupants of target housing built between 1960 and 1978 and child-occupied facilities built between 1960 and 1978 the opportunity to inform the firm that the building to be renovated is the residence of, or is a child-occupied facility frequented by, a child under age 6 with a blood lead level that equals or exceeds the CDC level of concern, or a lower State or local government level of concern. If the owner or occupant informs the renovation firm that a child under age 6 with an increased blood lead level lives in or frequents the building to be renovated, the renovation firm must comply with all of the training, certification, work practice, and recordkeeping requirements of this regulation.

Some commenters agreed that a staged approach was probably necessary, given the number of renovations that would be covered by the rule, and that a focus on buildings built before 1960 was appropriate. However, most commenters objected to the phased implementation. Some were concerned about the potential exposures to children in buildings built between 1960 and 1978 during the first stage of the rule. Another major concern expressed by commenters was that the phased implementation would unnecessarily complicate the rule, especially with the provision relating to children under age 6 with increased blood lead levels. These commenters felt that, because there already are accurate methods for determining whether a building contains lead-based paint, and because renovation firms ought to get into the habit of working in a lead-safe manner whenever they are working on a building built before 1978, the utility of the delay does not outweigh the likely confusion in the regulated community. Commenters also expressed reservations about providing sensitive medical information to contractors, in the case of children under age 6 with increased blood lead levels.

After reviewing the comments and weighing all of the factors, including EPA's expectation that the improved test kits will be commercially available by September 2010, EPA has decided not to include a phased implementation in this rulemaking. Therefore, this

regulation will take effect at the same time for target housing and child-occupied facilities regardless of whether they were built before or after 1960. Nonetheless, if the improved test kits are not commercially available by September 2010, EPA will initiate a rulemaking to extend the effective date of this final rule for 1 year with respect to owner-occupied target housing built after 1960.

iv. Test kit recognition process. In the 2006 Proposal, EPA described proposed criteria for test kit recognition. Specifically, for paint containing lead at or above the regulated level, 1.0 mg/cm² or 0.5% by weight, EPA stated its intention to only recognize kits that have a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time. In addition, as soon as the improved test kits are generally available, EPA proposed to recognize only those test kits that have a demonstrated probability (with 95% confidence) of a false positive response of no more than 10% to lead in paint at levels below the regulated level. EPA stated its belief that limiting recognition to kits that demonstrate relatively low rates of false positives would benefit the consumer by reducing the number of times that the training and work practice requirements of this regulation are followed in the absence of regulated lead-based paint. EPA also proposed to require that these performance parameters be validated by a laboratory independent of the kit manufacturer, using ASTM International's E1828, Standard Practice for Evaluating the Performance Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint (Ref. 28) or an equivalent validation method. In addition, the instructions for use of any particular kit would have to conform to the results of the validation, and the certified renovator would have to follow the manufacturer's instructions when using the kit. EPA requested comment on whether these standards are reasonably achievable and sufficiently protective. EPA also solicited input on how to conduct the kit recognition process.

Some commenters expressed reservations about the proposed performance criteria, contending that a false negative rate of 5% is too high to be protective. However, a 5% false negative rate (with 95% confidence) is similar to the performance requirements for other lead-based paint testing methods, such as laboratory analysis used for lead-based paint inspections, and is considered to be the statistical equivalent of zero. Therefore, this final rule retains the proposed false-negative

criteria for test kit recognition, i.e., for paint containing lead at or above the regulated level, 1.0 mg/cm² or 0.5% by weight, kits will be only recognized if they have a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time. Because no comments were received on the proposed false-positive criteria of 10% for the improved test kits, this final rule also retains the proposed false-positive criteria for the improved kits, i.e., after the improved kits are available, the only test kits that will be recognized are those that have a demonstrated probability (with 95% confidence) of a false positive response of no more than 10% to lead in paint at levels below the regulated level.

EPA did not receive any comments or suggestions on the test kit recognition process itself. With respect to existing test kits, EPA has determined that the NIST research (Ref. 26) is the equivalent of an independent laboratory validation of test kit performance. The NIST research found that three kits met the false-negative criteria established in this final rule. For the purposes of this regulation, EPA will therefore recognize these test kits, provided that they still use the same formulation that was evaluated by NIST. These test kits will be recognized by EPA until EPA publicizes its recognition of the first improved test kit.

With respect to the improved test kits, EPA has determined that Environmental Technology Verification Program (ETV) is a suitable vehicle for obtaining independent laboratory validation of test kit performance. EPA intends to use ETV or an equivalent testing program approved by EPA for the test kit recognition process. The goal of the ETV Program is to provide independent, objective, and credible performance data for commercial-ready environmental technologies. The ETV process promotes these technologies implementation for the benefit of purchasers, permittees, vendors and the public. If ETV is used, EPA would utilize the Environmental and Sustainable Technology Evaluations (ESTE) element of the ETV program because the development of the test kits is in support of this final rule, and the ESTE element was created in 2005 to address Agency priorities such as rule making. More information on this program is available on EPA's website at <http://www.epa.gov/etv/index.html>.

In the 2006 Proposal, EPA noted that it would look to ASTM International's E1828, Standard Practice for Evaluating the Performance Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint (Ref. 28) or equivalent for a validation method for test kits. With

the input of stakeholders, EPA is adapting this ASTM Standard for use in the laboratory validation program. The testing protocol will consist of an evaluation of the performance of the test kits, using the manufacturer's instructions, on various substrates, such as wood, steel, drywall, and plaster, with various lead compounds, such as lead carbonate and lead chromate, at various lead concentrations above and below regulatory threshold for lead-based paint. To be consistent with the performance criteria of the National Lead Laboratory Accreditation Program, the testing protocol will not involve testing the performance of the kits on paint that contains between 0.8 milligrams of lead per square centimeter and 1.2 milligrams of lead per square centimeter. After a test kit has gone through the ETV or other EPA approved testing process, EPA will review the test report to determine whether the kit has been demonstrated to achieve the criteria set forth in the rule. EPA anticipates that evaluation of the improved test kits under the recognition program will begin by August 2009.

In addition, EPA intends to allow other existing test kit manufacturers the opportunity to demonstrate that their kits meet the false negative criteria described in 40 CFR 745.88(c)(1) by going through the ETV process. Any recognition granted to test kits based only on the false negative criteria will expire when EPA publicizes its recognition of the first improved test kit that meets both the false negative and false positive criteria of 40 CFR 745.88(c).

Beginning on September 1, 2008, EPA's ETV program will accept applications for testing from test kit manufacturers. Applications must be submitted, along with a sufficient number of kits and the instructions for using the kits, to EPA. The test kit manufacturer should first visit the following website for information on where to apply: <http://www.epa.gov/etv/howtoapply.html>.

c. Minor repair and maintenance. EPA proposed to incorporate into this regulation the minor maintenance exception for the Pre-Renovation Education Rule. The proposed minor maintenance exception would have applied to projects that disturb 2 ft² or less of painted surface per component. The preamble to the 2006 Proposal discusses the history of this exception and requested comment on potential changes. In particular, EPA noted that HUD's Lead Safe Housing Rule, at 20 CFR 35.1350(d), includes a *de minimis* exception for projects that disturb 2 ft² or less of painted surface per room for

interior projects, 20 ft² or less of painted exterior surfaces, and 10% or less of the total surface area on an interior or exterior type of component with a small surface area. If less than this amount of painted surface is disturbed, HUD's lead-safe work practice requirements do not apply. EPA's lead-based Paint Activities Regulation incorporates this as an exception for small projects at 40 CFR 745.65(d). EPA requested comment on whether the minor maintenance exception in this regulation should be consistent with other EPA regulations and the HUD Lead Safe Housing Rule. This provision describes the applicability of the Pre-Renovation Education Rule as well as this final rule.

Most commenters expressed support for consistency in the various lead-based paint regulations administered by EPA and HUD. They noted that a consistent exception for small projects or minor maintenance would be easier for the regulated community to apply. Many of these commenters recommended 2 ft² for interior projects and 20 ft² on exterior surfaces. While some commenters supported a "per component" exception, several commenters specifically noted that the "per component" aspect of the existing Pre-Renovation Education Rule exception was problematic in that it could result in the disturbance of large areas of painted surfaces in a single room. Other commenters recommended that the threshold area for the exception be made smaller or the exception abolished. These commenters noted that even very small projects have the potential to create lead-based paint hazards and that, rather than worrying about the applicability of the exception, renovation firms should just get into the habit of performing every project in a lead-safe manner. Other commenters suggested that EPA consider a larger threshold area for the exception, or an exception based on other factors, such as time spent performing an activity. EPA recognizes that, depending upon the methods used to disturb lead-based paint, very small disturbances can release a great deal of lead. EPA also understands the practicality of a minor maintenance exception.

In weighing these competing considerations, EPA has decided to incorporate in this final rule a minor maintenance exception for projects that disturb 6 ft² or less of painted surface per room for interiors and 20 ft² or less of painted surface on exteriors. This addresses the concerns of those commenters who supported a "per component" exception while still limiting the overall amount of paint that can be disturbed in a single room during

a single project. As in the 2006 Proposal, this exception is not available for window replacement projects. In contrast to the Proposal, this exception is only available for projects that do not use any of the work practices prohibited or restricted by 40 CFR 745.85(a)(3) and that do not involve demolition of painted surface areas.

EPA remains convinced that the distinction between renovation and minor maintenance activities is an important part of implementing this program. Congress directed EPA to address renovation and remodeling. In ordinary usage, minor maintenance activities that might disturb lead-based paint (e.g., removing a face plate for an electric switch to repair a loose connection, adding a new cable TV outlet, or removing a return air grill to service the HVAC system) are not normally considered home renovations. EPA believes that minor repair and maintenance activities that cover 6 ft² or less per room and 20 ft² or less for exteriors and that do not involve prohibited practices, demolition or window replacement would not ordinarily be considered renovation or remodeling but would better be described as minor work on the home or COF. EPA also believes that a typical minor repair and maintenance activity would not normally involve the use of high dust generating machinery such as those prohibited or restricted by this rule. To make the distinction between renovations and minor repair and maintenance activities clear, EPA has added a definition of "minor repair and maintenance activities" to 40 CFR 745.83. This term is defined as follows:

"Minor repair and maintenance activities" are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

To accommodate this new definition of "minor repair and maintenance activities," the definition of "renovation" in § 745.83 has also been changed to include the following sentence: "The term renovation does not include minor repair and maintenance

activities." As a result of these two definitional changes, the reference to minor maintenance in 40 CFR 745.82(a)(1) is no longer necessary. Therefore, when engaged in minor repair and maintenance activities as defined in 40 CFR 745.83, renovation firms and renovators are not covered by this rule. EPA believes this approach--eliminating the per-component limitation in favor of an overall size cap, and prohibiting practices that EPA believes are inconsistent with minor maintenance work and that generate very high lead dust loadings--is a reasonable balance of the considerations identified by commenters and considered by EPA.

Several commenters expressed concerns about how the exception would be applied, and whether various activities would be covered by the rule or exempt under the minor maintenance exception. Window replacement was of interest to several commenters, who referred to EPA's previous guidance on window replacement under the Pre-Renovation Education Rule (Ref. 29). That guidance states that window replacement, for various reasons, cannot qualify for the minor maintenance exception. EPA knows of no reason why this interpretation should be changed. In fact, contrary to the assertions of some commenters, the Dust Study found that window replacement was one of the more hazardous jobs. The geometric mean of the lead content of floor dust samples taken in the work area after the window replacement projects was 3,003 µg/ft² (Ref. 17, at 6–11). In addition, EPA does not believe that window replacement is within the common understanding of the meaning of either minor repair or maintenance. EPA has specifically included language in the definition of "minor repair and maintenance activities" to make it clear that window replacements cannot qualify.

Two commenters contended that, when determining whether wall or ceiling cut-outs exceed the minor maintenance exception, the painted surface disturbed should be measured by multiplying the length of the cut by its width, as opposed to the total size of the cut-out. EPA disagrees with these commenters. For cut-outs, the calculation is made for the entire area of surface being disturbed, e.g., the area of the cut-out, for the following reasons:

- The removed portion can flex or be broken during the removal process and the paint can flake off;
- The removed portion can fall on the floor and be trampled upon; or
- The removed portion may not be removed as a single piece.

Calculating the amount of painted surface disturbed in the manner that the commenters suggested would also complicate the rule and be more difficult to convey during the renovator training course. In response to these comments, EPA has inserted clarifying language on this into the text of the definition of "minor repair and maintenance activities" at 40 CFR 745.83.

One commenter recommended that EPA prohibit splitting work, i.e., conducting a single project as several minor maintenance activities in the same room in a short time (like a month) in order to avoid the regulatory requirements. EPA agrees with this commenter. It has always been EPA's interpretation of the Pre-Renovation Education Rule that renovators could not artificially split up projects in order to avoid having to provide the pamphlet. In response to this comment, EPA has inserted clarifying language on this into the definition of "minor repair and maintenance activities" at 40 CFR 745.83. This definition states that jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

d. *Emergency projects.* Both the 2006 Proposal and the 2007 Supplemental Proposal proposed to retain the emergency project exception in the Pre-Renovation Education Rule with one modification. EPA proposed to clarify that interim control projects performed on an expedited basis in response to an elevated blood lead level finding in a resident child qualify for the emergency project exception from the Pre-Renovation Education Rule requirements. As discussed in the 2006 Proposal, EPA was concerned that local public health organizations may be delayed in responding to a lead-poisoned child if the owner of the building where the child resides is not available to acknowledge receipt of the lead hazard information pamphlet before an interim control project begins. In addition, EPA recognized that some emergencies could make it difficult to comply with all of the training, certification, work practice, and recordkeeping requirements. For example, a broken water pipe may make it impossible to contain the work area before beginning to disturb painted surfaces to get to the pipe. The proposed emergency project exception would have required firms to comply with the work practice, training, certification, and recordkeeping requirements to the extent practicable.

EPA received a number of comments on this aspect of the 2006 Proposal. Several recognized the need for such an exception, but most of the commenters were concerned that the language of the proposal would make it possible for renovation firms to circumvent the training, certification, and work practice controls when performing interim controls in response to a child with an elevated blood lead level. A number of these commenters, as well as several others, urged EPA to be more specific about which requirements could be bypassed in particular situations. EPA agrees with these commenters. It never was EPA's intention to allow firms performing interim controls in response to a poisoned child to use untrained workers or work in a manner not consistent with the work practices required by this rule.

EPA has therefore revised the exception to specifically state that interim controls performed in response to a child with an elevated blood lead level are only exempt from the information distribution requirements, which is consistent with the current Pre-Renovation Education Rule. EPA has also modified the exception to state that emergency renovations are only exempt to the extent necessary to respond to the emergency from the training, certification, sign posting, and containment requirements of this regulation. For example, most property management companies who do their own maintenance are likely to have at least one trained and certified renovator on staff to perform renovations, so these companies should be able to comply with the training and certification requirements on all renovations. Likewise, firms performing emergency renovations should be able to follow the required cleaning procedures after emergency repairs have been made. As such, under the final rule, in all cases the cleaning specified by the regulation must be performed and it must be performed or directed by certified renovators. In addition, in all cases, the cleaning verification requirements of this regulation must be performed and they must be performed by a certified renovator. In response to one commenter who requested that EPA require firms to document their inability to comply with all of the regulatory provisions in emergencies, EPA has included such a requirement in 40 CFR 745.86(b)(7). Finally, EPA has removed the word "operations" from the exception, in response to one commenter who suggested that the word is unnecessary and confusing. EPA agrees that the word "operations" is

unnecessary in its description of emergency renovations. EPA intends to continue interpreting the term "emergency renovations" in the same way that it always has done, except that EPA has clarified that interim controls performed in response to a child with an elevated blood-lead level can be an emergency renovation.

B. Pre-Renovation Education

The Pre-Renovation Education Rule, promulgated pursuant to TSCA section 406(b) and codified at 40 CFR part 745, subpart E, requires renovators to provide owners and occupants of target housing with a lead hazard information pamphlet before beginning a renovation in the housing (Ref. 8). The pamphlet currently used for this purpose, "Protect Your Family From Lead in Your Home," was developed in accordance with TSCA section 406(a) and includes useful information on lead-based paint and lead-based paint hazards in general. This pamphlet is also used to provide lead hazard information to purchasers and renters of target housing under the Requirements for Disclosure of Information Concerning lead-Based Paint in Housing "Lead Disclosure Rule" (Ref. 30).

1. *New renovation-specific pamphlet.* EPA has developed a new lead hazard information pamphlet that addresses renovation-specific lead exposure concerns. The development of this pamphlet, including the public comments received on the format and content, is discussed in greater detail in a separate notice published elsewhere in today's **Federal Register**. This new renovation-specific pamphlet, entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* will better inform families about the risks of exposure to lead-based paint hazards created during renovations and promote the use of work practices and other health and safety measures during renovation activities (Ref. 31). This new pamphlet gives information on lead-based paint hazards, lead testing, how to select a contractor, what precautions to take during the renovation, and proper cleanup activities, while still incorporating the information already included in the original "Protect Your Family From Lead in Your Home" and mandated by section 406(a) of TSCA.

In the 2006 Proposal, EPA proposed to require renovation firms to distribute the new renovation-specific pamphlet (then titled *Protect Your Family From Lead During Renovation, Repair & Painting*) instead of the pamphlet currently used for this purpose (*Protect Your Family From Lead in Your Home*).

In general, most commenters were supportive of a requirement to distribute a new renovation-specific pamphlet for the purposes of TSCA section 406(b). One commenter stated a belief that the existing *Protect Your Family From Lead in Your Home* pamphlet had served its purpose well and the development of a new pamphlet should not be a priority. EPA agrees with the commenters who recognized the merit of providing renovation-specific information to owners and tenants before renovations commence. Therefore, this final rule will require renovation firms to distribute the new *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*; pamphlet before beginning renovations. This requirement to use the new pamphlet will become effective as discussed in Unit III.H. of this preamble.

2. *Information distribution requirements.* Other than the use of the new renovation-specific pamphlet, EPA did not specifically propose any changes to the existing information distribution requirements for target housing that does not meet the proposed definition of "child-occupied facility." One commenter contended that the existing information distribution requirements for multi-family target housing were extremely burdensome and resulted in tenants being given multiple notifications and copies of the lead hazard information pamphlet over the course of a year's time. This commenter requested that EPA modify the regulations to allow an annual distribution of renovation-related lead hazard information to tenants. However, as noted in interpretive guidance previously issued on the Pre-renovation Education Rule, EPA, in developing the final Pre-renovation Education Rule, carefully weighed whether a one-time pamphlet distribution would be adequate to meet the objectives of section 406(b) of the lead statute, and concluded that many, if not most, tenants would benefit from receiving the information in the lead pamphlet closer to the time that a renovation is to begin. Although some tenants may read lead information delivered on a "for-your-information" basis, many others are not likely to focus on potential lead hazards until a renovation affecting their unit is imminent, and would welcome receiving information on protecting their families from lead in a more timely fashion. Therefore, EPA has determined that an annual distribution of renovation-specific lead hazard information would not be an effective means of providing timely information to tenants.

However, with respect to renovations in common areas, EPA has determined that there are other effective ways of delivering lead hazard information to tenants in a timely manner. Specifically, the posting of informational signs during the renovation in places where the tenants of the affected units are likely to see them will provide these tenants with the information they need at the time that they need it. Depending upon the circumstances, renovation firms may find the posting of such signs to be less burdensome than mailing or hand-delivering this information to affected tenants. Indeed sign posting may be more effective than mail since it provides an immediate reminder. Therefore, EPA will allow renovation firms performing renovations in common areas of multi-unit target housing the option of mailing or hand-delivering general information about the renovation and making a copy of the pamphlet available to the tenants of affected units upon request prior to the start of the renovation, or posting informational signs while the renovation is ongoing. These signs must be posted where they are likely to be seen by all of the tenants of the affected units and they must contain a description of the general nature and locations of the renovation and the anticipated completion date. The signs must be accompanied by a posted copy of the pamphlet or information on how interested tenants can review or obtain a copy of the pamphlet at no cost to the tenants.

One commenter expressed concern about tenants either not seeing the "postings" because they use different entrances or distinguishing the renovation-specific lead hazard information "postings" from other "postings" in the general area. To take advantage of this option, this final rule requires renovation firms to use actual signs, not notices on tenant bulletin boards. In addition, these signs must be posted where the tenants of all of the affected units can see them. If the tenants of the affected units use several different entrances, a sign posted by one of the entrances would not be sufficient.

With respect to renovations in individual housing units, whether single family or multi-family, firms performing renovations for compensation in target housing must continue to distribute a lead hazard information pamphlet to the owners and tenants of the housing no more than 60 days before beginning renovations. This requirement, along with the associated requirements to obtain acknowledgments or document delivery, has not changed. For

renovations in the common areas of multi-unit target housing, firms must provide tenants with general information regarding the nature of the renovation and make the pamphlet available upon request, by mailing, hand-delivery, or posting informational signs. Firms must also maintain documentation of compliance with these requirements. The 2007 Supplemental Proposal contained additional proposed information distribution requirements for child-occupied facilities in target housing and in public and commercial buildings. This final rule incorporates those additional requirements.

Also, as proposed in the 2006 Proposal, this final rule deletes the existing 40 CFR 745.84 because it is duplicative. The section provided some details on submitting CBI and how EPA will handle that information. However, comprehensive regulations governing sensitive business information, including CBI under TSCA, are codified in 40 CFR part 2. The regulations in 40 CFR part 2 set forth the procedures for making a claim of confidentiality and describe the rules governing EPA's release of information. EPA received no comments on the proposed deletion of 40 CFR 745.84. Therefore, EPA is deleting this section and redesignating existing 40 CFR 745.85 as 40 CFR 745.84.

EPA is also taking this opportunity to reiterate who is responsible for complying with the information distribution responsibilities of 40 CFR 745.84. This provision of this final rule includes the existing Pre-Renovation Education Rule information distribution requirements as amended to include requirements applicable to child-occupied facilities. In interpretive guidance issued for the Pre-Renovation Education Rule, EPA shed additional light on the issue of who is responsible for complying with the information distribution requirements, particularly for renovation projects where multiple contractors are involved (Ref. 32). EPA stated that if the renovation is overseen by a general contractor, the general contractor is considered to be the "renovator" under the rule and is therefore responsible for ensuring that the information distribution requirements are met. EPA further stated that it would not consider a subcontractor to be a "renovator" for purposes of the Pre-Renovation Education Rule so long as the subcontractor has no direct contractual relationship with the property owner or manager relating to the particular renovation. EPA's reasoning is that the information distribution requirements

should be fulfilled by the person or entity with which the customer enters into the contract and compensates for the work—even if that work is subsequently contracted out.

This final rule changes the existing definition of “renovator” to refer specifically to the individual trained in work practices as distinct from the renovation firm. The final rule also specifies in 40 CFR 745.84 that the renovation firm is responsible for carrying out the information distribution requirements. Renovation firms may find it more efficient to have someone other than the certified renovator distribute the pamphlet and obtain the acknowledgement forms. In changing the definition of “renovator,” EPA is not changing its policies as to which entity, between a contractor and subcontractor, is responsible for carrying out the information distribution requirements. On the contrary, as to this issue, EPA intends to continue interpreting the regulatory responsibility for the information distribution requirements as it has in the past.

a. *Owners and occupants of public or commercial buildings containing a child-occupied facility.* The Pre-Renovation Education Rule covers only renovations in target housing. Thus, the information distribution requirements summarized in the preceding paragraph have not historically applied to firms performing renovations for compensation in public or commercial buildings. In the 2007 Supplemental Proposal, EPA proposed to require firms performing renovations for compensation in child-occupied facilities in public or commercial buildings to provide a lead hazard information pamphlet to the owner of the building as well as to an adult representative of the child-occupied facility, if the owner of the building and the child-occupied facility are different entities. This requirement was modeled on the Pre-Renovation Education Rule’s requirements for pamphlet distribution in rental target housing. As described in the 2007 Supplemental Proposal, EPA has determined, in accordance with TSCA section 407, that the distribution of lead hazard information, before renovation projects begin, to an adult representative of the child-occupied facility as well as to the owners of public or commercial buildings that contain child-occupied facilities is necessary to ensure effective implementation of this regulation. EPA believes that information on lead-based paint hazards, and lead-safe work practices that minimize the creation of hazards, will stimulate interest on the

part of child-occupied facilities and public or commercial building owners in these work practices and increase the demand for their use.

EPA received no comments on this aspect of the 2007 Supplemental Proposal. Therefore, the final rule includes this requirement as proposed. Renovation firms performing renovations for compensation in a child-occupied facility in a public or commercial building must provide the lead hazard information pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* to the owner of the building. The renovation firm must either obtain written acknowledgment from the owner that the pamphlet was delivered or obtain a certificate of mailing for the pamphlet at least 7 days prior to the start of the renovation. In addition, the renovation firm must provide the pamphlet to an adult representative of the child-occupied facility if the facility and the building are owned by different entities. To document compliance with this requirement, the renovation firm must do one of the following:

- Obtain a written acknowledgment of pamphlet delivery from the adult representative of the child-occupied facility.
- Obtain a certificate of mailing for the pamphlet at least 7 days prior to the start of the renovation.
- Certify in writing that the pamphlet has been delivered to the child-occupied facility and the firm has been unsuccessful in attempting to obtain the signature of an adult representative of the child-occupied facility. This certification must contain the reason for the failure to obtain the signature.

b. *Parents and guardians of children under age 6 using a child-occupied facility.* The 2007 Supplemental Proposal would also have required a renovation firm performing a renovation for compensation in a child-occupied facility to provide information about the renovation to the parents and guardians of children under age 6 using the facility. This proposed requirement was designed to be comparable to the Pre-Renovation Education Rule provisions for informing adult occupants (who are not owners). EPA is finalizing this requirement as proposed. The renovation firm must either mail each parent or guardian the lead hazard information pamphlet and a general description of the renovation or post informational signs where parents and guardians would be likely to see them. The signs must be accompanied by a posted copy of the pamphlet or

information on how to obtain the pamphlet at no charge to interested parents or guardians. This requirement applies to renovations in child-occupied facilities in target housing as well as to renovations in child-occupied facilities in public or commercial buildings.

EPA received three comments on this aspect of the 2007 Supplemental Proposal. One commenter expressed support for this proposed requirement. The other two provided a number of reasons why the final rule should not include such a requirement. These commenters noted that renovation firms have no contractual connection with or contractual responsibility to the parents or guardians of children using a child-occupied facility. They believe that the child-occupied facility owner bears primary responsibility for maintaining a safe environment for children. They were also concerned that renovation firms might be called upon to spend a significant amount of additional time at a child-occupied facility to answer parents’ questions about lead poisoning. EPA is not persuaded by these comments. Although the firms may have no contractual connection with the parents or guardians of the children, that is often the case with occupants who are not owners. Although child-occupied facility owners bear responsibility for maintaining a safe environment for children, renovation firms are responsible for providing the pamphlet to owners and occupants. Once the renovation firm has distributed the pamphlet, it has no further obligation to educate the owners or occupants about lead poisoning. The pamphlet contains this information and refers to additional resources. EPA acknowledges that it may be difficult to provide copies of the pamphlet to each parent, which is why this final rule allows renovation firms to comply by posting informational signs where parents or guardians would be likely to see them.

c. *Other commenter suggestions regarding information distribution to owners and occupants.* EPA received a number of comments that recommended that additional information be provided to the owner and the occupant before and after a renovation occurs. These commenters believe that one of the purposes of this rule ought to be to provide enough information to owners and occupants so that they can understand the work practices and can adequately monitor the work being performed by renovation firms. EPA agrees that consumers will play a critical role in ensuring that the requirements of this regulation are being followed. EPA believes that some of the

suggested items of additional information, such as an explanation of the cleaning verification process, use of test kits, lead-based paint and dust testing recommendations, and how to find a qualified person to do testing, are best addressed through revisions to the new lead hazard informational pamphlet for renovations, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*. Those changes are described and discussed in a notice published elsewhere in today's **Federal Register**.

Other information distribution elements recommended by these commenters are likely to be provided by renovation firms already. For example, several commenters suggested that EPA require the renovation firm to provide emergency contact information to owners and occupants. EPA believes that, during the normal course of business, persons that hire renovation firms to perform renovations typically already have contact information. A person who contracts for a renovation is likely to be the owner of the property being renovated, and this person is also likely to be able to stop the work at any time so that he or she can confer with the certified renovator or supervisor. Occupants who are not the owners of the property being renovated often will not be the party contracting for the renovation and may not always have emergency contact information for the specific firm performing a renovation in their housing unit or building. However, these occupants will most likely have contact information for their landlord, and the landlord as the person most likely contracting with the renovation firm and therefore to have authority to direct the renovation work. In addition, renovations that occur in occupied rental housing are likely to be maintenance or repair projects that are performed by the landlord, the landlord's employees, or a maintenance company under contract to perform all maintenance for a particular landlord or rental complex.

Some commenters suggested that EPA require renovation firms provide a description of the work area and identify the designated entrance and exit from the work area. EPA is not requiring the renovation firm to designate a specific entrance and exit from the work area. This final rule requires the work area itself to be delineated by warning signs and plastic containment. EPA does not believe there is any utility in requiring the contractor to also provide the owner and occupant with a written description of the work area before the work begins.

Other commenters noted the existence of the Lead Disclosure Rule (Ref. 30), promulgated under section 1018 of the Residential lead-Based Paint Hazard Reduction Act of 1992, and codified at 40 CFR part 745, subpart F and 24 CFR part 35. These commenters stated that information about the use of spot test kits and the results of those tests, and well as any sort of dust testing information, are information pertaining to lead-based paint or lead-based paint hazards and would therefore have to be disclosed to subsequent purchasers or tenants of the renovated property under the Lead Disclosure Rule. These commenters further opined that a requirement for the renovation firm to provide this information to the owner of the property is necessary to ensure the information is available to be disclosed. With respect to the use of test kits to determine whether components to be affected by a renovation contain lead-based paint, EPA agrees with these commenters in their Lead Disclosure Rule analysis. Therefore, this final rule includes a requirement for the renovation firm to provide, within 30 days, information identifying the manufacturer and model of test kits used, a description of the components tested, including locations, and the results of the test kits to the person who contracted for the renovation. EPA also agrees that dust clearance sampling information is information pertaining to lead-based paint hazards and must be disclosed under the Disclosure Rule. If dust clearance sampling is performed instead of cleaning verification as permitted in 40 CFR 745.85(c), this final rule requires the renovation firm to provide, within 30 days, a copy of the dust clearance report to the person contracting for the renovation.

However, EPA does not believe that information related to cleaning verification is a record or report "pertaining to lead-based paint or lead-based paint hazards" for purposes of section 1018. As discussed in more detail in Unit III.E.7. of this preamble, cleaning verification is not the equivalent of clearance. The purpose of cleaning verification is to determine whether the dust that was created by the renovation, whether or not it contains lead, has been adequately removed. Although the disposable cleaning-cloth study, discussed in Unit III.E.7., and the Dust Study show that information is correlated with the hazard standard, the purpose of cleaning verification is not to detect lead-based paint hazards *per se*. In addition, under this final rule, cleaning verification must be completed for every renovation (i.e., it must

achieve "white glove" or the prescribed combination of wet and dry wipes must have been used), so the results of verification will always show that "white glove" or the equivalent has been achieved. As explained below, the cleaning verification is part of a package of work practices that, together, minimize exposure to hazards created by renovation. Also, as explained below, completing the cleaning verification process does not necessarily indicate that the surface does not have lead-based paint hazards unrelated to the renovation. Therefore, EPA will not require the results of cleaning verification activities to be disclosed under the Lead Disclosure Rule.

C. Training and Certification

Under the current Lead-based Paint Activities Regulations at 40 CFR part 745, subpart L, both individuals and firms that perform lead-based paint inspections, lead hazard screens, risk assessments, and abatements must be certified by EPA. EPA proposed a similar, but not identical, regulatory scheme for individuals and firms that perform renovations.

This final rule requires all renovations subject to this rule to be performed by a firm certified to perform renovations. In addition, the rule requires that all persons performing renovation work either be certified renovators or receive on-the-job training from and perform key tasks under the direction of a certified renovator. In order to become a certified renovator, a person must successfully complete an accredited renovator course. EPA renovator certification allows the certified individual to perform renovations in any State, Territory, or Indian Tribal area that does not have a renovation program authorized under 40 CFR part 745, subpart Q. These requirements are discussed in greater detail in the following sections.

EPA is also creating, with this final rule, a dust sampling technician discipline. Although, as discussed in Unit III.E.7. of this preamble, this final rule does not allow dust clearance testing in lieu of post-renovation cleaning verification, except in limited circumstances, EPA still believes that there will be a market for the services of persons with dust sampling technician credentials. EPA recommends that any property owners who choose to have dust clearance testing performed after a renovation use a certified inspector, risk assessor, or dust sampling technician.

Finally, in response to one commenter who suggested that EPA's use of the term "person" and the term

“individual” was confusing, EPA has modified the regulatory text in the sections added or significantly revised by this final rule to use the term “person” when referring to both natural persons and judicial persons, such as renovation firms, property management companies, or units of government, and the term “individual” when referring only to natural persons.

1. *Individuals.* Under this final rule, EPA is establishing new individual certification disciplines for renovators and dust sampling technicians. All renovation activities covered by this final rule must be performed by certified renovators, or by renovation workers who receive on-the-job training in the work practices from a certified renovator.

a. *Certified renovators and renovation workers—i. Responsibilities of certified renovators.* The certified renovator assigned to a renovation is responsible for ensuring that the renovation is performed in compliance with the work practice requirements set out in 40 CFR 745.85. These requirements pertain to warning signs and work area containment, the restriction or prohibition of certain practices (e.g., high heat gun, torch, power sanding), waste handling, cleaning, and post-renovation cleaning verification. The certified renovator can perform these work practices herself or himself. Alternatively, the certified renovator can direct other workers to perform most of these work practices. However, the post-renovation cleaning verification requirements must be performed by a certified renovator. These requirements cannot be delegated to a worker. If the certified renovator directs the other workers to perform the work practices, the certified renovator must be at the work site during the critical phases of the renovation activity. The critical phases are posting warning signs, containing the work area, and cleaning the work site.

Although the certified renovator is not required to be on-site at all times, while the renovation project is ongoing, a certified renovator must nonetheless regularly direct the work being performed by other workers to ensure that the work practices are being followed. When a certified renovator is not physically present at the work site, the workers must be able to contact the renovator immediately by telephone or other mechanism. A certified renovator must:

- Perform the post-renovation cleaning verification described in 40 CFR 745.85(b).

- Perform or direct workers who perform all of the work practices described in 40 CFR 745.85(a).

- Provide training to workers on the work practices they will be using in performing their assigned tasks.

- Be physically present at the work site when the signs required by 40 CFR 745.85(a)(1) are posted, while the work area containment required by 40 CFR 745.85(a)(2) is being established, and while the work area cleaning required by 40 CFR 745.85(a)(5) is performed.

- Regularly direct the work being performed by other workers to ensure that the work practices are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

- Be available, either on-site or by telephone, at all times that renovations are being conducted.

- When requested by the party contracting for renovation services, use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

- Have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

- Prepare the records required to demonstrate that renovations have been performed in accordance with the requirements of this rule.

There are some slight revisions between the 2006 Proposal and this final rule, although none of these changes add to or detract from the renovator’s responsibilities. First, the Proposal used both the term “lead-safe work practices” and “work practices” in the preamble and in the proposed rule text. Although the work practices required in this final rule are lead-safe, for purposes of clarity, the final rule text has been changed to “work practices.” The reason for this change was to make text of the rule relating the renovator’s responsibilities text consistent with other provisions in the rule, particularly 40 CFR 745.85 (Work Practice Standards). Today’s work practices are lead-safe work practices. The work practice standards listed in § 745.85(a) are the same tasks that the other workers will be directed in and trained to do by the certified renovator (except for cleaning verification). In addition, the term “lead-safe work practices” has different meanings in different contexts, and this change is to make clear that the work practices required by this final rule are the work practices required in § 745.85(a).

Second, one of the renovator’s responsibilities listed in the preamble of the 2006 Proposal was to “[r]egularly

direct the work being performed by uncertified persons to ensure that lead-safe work practices are being followed, the integrity of the containment barriers is maintained, and dust or debris is not spread beyond the work area.” The word “regularly” was inadvertently omitted from the proposed regulatory text. To make the regulatory text consistent with the preamble, the word “regularly” has been added to the final regulatory text. In addition, EPA has slightly modified the regulatory text, consistent with the preceding paragraph, to clarify that maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area are among the work practices required by the rule.

Some commenters agreed that it was unnecessary for a certified renovator to be on site at all times and believed that oversight by a certified renovator on a regular basis was sufficient. One commenter believed that the certified renovator should be on site at critical points including site preparations and isolation, end of day and end of project cleaning, and cleaning verification. Many other commenters thought a certified renovator should be on site at all times. Another stated that a certified renovator would not have to be on site at all times if workers received lead safe work practices training. After carefully considering the issue, EPA has concluded that requiring a certified renovator to be on site during critical phases of the work is sufficient to ensure that the work practices required by this final rule are followed. These work practices provide a mechanism to contain dust and debris generated by a job and a clean-up regimen following work that is designed to minimize exposure to lead-based paint hazards created during the renovation activity. Once the containment has been established and until cleanup begins, this final rule requires few, and simple, changes from the way renovation work is currently carried out. Specifically, renovation workers need to avoid using the specific practices prohibited by this final rule; they need to maintain the containment (e.g., avoid ripping or displacing the plastic); and they need to make sure that any waste generated is contained at the end of the day. These are important but relatively simple measures that EPA does not believe require formal classroom training, or the constant supervision of a certified renovator who has had formal training. Once the cleanup begins, the certified renovator will again be required to be present, either performing the cleanup

or directing others. In addition, the certified renovator must perform the cleaning verification. Thus, EPA has concluded that having a renovator on site at all times is unwarranted.

ii. *Renovator training.* To become a certified renovator, a person must successfully complete a renovator course accredited by EPA or by a State, Territorial, or Tribal program authorized by EPA.

Some commenters questioned the need to create a separate discipline for renovators. In their opinion, the existing abatement course is sufficient (with some basic changes) and to create a new program will take resources away from existing efforts in lead hazard control. EPA believes that there are sufficient differences between abatement and renovation activities to warrant different training and work practice requirements. Specific activities of an abatement contractor may be similar to those of a renovator (e.g., sanding, caulking, painting, sawing), but because the project goal is the permanent elimination of hazards, the application and methodology differ. Therefore, a significant portion of an abatement contractor's training is focused on abatement techniques and selection of the appropriate course of action for a variety of hazards. Renovators, on the other hand, do not seek to permanently eliminate lead hazards. Renovators perform maintenance and improvement tasks as directed by the consumer. The goal of EPA's renovator training and certification program is not to update the methodology a renovator uses to accomplish these tasks, with the exception of the practices prohibited or restricted by this final rule, but rather to introduce containment and cleaning methods to minimize exposure to lead-based paint hazards created by the renovation activity.

Several commenters saw the need for universal, standard renovator training. A commenter suggested that training for certified renovators be similar to the current EPA/HUD renovator and remodeler course. One commenter thought that standard training would make it easier when hiring someone to verify that they had completed the appropriate training. Another mentioned that it would encourage state-to-state reciprocity for training programs so that renovators would not need to take multiple courses with the same content. EPA plans to work with HUD to update the model EPA/HUD renovator training course to cover the requirements of this final rule. EPA agrees that reciprocity among authorized State, Territorial, and Tribal programs, and with the Federal

program, is preferable. However, as with the abatement program, authorized programs will have the ability to customize requirements and course content based on their particular needs. The Agency encourages jurisdictions seeking authorization to consider reciprocity of training as they develop their individual programs.

Commenters were also concerned about the cost of formal training. Commenters thought that EPA could provide free training to encourage renovator compliance, or that EPA funds for enforcement of the final rule would be better spent on training. EPA agrees that renovator training should be as inexpensive as possible. However, the training course costs will be established by independent training programs based on market forces. The total cost of conducting a training course depends upon the labor cost for the instructor(s), the cost of providing a classroom and other facilities, and other fixed costs. But the cost per trainee also depends on the number of trainees per class. Due to the large number of individuals who will need training, the Agency anticipates that demand will be high, keeping the cost per trainee lower than might otherwise be the case. But also due to that large volume, the Agency does not anticipate that it will be able to provide any significant source of funding to support training.

iii. *Other renovation worker training.* This final rule does not require everyone involved in performing a regulated renovation project to receive training from an accredited training provider. To allow flexibility for firms undertaking these projects, the rule allows firms to use other workers to perform renovation activities as long as they receive on-the-job training (OJT) in work practices from a certified renovator. This training must include instruction in the specific work practices that these workers will be responsible for performing. OJT training occurs while the worker is engaged in productive work and which provides knowledge and skills essential to the full and adequate performance of the job. OJT may also be structured through a planned process of developing competence on units of work by having the certified renovator train the worker at the work setting or a location that closely resembles the work setting. Although there is no specific requirement for "refresher training," OJT must be provided for each worker for each job to the extent necessary to ensure that that worker is adequately trained for the tasks he or she will be performing.

If, under the direction of the certified renovator, the workers will be posting warning signs, establishing containment, or cleaning the work area after the renovation, the certified renovator must provide instruction, either verbally or through demonstration, to the workers in how to perform these tasks. With respect to other activities, including work performed while the certified renovator is not present, the certified renovator must provide instruction, either verbally or through demonstration, in how to perform the work without using work practices prohibited by this rule, how to maintain the integrity of the containment barriers (e.g., taking care not to tear the plastic), and how to avoid spreading dust or debris beyond the work area (e.g., vacuuming clothing and tools with a HEPA vacuum before leaving the work area). In any event, the certified renovator remains responsible for ensuring that this work is done in compliance with the rule's requirements, e.g., that containment sufficient to prevent release of dust or debris from the work site has been established and that clothing and tools were adequately cleaned before leaving the work area.

Workers need not be trained in work practices that do not pertain to the renovations they will be performing. If the certified renovator will be the one posting warning signs, establishing containment, and cleaning the work area after the renovation, it is not necessary for the certified renovator to provide instruction on these tasks to any workers who will be used elsewhere on the project. Similarly, workers hired to perform only exterior projects need not receive training in how to clean an interior work area after a renovation.

EPA chose to allow OJT to alleviate industry concerns raised during the SBREFA panel process regarding high employee turnover rates within the industry and the potential for high training costs if all workers were required to be certified. The Agency concluded that allowing OJT could be done effectively and would provide flexibility for firms undertaking renovation projects. EPA determined that OJT can be effectively delivered by a certified renovator because the requirements themselves are simple and easy to understand. This final rule also requires a certified renovator be assigned and responsible for each project to ensure compliance with required standards.

Some commenters agreed that OJT by a certified renovator is sufficient for training workers. One commenter stated that as long as a specific person is

designated to oversee the job, there is no need for all workers on site to have formal training. The commenter noted the similarity between this approach and OSHA's "competent person" standard. EPA agrees that there are some similarities between the approach in this final rule and OSHA's "competent person" standard.

However, the majority of commenters had concerns about the use of OJT to train workers. Many argued that OJT is insufficient for providing workers with the necessary skills and thought renovation workers should receive formal LSWP training such as a 1 day course equivalent to that required for certified renovators. Some of these commenters also thought that workers should be certified or licensed.

Some commenters were concerned that the content of OJT is not clearly defined in the rule. One believed EPA should impose a structured OJT program in order to produce consistent, accurate, and comprehensive training outcomes. Others thought more time was needed for OJT, with suggestions ranging from 5 to 6 hours of training to 3 to 4 days. EPA has neither established a structured OJT program nor required a specific length of time for OJT because the OJT required will vary widely from project to project, depending upon how the other workers are used. As discussed above, if the worker will not be establishing containment, there is no need to train the worker in how to establish containment. If the worker in question is an electrician, and he will merely be installing an electrical outlet as part of a larger job, then there may be no need to provide any training to this worker other than instructing him not to disturb the plastic on the floor and making sure that he and his tools are free of dust and debris before leaving the work area.

In addition, as discussed in Unit III.C.1.c.iii. of this preamble, EPA will "grandfather" persons with previous EPA/HUD lead-safe work practices training or accredited abatement supervisor or worker training. To become certified renovators, these persons must take a renovator refresher course in order to ensure that they are acquainted with how to use test kits to determine whether lead-based paint is present on a component and how to perform cleaning verification. However, even if they do not take the refresher course and become certified renovators, these individuals have still received significant training in the required work practices such as establishing containment and cleaning the area after the job is finished. They are not likely to need much, if any OJT, depending

upon how recent their training was. Similarly, although not recognized for the purpose of "grandfathering" by EPA, HUD's Lead Maintenance course would also provide a great deal of information on lead-safe work practices. Someone who had taken the Maintenance course recently would also not be likely to need much, if any, OJT.

Several commenters thought that workers would not receive adequate OJT because the certified renovator was not qualified to train others. They noted that the certified renovators are renovators, not professional trainers, and do not necessarily have the skills necessary for teaching others.

After consideration of these commenters' concerns, EPA has concluded that OJT is sufficient for training some renovation employees. The work practice standards of this final rule are not complex or difficult to institute, and those activities critical to ensuring the lead safe outcome of the project are either conducted by certified renovators or directed by certified renovators. The remainder of the project is often just the renovation itself, and EPA was careful when developing these final work practices to minimize the effect on the way typical renovations are conducted. With the exception of the prohibition of certain unsafe practices, renovation methods are unaffected by this rule. For example, the work practices of this final rule do not affect the method a firm would employ to replace a window. A certified renovator should be able to demonstrate to other firm employees work practices, such as how to work within containment and how to move into and out of containment without spreading lead dust and debris. EPA does not believe a professional trainer is needed to train renovation workers, who will be directed by a certified renovator if they will be performing any of the key tasks associated with the work practices. Most of the people performing renovations today are not trained by professional trainers. They are trained on-the-job by experienced firm employees. For example, persons learn the various techniques for removing and replacing windows from others in the firm who are experienced in these techniques. Renovation workers can learn work practices in the same way from a certified renovator.

Although the work practices in the final regulation are sufficiently straightforward and can be easily demonstrated by the certified renovator, EPA agrees that renovators do not necessarily consider themselves to be trainers. Therefore, accredited renovator training will include a train-the-trainer

component to provide instruction on providing OJT. In addition, instructors will be expected to provide training tips to renovators during hands-on instruction. As the instructor is showing the renovator how to do these work practices, he or she can also provide instruction on how to show others how to do these work practices. Accordingly, EPA has concluded that certified renovators will be adequately prepared to provide OJT that is sufficient and appropriate for the purposes of this rule.

Commenters expressed concerns that the rule would not provide appropriate training for the large number of non-English speaking workers in the renovation field. One of these commenters suggested that EPA consider such means as graphic manuals, video presentations, and translators to aid in training non-English speaking workers. Another thought that a hands-on only training process overlooked possible language barriers between the certified renovator and trainee. EPA agrees that OJT can be conducted effectively by demonstration by the certified renovator or through the use of graphic training materials. The Agency plans to develop materials to assist certified renovators in conducting on-the-job training. To the extent possible, these materials will use a graphic format that does not require the use of any particular language. Moreover, renovation firms currently communicate job needs to their employees, and EPA doubts that firms routinely hire people with whom they are unable to communicate. Finally, EPA emphasizes again that the certified renovator and the renovation firm are responsible for ensuring compliance with this final rule. If the certified renovator has doubts about an employee's understanding of or ability to comply with the requirements that are relevant to the work he or she is to undertake, the certified renovator may need to be on site and direct the work more regularly than he otherwise would, or may need to perform certain tasks himself. However, given the relative simplicity of the work practices that are required between establishment of containment and cleanup, EPA does not expect that this will often be necessary.

Some commenters were concerned that OJT does not include a means to assess worker competence such as an examination. Commenters were also concerned about ongoing training needs and suggested requiring worker refresher training on a periodic or annual basis. This final rule requires a certified renovator to direct workers with OJT as necessary to ensure that

work practices are being followed. This will necessarily involve a period of observation after OJT is provided to ensure that the worker has understood and is following the work practices pertinent to his assigned duties. In addition, to some extent, OJT is continuous and certified renovators will likely need to continue to provide training to workers based on the activities that they will be expected to perform on a particular job. A certified renovator would not need to provide OJT to the same worker on consecutive jobs if the worker is performing the same work, but if the nature of the work varies, or if the firm hires a new employee, relevant OJT would have to be provided for the work to be performed. EPA believes that the continuous nature of OJT obviates the need for a refresher training requirement in the rule and will serve as an incentive for firms to have their permanent employees trained as certified renovators. EPA also believes that refresher training *per se* is not practical, given that OJT will be specific to the job in question.

Some commenters wanted some form of verification that a worker had received training, such as a certificate of training or a sticker which could be placed on an ID card. Because each worker is not likely to receive training in all aspects of lead safe work practices, a certificate or other form of training completion that would indicate an employee's OJT is complete is not appropriate for this program. It is important to note that OJT is not as portable as certified renovator training nor is it intended to be. Certified renovators carry a training certificate that they can present to each new employer to prove that they have received training in the required work practices. There is no corresponding document that can be used to verify OJT by a previous employer. Renovation firms will generally need to provide OJT each time a new worker is used. It is also the renovation firm's responsibility to adequately document the elements of OJT provided to each worker on each project.

Because a certified renovator must be assigned to each and every renovation covered by this regulation, EPA anticipates that some renovation contractors and property management companies will find that they achieve maximum efficiency and flexibility by qualifying all of their permanent employees who perform renovations as certified renovators. However, due to the industry's high employee turnover rates and short-term labor needs, the Agency believes that training flexibility

in the form of on-the-job training is needed. EPA believes that such flexibility will provide firms the ability to respond to variable labor demands and will not compromise the safety of this final rule. EPA is concerned that a regulation requiring formal, classroom training for every worker performing any renovation activity would be unrealistic for this industry and therefore less effective at ensuring that the renovation work force is trained in work practices than the more balanced training requirements in this final rule.

b. *Dust sampling technicians.* Except as provided in 40 CFR 745.85(c), this final rule does not allow dust clearance sampling to be performed in lieu of post-renovation cleaning verification. However, some property owners may still choose to have dust clearance sampling performed after the renovation. Dust sampling technicians certified in accordance with this final rule will be available to perform dust clearance sampling after renovations and for purposes of HUD's Lead Safe Housing Rule.

Some commenters questioned the need for dust sampling technicians. One stated that there is no benefit to creating a third inspection-type discipline that has such limited training requirements. Two commenters thought that only EPA- or State-certified risk assessors should be allowed to collect dust wipe clearance samples and two commenters thought that dust sampling technicians should be required to work under a certified risk assessor or inspector.

In 1999, in order to make accurate dust testing for lead more available and affordable, Congress provided EPA with funding for the development of a 1 day dust sampling technician course. Congress also encouraged the Agency to promote the recognition of this discipline. EPA completed the development of the course, entitled *Lead Sampling Technician Training Course*, in July of 2000. This course provides instruction on how to conduct a visual assessment for deteriorated paint, collect samples for lead dust, and interpret sample results. The training curriculum provides clearance sampling instruction that is equivalent to that presented in inspector and risk assessor courses, in terms of time and quality with respect to dust sampling. Therefore, EPA can recommend that property owners and others who wish to have optional dust sampling performed use the services of a certified inspector, risk assessor, or dust sampling technician.

c. *Certification of individuals—i. Initial certification.* Section 745.90 of this final rule addresses renovator and

dust sampling technician certification. To become a certified renovator, a person must successfully complete a renovator course accredited by EPA or by a State, Territorial, or Tribal program authorized by EPA under 40 CFR part 745, subpart Q. The renovator course accreditation requirements are based on the joint EPA-HUD model curriculum entitled *Lead Safety for Remodeling, Repair, & Painting*. EPA is not requiring additional education or work experience of persons wishing to become certified renovators. EPA renovator certification will allow the certified individual to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program authorized under 40 CFR part 745, subpart Q. To become a certified dust sampling technician, a person must successfully complete a dust sampling technician training course that has been accredited either by EPA or by a State, Territorial, or Tribal program authorized by EPA under 40 CFR part 745, subpart Q. EPA is not requiring additional education or work experience of persons wishing to become certified dust sampling technicians.

The final rule also establishes, in 40 CFR 745.91, procedures for suspending, revoking, or modifying an individual's or firm's certification. These procedures are very similar to the current procedures in place at 40 CFR 745.226(i) for suspending, revoking, or modifying the certification of an individual who is certified to perform lead-based paint activities. In addition, under the final rule, renovator certification can be suspended, revoked, or modified if the certified renovator does not conduct projects to which he or she is assigned in accordance with the work practice requirements of this final rule. Finally, in order to ensure that the effect of a suspension, revocation, or modification determination is clear to the certified individual or firm, EPA has added language to this section ensuring that the commencement date and duration of a suspension, revocation, or modification is identified in the Presiding Officer's decision and order. EPA has also added language to this section to clarify what steps an individual or firm must take after such an action in order to exercise the privileges of certification again. An individual whose certification has been suspended must take a refresher training course in the appropriate discipline in order to make his or her certification current, while an individual whose certification has been revoked must take another initial training course in order to be re-certified. A firm whose

certification has been suspended need not do anything after the suspension ends to become current again, as long as the suspension ends before the firm's certification expires. If the firm's certificate expires during the suspension, the firm must apply for recertification after the suspension ends. If a firm's certification is revoked, the firm must apply for certification after the revocation period ends in order to be certified.

Some commenters questioned the need for a certification requirement, emphasizing that it is the training that is important rather than the certification. One commenter thought that, since firms will have to be certified, there was no added value in certifying renovators. Others supported certification and some thought renovators should have to apply to EPA to receive their certification in the same way that abatement workers do, stating that no regulatory program can work unless the regulating agency can reliably identify and contact the regulated individuals. One commenter thought that there should also be a work experience requirement for certified renovators.

EPA believes that renovators must be certified so that the Agency has a mechanism to verify an individual has received the appropriate training. In addition, if a contractor does not comply with the regulatory standards then withdrawal of the renovator's certification is a regulatory remedy available to the Agency. The final rule includes a certification process that is more streamlined than the individual certification process of the Agency's abatement regulations. In the abatement program, an individual must complete training, then submit an application and fee to the Agency and, depending on the discipline, take a third party exam in order to be certified. In contrast, an individual will be considered a certified renovator upon successful completion of an accredited training program, and the accredited training program is required to submit identifying and contact information to EPA regarding the individuals that they have trained. EPA does not believe that work experience requirements are necessary because previous experience in the construction or renovation industry would do little to help an individual understand or perform the work practices, which are not a standard practice in the industry. Consequently, there is no relevant work experience for EPA to require. In addition, the work practices required by this final rule are sufficiently straightforward that EPA does not believe it is necessary to

require work experience in addition to certified renovator training.

Because EPA is not requiring any additional education or work experience requirements, or a third-party examination similar to that taken by inspector, risk assessor, or supervisor candidates, EPA believes that there is little value in requiring candidates to apply to EPA to receive their renovator or dust sampling technician certification. Currently, the only certified discipline without prerequisites in education or experience, or a third-party examination, is the abatement worker. When candidates for worker certification apply to EPA, EPA verifies that the copy of the training course certificate submitted with the application is from an accredited training provider. Without requiring renovators or dust sampling technicians to apply to EPA for certification EPA will still receive course completion information from course providers. With this information, EPA will have a complete list of certified renovators and will be able to check to see if a particular course completion certificate holder appeared on a course completion list submitted by the training course provider identified on the certificate. When EPA inspects a renovation job for compliance with these regulations, EPA will have the ability to verify, to the same extent, the validity of a course completion certificate held by a renovator at that job. Therefore, under this final rule, EPA is requiring that a course completion certificate from an accredited training provider serve as a renovator's or dust sampling technician's certification. To facilitate compliance monitoring, the rule requires a certified renovator or dust sampling technician to have a copy of the course completion certificate at the job site.

Several commenters saw the need for a way to determine that a certified renovator was current with applicable training requirements. Suggestions for proof of training included issuing photo IDs, issuing a hard card or certificate, and establishing a national database of workers with current training. One commenter thought that it should be the responsibility of the training provider to certify that renovators have successfully completed the training requirements and to then supply EPA with all of the information. EPA agrees that there must be a way to determine if a renovator is certified and is current with training requirements. The Agency agrees that a database of renovator information would be important, and will include identifying and training information in

the Agency's Federal Lead Paint Program (FLPP) database. However, this database will only contain information about certified renovators working in federally administered jurisdictions. In addition, the Agency will require training programs to include a photograph of the individual who completes renovator or dust sampling technician training on the training certificate and to submit that photo to the Agency to be included in the database record. This will enable inspectors to determine whether a particular individual has received training from an accredited training provider.

Some of the commenters had concerns specific to small businesses. Two commenters stressed the need for outreach programs to inform small businesses of new compliance requirements. One commenter stated that smaller firms should not be exempt from training and certification requirements; another thought that small businesses would continue to operate without appropriate training and certification unless there was some type of enforcement. EPA understands that the task of communicating this final rule requirements to the renovation community will be challenging. Therefore, EPA is developing a comprehensive outreach and communications program to support this final rule. This will include outreach to contractors as well as consumers. In addition the Agency plans to roll out a compliance assistance effort to complement this undertaking.

One commenter suggested that authorized State, Territorial, or Tribal programs include the requirement for training as part of a contractor licensing function, thereby eliminating the need to create a special (new) lead renovator's certification or license. EPA agrees that where a State, Territory, or Tribe has a pre-existing relationship with renovation contactors, such as a renovators' licensing program, the simplest and most cost-effective approach may be to incorporate a requirement for lead safe work practice training into that pre-existing program.

ii. *Recertification.* Under this final rule EPA is requiring that renovators and dust sampling technicians who wish to remain certified take refresher training every 5 years. In addition, EPA is requiring that the refresher training course be half the length of the initial course. This is consistent with current practice for certified individuals performing lead-based paint activities. If an individual does not take a refresher course within 5 years of the date he or she completed the initial course or the

previous refresher course, that individual's certification will expire on that date and that individual may no longer serve as a certified renovator or dust sampling technician. There is no grace period. To become certified again, the individual must take another initial training course. In addition, under this final rule a certified renovator may choose to take the initial renovator course instead of a refresher course to allow maximum flexibility, particularly if for some reason the person was unable to attend a refresher course.

Some commenters asserted that the refresher requirement was of no benefit or imposed an unnecessary cost. These commenters reasoned that lead-safe work practices were not likely to change significantly over time. One noted that HUD's experience with lead-safe work practices training since 1999 has not revealed a need for refresher training in their program. Commenters who supported refresher training differed on the frequency of the training and the length of the refresher course. Some agreed that refresher training should be required every 3 years, others thought it should be required biennially, annually, or every 3 to 6 months. One commenter agreed with the proposed 4-hour course, two commenters thought a 4-hour course was too short, and one thought that instead of completing a refresher, certified renovators should be required to retake the initial training course every 2 to 3 years. One commenter stated that a certified renovator should have the opportunity to take a third party test and allow the renovator to "test out" of having to complete the refresher course.

After considering the range of concerns raised by the commenters, EPA has concluded that refresher training is important for renovators and dust sampling technicians and for the Agency. During the refresher course, renovators and dust sampling technicians are given the opportunity to discuss any point of emphasis and to be updated on changes in the regulations or technical issues. For example, refresher training could be used to update renovators on availability of new techniques and products, such as test kits. Refresher training provides the Agency with a mechanism to pass along critical information to certified individuals and to keep track of the workforce. However, EPA has determined that these purposes can be adequately served by 4-hour refresher training every 5 years, instead of every 3 years. This provides a reasonable period between trainings that limits training costs while providing an opportunity to update renovators and

dust sampling technicians regarding regulations and technical issues. EPA believes that most renovators will not also be certified abatement professionals, so the difference in the length of time between required refresher courses should not confuse individuals about their responsibilities under the two programs.

iii. *Grandfathering.* Under this final rule, individuals who successfully completed an accredited abatement worker or supervisor course, and individuals who successfully completed either HUD, EPA, or the joint EPA/HUD model renovation training courses may take an accredited refresher renovation training course in lieu of the initial renovation training to become a certified renovator. In addition, individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course, but are not currently certified in the discipline, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Inspectors and risk assessors who are certified by EPA or an authorized program are qualified to perform dust sampling as part of lead hazard screens, risk assessments, or abatements. Therefore, it would be unnecessary for a certified inspector or risk assessor to seek certification as a dust sampling technician.

A number of commenters thought that certification should be given to those who have already attended appropriate training. Some of these commenters thought that individuals who had received EPA, HUD, or State-approved Lead Safe Work Practices (LSWP) training should be grandfathered. One commenter thought individuals that had completed OSHA's 40-hour Hazardous Waste Operations and Emergency Response course should also be grandfathered and another wanted individuals that had taken the National Apartment Association's lead worker training course to be grandfathered. Four commenters were in favor of grandfathering dust sampling technicians that have previously completed a dust sampling course.

Most of the commenters who expressed an opinion agreed with grandfathering previously trained individuals but suggested that there be restrictions. Some of these commenters thought that in order to receive credit the training needed to have been completed in the last 2 to 3 years while others thought that certification should be given only if a refresher or "gap" course were completed. One commenter thought that the quality of the previous

course should be taken into account and another commenter thought that a one-size fits all rule would not be appropriate and that factors including previous course requirements, the facility that had provided the training, and time elapsed since initial training should all be considered in establishing requirements for streamlined certification. One commenter opposed grandfathering, noting that existing courses do not cover lead test kits, cleaning verification, or recordkeeping in accordance with the proposed rule.

The final rule allows individuals who have successfully completed model renovation courses developed by HUD or EPA and individuals who have taken an abatement worker or supervisor course accredited by EPA or an authorized State or Tribal program to become certified renovators by taking EPA-accredited renovator refresher training. Individuals who have successfully completed a risk assessor or inspector course accredited by EPA or an authorized State or Tribal program can become certified dust sampling technicians by taking EPA-accredited dust sampling technician refresher training. EPA is recognizing only EPA and HUD model renovation training and lead-based paint activities training courses accredited by EPA or an authorized State, Territorial, or Tribal program because EPA has not sufficiently evaluated the content of other courses. In addition, it would be unwieldy to develop the content of multiple refresher courses based on the content of different initial training courses. While the recognized training provides meaningful information relevant to these disciplines, it does not include some specific requirements of this final regulation. Therefore, EPA is requiring these individuals to receive refresher training to ensure they are familiar with the requirements of this final rule. Training providers are required to notify EPA of the individuals who become certified by successfully completing the refresher training. This information will support EPA's compliance assistance programs.

2. *Renovation firms*—a.

Responsibilities of renovation firms.

Under this final rule, firms must ensure that all persons performing renovation activities on behalf of the firm are either certified renovators or have been trained and are directed by a certified renovator in accordance with 40 CFR 745.90. The firm is responsible for assigning a certified renovator to each renovation performed by the firm and ensuring that the certified renovator discharges all of the responsibilities identified in this final rule. The firm must ensure that the

information distribution requirements in 40 CFR 745.84 are met. As mentioned above, the certified renovator is responsible for ensuring compliance with 40 CFR 745.85 at all renovations to which he or she is assigned. The firm is also responsible for ensuring that all renovations performed by the firm are performed using certified renovators and in accordance with the work practice standards in proposed 40 CFR 745.85.

Where multiple contractors are involved in a renovation, any contractor who disturbs, or whose employees disturb, paint in excess of the minor maintenance exception is responsible for compliance with all of the requirements of this final rule. In this situation, renovation firms may find it advantageous to decide among themselves which firm will provide pre-renovation education to the owners and occupants, which firm will establish containment, and which firm will perform the post-renovation cleaning and cleaning verification. For example, a general contractor may be hired to conduct a multi-faceted project involving the large-scale disturbance of paint, which the general contractor then divides up among several subcontractors. In this situation, having the general contractor discharge the obligations of the Pre-Renovation Education Rule is likely to be the most efficient approach, since this only needs to be done once. With regard to containment, the general contractor may decide that it is most cost-effective to establish one large work area for the entire project. In this case, from the time that containment is established until post-renovation cleaning verification occurs, all general contractor and subcontractor personnel performing renovation tasks within the work area must be certified renovators or trained and directed by certified renovators in accordance with this rule. In addition, these personnel are responsible for ensuring the integrity of the containment barriers. The cleaning and post-renovation cleaning verification could be performed by any properly qualified individuals, without regard to whether they are employees of the general contractor or a subcontractor. However, all contractors involved in the disturbance of lead-based paint, or who perform work within the work area established for the containment of lead dust and debris, are responsible for compliance with this final rule, regardless of any agreements the contractors may have made among themselves.

b. *Certification of firms*—i. *Initial certification*. This final rule requires

firms that perform renovations, as defined by this rule, to be certified by EPA. EPA is adding a definition of “firm” to § 745.83 to make it clear that this term includes persons in business for themselves, i.e., sole proprietorships, as well as Federal, State, Tribal, and local governmental agencies, and nonprofit organizations. Firms covered by this final rule include firms that typically perform renovations, such as building contractors or home improvement contractors, as well as property management companies or owners of multi-family housing performing property maintenance activities that include renovations within the scope of this final rule.

This final rule provides information about the certification and re-certification process, establishes procedures for amending and transferring certifications, and identifies clear deadlines. A firm wishing to become certified to perform renovations must submit a complete “Application for Firms,” signed by an authorized agent of the firm, along with the correct certification fee. EPA intends to establish firm certification fees in a separate rulemaking. EPA will approve a firm’s initial application within 90 days of receipt if it is complete, including the proper amount of fees, and if EPA determines that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to comply with applicable environmental statutes or regulations. EPA will generally consider the following to be an indication that the applicant is unwilling or unable to comply with environmental statutes or regulations if, during the past 3 years, the applicant has:

- A criminal conviction under a Federal environmental statute;
- An administrative or civil judgment against the applicant for a willful violation of a Federal environmental statutory or regulatory requirement; or
- More than one administrative or civil judgment for a violation of a Federal environmental statute. Violations that involve only recordkeeping requirements will not be considered.

If the application is approved, EPA will establish the firm’s certification expiration date at 5 years from the date of EPA’s approval. EPA certification will allow the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program authorized under 40 CFR part 745,

subpart Q. If the application is incomplete, EPA will notify the firm within 90 days of receipt that its application was incomplete, and ask the firm to supplement its application within 30 days. If the firm does not supplement its application within that period of time, or if EPA’s check into the compliance history of the firm revealed an unwillingness or inability to comply with environmental statutes or regulations, EPA will not approve the application and will provide the applicant with the reasons for not approving the application. EPA will not refund the application fees. A firm could reapply for certification at any time by filing a new, complete application that included the correct amount of fees.

This final rule provides firms with more time to amend their certification whenever a change occurs. A firm must amend its certification within 90 days whenever a change occurs to information included in the firm’s most recent application. If the firm failed to amend its certification within 90 days of the date the change occurred, the firm would not be authorized to perform renovations until its certification was amended. Examples of amendments include a change in the firm’s name without transfer of ownership, or a change of address or other contact information. To amend its certification, a firm must submit an application, noting on the form that it was submitted as an amendment. The firm must complete the sections of the application pertaining to the new information, and sign and date the form. The amendment must include the correct amount of fees. Amending a certification will not affect the validity of the existing certification or extend the certification expiration date. EPA will issue the firm a new certificate if necessary to reflect information included in the amendment. Firm certifications are not transferable—if the firm is sold, the new owner must submit a new initial application for certification in accordance with 40 CFR 745.89(a). The final rule also includes procedures for suspending, revoking, or modifying a firm’s certification. These procedures are very similar to the current procedures in place for suspending, revoking, or modifying the certification of a firm that is certified to perform lead-based paint activities.

Some commenters questioned the need for firm certification, while others, including industry representatives, supported it. The Agency believes that firm certification is necessary for several reasons. First, certification is an important tool for the Agency’s

enforcement program. To become certified, a firm acknowledges their responsibility to use appropriately trained and certified employees and follow the work practice standards set forth in the final rule. This is especially important under this final rule, since the certified renovator is not required to perform or be present during all of the renovation activities. Under these circumstances, it is important for the firm to acknowledge its legal responsibility for compliance with all of the final rule requirements, since the firm both hires and exercises supervisory control over all of its employees. Should the firm be found to violate any requirements, its certification can be revoked, giving the firm a strong incentive to ensure compliance by all employees.

ii. *Recertification.* Under 40 CFR 745.89(b), a certified firm maintains its certification by submitting a complete and timely "Application for Firms," noting that it is an application for re-certification, and paying the required re-certification fee. With regard to the timeliness of the application for re-certification, if a complete application, including the proper fee, is postmarked 90 days or more before the date the firm's current certification expires, the application will be considered timely and sufficient, and the firm's existing certification will remain in effect until its expiration date or until EPA has made a final decision to approve there-certification application, or not, whichever occurs later. If the firm submits a complete re-certification application fewer than 90 days before the date the firm's current certification expired, EPA might be able to process the application and re-certify the applicant before the expiration date, but this would not be guaranteed. If EPA does not approve the re-certification application before the existing application expired, the firm's certification expires and the firm is not able to conduct renovations until EPA approves its re-certification application. In any case, the firm's new certification expiration date will be 5 years from the date the existing certification expired.

If the firm submits an incomplete application for re-certification and EPA does not receive all of the required information and fees before the date the firm's current certification expires, or if the firm does not submit its application until after its certification expired, EPA will not approve the firm's re-certification application. The firm cannot cure any deficiencies in its application package by postmarking missing information or fees by its certification expiration date. All

required information and fees must be in EPA's possession as of the expiration date for EPA to approve the application. If EPA does not approve the application, the Agency will provide the applicant with the reasons for not approving the re-certification application. Any fees submitted by the applicant will not be refunded, but the firm can submit a new application for certification, along with the correct amount of fees, at any time.

As with initial applications, this final rule includes a description of the actions EPA may take in response to an application for re-certification and the reasons why EPA will take a particular action. This section is identical to the process for initial applications, except that EPA will not require an incomplete application to be supplemented within 30 days of the date EPA requests additional information or fees. In the re-certification context, the firm must make its application complete by the date that its current certification expires.

Several commenters thought that firms should not be required to be re-certified because the firm's certification is not based on knowledge or technology, but rather on a promise to abide by the rules. The Agency believes that firm re-certification is an important element of the final regulation. Firm re-certification provides a mechanism for EPA to keep its records current with respect to firms actively engaged in renovations. Re-certification also provides a means for EPA to ensure that it has updated firm contact information. Re-certification also prompts the firm to positively reaffirm their commitment to adhere to the requirements set forth in this regulation. Finally, re-certification allows EPA an opportunity to review a firm's compliance history before it obtains re-certification. However, EPA has determined that these purposes can be adequately served by re-certifying renovation firms every 5 years instead of every 3 years as proposed.

D. Training Provider Accreditation and Recordkeeping

EPA is amending the general accreditation requirements of 40 CFR 745.225 to apply to training programs that offer renovator or dust sampling technician courses for certification purposes. The regulations describe training program qualifications, quality control measures, recordkeeping and reporting requirements, as well as suspension, revocation, and modification procedures. Amendments to § 745.225 add specific requirements for the renovator and dust sampling technician disciplines. Also included are minimum training curriculum,

training hour, and hands-on requirements for courses leading to certification as a renovator or a dust sampling technician. As discussed in the previous Unit of this preamble, to assist EPA compliance inspectors in determining whether a renovator at a renovation work site successfully completed an accredited renovator training course, this final rule also requires providers of renovator training to take a digital photograph of each individual who successfully completes a renovator training course, include that photograph on the individual's course completion certificate, and provide that photograph to EPA along with the training course provider's post-training notification required by 40 CFR 745.225(c)(14).

Training course providers that obtained accreditation to offer renovator or dust sampling technician training would have to comply with the existing recordkeeping requirements for lead-based paint activities training course providers. These existing recordkeeping provisions require providers to maintain records of course materials, course test blueprints, information on how hands-on training is delivered, and the results of the students' skills assessments and course tests. EPA received no comments on this aspect of the proposed recordkeeping requirements. These requirements are currently working well for lead-based paint activities training providers and EPA believes they will work equally well for renovation training providers. Therefore, EPA is finalizing this requirement as proposed. Training course providers who receive accreditation to provide renovator or dust sampling technician courses must comply with the recordkeeping requirements of 40 CFR 745.225(i).

1. *Renovator training.* The minimum curriculum requirements for an initial renovator course are described in 40 CFR 745.225(d)(6). The topics include the roles and responsibilities of a renovator; background information on lead and its health effects; background on applicable Federal, State, and local regulations and guidance; use of acceptable test kits to test paint to determine whether it is lead-based paint; methods to minimize the creation of lead-based paint hazards during renovations; containment and clean-up methods; ways to verify that a renovation project has been properly completed, including cleaning verification; and waste handling and disposal. Hands-on activities relating to renovation methods, containment and clean-up, cleaning verification, and waste handling would be required in all courses. Section 745.225(c)(6)(vi)

establishes the minimum length for an initial renovator course at 8 training hours, with 2 hours being devoted to hands-on activities.

Commenters raised concerns and had suggestions regarding how certified renovator training should be conducted in three broad areas: Course length; course content and format; and training of non-English speaking renovators.

a. *Course length.* Several commenters raised concerns about the length of the certified renovator training course. Some agreed with the training length as defined in the rule, others stated it was too short or too long, and one said that the length of the training should not be defined in the rule. In establishing the minimum requirements for the renovator course, the Agency considered the many types of activities that would likely be performed during renovation, remodeling, and painting activities and tried to balance that with the need for a training course that would address the necessary skills without being overly burdensome on the part of the trainee. The suggested course schedule for the EPA/HUD lead-safe work practices curriculum "Lead Safety for Remodeling, Repair, & Painting" calls for an 8-hour training day, including lunch, two breaks, and an hour-long course test. The course is designed in a modular format, so that it can be delivered in 1 day or over two or more days, at the discretion of the training provider. Based on a review of the material and the suggested schedule, EPA believes that "Lead Safety for Remodeling, Repair, and Painting" can be modified to include material on the use of test kits and performing cleaning verification and still fit within eight training hours. However, any attempt to cover all of the required elements in a shorter period of time would likely result in a significant reduction in the level of detail with which the elements are presented. A minimum requirement for eight training hours represents a reasonable minimum requirement for the renovator course and gives training course providers an indication of the amount of time that EPA has determined through experience with the EPA/HUD curriculum that it takes to adequately cover each required training element.

b. *Course content and format.* Most commenters agree that the certified renovator course should include a hands-on training portion and several of these agree that the hands-on portion should not be any shorter than two hours as proposed. Other commenters suggested that the hands-on portion of the training should be allowed to be conducted as a demonstration via a

remote delivery system (DVD or Internet). EPA agrees that development of a procedure to address the hands-on component of the renovator course via remote delivery systems would be beneficial. This final rule does not preclude training providers from developing alternative methods for the delivery and evaluation of training for submission for approval to EPA.

Several commenters had suggestions as to the certified renovator training content. Two recommended that the renovator course include training on recordkeeping requirements. EPA agrees with these commenters, and has added the element of recordkeeping to the required training course elements for renovators. Because EPA has modified the recordkeeping requirements, as discussed below, to require the certified renovator to prepare the records associated with renovations to which he or she is assigned, the renovation training course will include a recordkeeping component. Three commenters suggested that, if the certified renovator is responsible for providing OJT to other renovation workers, the renovator training course should include a train-the-trainer component. EPA agrees with these commenters and has added a train-the-trainer element to the required elements for the renovator training course. In addition, EPA will develop a train-the-trainer component for its model renovator training course. Other commenters suggested that the required training elements include OSHA health and personal safety requirements. The Agency agrees that these are relevant topics and considers an overview of the OSHA requirements to be part of the required element of background on applicable Federal, State, and local regulations and requirements. To ensure that this is clear, EPA has modified this provision to state that the background information must include EPA, HUD, OSHA, and other Federal, State, and local regulations and guidance. Consistent with its approach in other courses related to lead-based paint activities, the Agency believes that identifying potential OSHA requirements, rather than requiring in-depth curriculum components, is the best way to make trainees aware of those requirements and yet avoid redundancies between EPA- and OSHA-required courses.

c. *Training of non-English speaking renovators.* Renovator and dust sampling technician courses, both initial and refresher, can be taught in any language, but accreditation would be required for each specific language the provider wished to present the

course in. All course materials and instruction for the course would have to be in the language of the course. The modification to § 745.225(b)(1)(ii) clarifies that all lead-based paint courses taught in different languages are considered different courses, and accreditation must be obtained for each. To facilitate accreditation of courses in languages other than English, EPA is requiring that the training provider include in its application both the English version as well as the non-English version of all training materials, in addition to a signed statement from a qualified, independent translator that the translator has compared the non-English language version of the course materials to the English-language version and that the translation is accurate. This requirement applies to any course for which accreditation is sought, including lead-based paint activities courses. Finally, to assist EPA in monitoring compliance with these requirements, EPA is requiring that course completion certificates include the language in which the course was taught.

Several commenters agreed that the needs of non-English speaking workers should be considered. Commenters suggested that EPA translate its model course into other languages and/or facilitate free access to such translations. EPA agrees that it is important to have renovator training available in languages other than English. EPA anticipates translating its revised model renovator course into Spanish. EPA will also consider translating the course into other languages. However, EPA is not able to make available proprietary material developed by training course providers that is then translated by those providers into other languages.

2. *Dust sampling technician training.* The minimum curriculum requirements for an initial dust sampling technician course are described in 40 CFR 745.225(d)(7). The topics include the roles and responsibilities of a dust sampling technician; background information on lead and its adverse health effects; background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities; dust sampling methodologies; clearance standards and testing; and report preparation and recordkeeping requirements. Section 745.225(c)(6)(vii) establishes the minimum length for an initial dust sampling technician course at 8 training hours, with 2 hours being devoted to hands-on activities. EPA received relatively few comments specifically on the content of dust

sampling technician training; most had to do with the length of the training course. EPA has developed a model dust sampling technician course (Ref. 33). This course has been designed to be delivered in one 8-hour training day, including lunch, breaks, and a course test. As with the EPA/HUD "Lead Safety for Remodeling, Repair, & Painting" curriculum, EPA believes that this is a reasonable minimum requirement for the dust sampling technician course and it gives training course providers an indication of the amount of time that EPA has determined it takes to adequately cover each required training element.

E. Work Practices

This final rule requires that all renovations subject to this rule be conducted in accordance with a defined set of work practice standards. Again, this final rule is a revision of the existing TSCA section 402(a) Lead-based Paint Activities Regulations to extend training, certification, and work practice requirements to certain renovation and remodeling projects in target housing and child-occupied facilities. In so doing, EPA did not merely modify the scope of the current abatement requirements to cover renovation and remodeling activities. Rather, EPA has carefully considered the elements of the existing abatement regulations and is revising those regulations in a manner that reflects the differences between abatement and renovation activities.

Work practices for abatement are part of larger range of activities that are intended to identify and eliminate lead-based paint hazards. When abatements are conducted, residents typically are removed from the home until after the abatement activities are completed, which is demonstrated through the use of clearance testing. This may require the removal of carpeting, refinishing, sealing, or replacement of floors to achieve clearance. Accordingly, clearance testing is part of a broader set of activities that comprise abatement, with the purpose of permanently eliminating existing lead-based paint hazards.

Renovation, repair, and painting activities typically are conducted while the residents are present in the dwelling and are not activities intended to eliminate lead-based paint hazards. Work practices for renovation, repair, and painting are designed to minimize exposure to lead-based paint hazards created by the renovation both during the renovation, while residents are likely to be present in the dwelling, and after the renovation. The work practices

are not intended to address pre-existing hazards.

1. *In general.* This final rule incorporates work practice standards generally derived from the HUD Guidelines, EPA's draft technical specifications for renovations, and the model training curriculum entitled *Lead Safety for Remodeling, Repair, & Painting* (Refs. 18, 34, and 35). For more information on the development of these documents, please consult Unit III.C. of the preamble to the 2006 Proposal. To reduce exposure to lead-based paint hazards created by renovation activities, the work practice standards in this regulation provide basic requirements for occupant protection, site preparation, and clean-up.

Commenters generally felt that work practices are important and should be clear and correctly followed. One commenter stated that the rule has "tremendous potential for making a difference," especially in establishing and "reinforcing the industry norm." One commenter noted that EPA should "set simple and flexible work practices." Another commenter asked for less specificity. EPA believes that this final rule provides certified renovators an appropriate blend of flexibility and specificity. EPA believes that, due to the highly variable nature of renovation activities, flexibility is needed for certain tasks, such as establishing containment, and that other tasks, such as specialized cleaning, require a greater degree of specificity.

2. *Occupant protection.* This final rule requires the firm to post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. In addition, it requires that the certified renovator be physically present at the work site when the required signs are posted. These signs must be posted before beginning the renovation and must remain in place until the renovation has been completed and cleaning verification has been completed. The signs must be, to the extent practicable, provided in the occupants' primary language. If warning signs have been posted in accordance with HUD's Lead Safe Housing Rule (24 CFR 35.1345(b)(2)) or OSHA's Lead in Construction Standard (29 CFR 1926.62(m)), additional signs are not required.

Three commenters stated that the required signs for posting at a work site should be in the language of the occupant. One commenter stated that such a requirement would be consistent with HUD's Lead Safe Housing Rule

requirements. EPA agrees that having signs in the language of the occupant is preferable. However, the Agency is concerned that renovators will not have the ability to provide signs in every language, and that it may be the case that occupants, especially in multi-family dwellings, will speak a variety of languages. In the HUD Lead Safe Housing Rule, HUD addressed this issue by requiring that signs, to the extent practicable, be provided in the occupants' primary language. Therefore, consistent with HUD's Lead Safe Housing Rule, this final rule requires warning signs, to the extent practicable, to be provided in the occupants' primary language.

3. *Containment.* This final rule requires that the firm isolate the work area so that dust or debris does not leave the work area while the renovation is being performed. In addition, EPA has clarified that the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that dust or debris does not leave the work area while the renovation is being performed.

In addition, EPA has made conforming changes to the performance standard that renovators and renovation firms are being held to in this final rule. EPA was concerned that the rule text and preamble were confusing because there were references to "visible" dust and debris or "identifiable" dust and debris and "all" dust and debris. For example, in the 2006 Proposal "work area" was defined as the area established by the certified renovator to "contain all the dust and debris generated by a renovation." In the renovator responsibilities (as proposed at 40 CFR 745.90(b)(4)), the renovator was responsible for ensuring "that dust and debris is not spread beyond the work area." In describing the containment to be established, the rule text referred to "visible" dust and debris and in the section on waste from renovations (as proposed at 40 CFR 745.85(a)(3)) the rule text referred to "identifiable" dust. It was not EPA's intention to create subjectivity as to whether dust and debris were being dispersed. By conforming its terminology EPA is clarifying that certified renovators and renovation firms must ensure that the dust and debris (as opposed to "visible" or "identifiable" dust and debris) generated by the renovation is contained. Should an EPA inspector observe dust or debris escaping from the containment, the certified renovator and

the renovation firm would be in violation of this final rule.

This final rule also requires that the certified renovator be physically present at the work site when the required containment is established. This means the certified renovator must determine for each regulated project the size and type of containment necessary to prevent dust and debris from leaving the established work area. This determination will be based on the certified renovator's evaluation of the extent and nature of the activity and the specific work practices that will be used.

Containment refers to methods of preventing leaded dust from contaminating objects in the work area and from migrating beyond the work area. It includes, among other possible measures, the use of disposable plastic drop cloths to cover floors and objects in the work area, and sealing of openings with plastic sheeting where necessary to prevent dust and debris from leaving the work area. When planning a renovation project, it is the certified renovator's responsibility to determine the type of work site preparation necessary to prevent dust and debris from leaving the work area.

Renovation projects generate varying amounts of leaded dust, paint chips, and other lead-contaminated materials depending on the type of work, area affected, and work methods used. Because of this variability, the size of the area that must be isolated and the containment methods used will vary from project to project. Large renovation projects could involve one or more rooms and potentially encompass an entire home or building, while small projects may require only a relatively small amount of containment. The necessary work area preparations will depend on the size of the surface(s) being disturbed, the method used in disturbing the surface, and the building layout. For example, repairing a small area of damaged drywall would most likely require the containment of a smaller work area and less preparation than demolition work, which would most likely require a containment of a larger work area and more extensive preparation in order to prevent the migration of dust and debris from the work area. The Environmental Field Sampling Study, which found that the following activities created dust-lead hazards at a distance of 6 feet from where the work was being performed:

- Paint removal by abrasive sanding.
- Window replacement.
- HVAC duct work.
- Demolition of interior plaster walls.

- Drilling into wood.
- Sawing into wood.
- Sawing into plaster.

Based on these data, EPA believes that at least 6 feet of containment is necessary to contain dust generated by most renovation projects.

Under this final rule, at a minimum, interior work area preparations must include removing all objects in the work area or covering them with plastic sheeting or other impermeable material. This includes fixed objects, such as cabinets and countertops, and objects that may be difficult to move, such as appliances. Interior preparations must also include closing all forced air HVAC ducts in the work area and covering them with plastic sheeting or other impermeable material; closing all windows in the work area; closing and sealing all doors in the work area; and covering the floor surface in the work area, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

To ensure that dust and debris do not leave the work area, it may be necessary to close forced air HVAC ducts or windows near the work area. Doors within the work area that will be used while the job is being performed must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through, while confining dust and debris to the work area. In addition, all personnel, tools, and other items, including the exterior of containers of waste, must be free of dust and debris when leaving the work area.

For exterior projects, the same performance standard applies; namely, the certified renovator or a worker under the direction of the certified renovator must contain the work area so that dust or debris does not leave the work area while the renovation is being performed. Additionally, in response to comments suggesting that EPA follow the HUD Guidelines with respect to exterior containment requirements, EPA has incorporated a similar 10 foot minimum. Consequently, this final rule requires that exterior containment include covering the ground 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. EPA has concluded that this is an appropriate and reasonable precaution for exterior work, given the fact that some amount of

dispersal of dust or debris is likely as a result of air movement, even on relatively calm days. In addition, EPA sees value in maintaining appropriate consistency between this regulation and related HUD rules and guidelines.

In addition to such ground covering, exterior work area preparations must include, at a minimum, closing all doors and windows within 20 feet of the outside of the work area on the same floor as the renovation, and closing all doors and windows on the floors below that area. For example, if the renovation involves sanding a 5-foot by 5-foot area of paint in the middle of the third floor of a building, and that side of the building is only 40 feet long, all doors and windows on that side of the third floor must be closed, as well as all of the doors and windows on that side of the second and first floors. In situations where other buildings are in close proximity to the work area, where the work area abuts a property line, or weather conditions dictate the need for additional containment (i.e., windy conditions) the certified renovator or a worker under the direction of the certified renovator performing the renovation may have to take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or migrate to adjacent property. This may include erecting vertical containment designed to prevent dust and debris from contaminating the ground or any object beyond the work area. In addition, doors within the work area that will be used while the job is being performed must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

Some commenters agreed with the proposed procedures. One commenter agreed that with containment, dust can be contained and cleaned up sufficiently to pass the wipe test screening results. Another commenter supported the use of standard containment and cleaning practices known to reduce dust lead levels on both interior and exterior surfaces and to protect soils and gardens surrounding the house.

Some commenters asserted that the containment procedures were not stringent enough. Some suggested that EPA follow the HUD Guidelines with respect to exterior containment requirements. Others asked EPA to strengthen exterior containment requirements by specifying that containment extend at least twenty feet to collect all debris and residue and that

the rule address circumstances such as wind and rain. One commenter asserted that allowing the certified renovator complete discretion to determine what is appropriate renders the worksite containment requirements completely unenforceable and asked EPA to consider providing a minimum performance standard that all renovators must meet. EPA agrees that a minimum performance standard is necessary and that is why under this final rule EPA is requiring certified renovators to establish containment that prevents dust and debris from leaving the work area. In addition, in this rule EPA has established minimum containment requirements for both interior and exterior renovation requirements. While the certified renovator has discretion regarding the specific components and extent of containment, the renovator and firm will be in violation of this final rule if dust or debris leaves the work area for both interior and exterior renovations. If dust or debris migrates beyond the work area, that migration constitutes a violation of the rule. Accordingly, EPA does not agree with the commenter that the rule is unenforceable.

This final rule provides the certified renovator with some discretion to define the specific size and configuration of the containment to accommodate the variability in size and scope of renovations. EPA considered requiring that in all cases the entire room in which a renovation is occurring be contained, but concluded that doing so would be unwarranted. For example, a small manual sanding job in a large room would not necessarily require full room containment to isolate the work area. EPA has concluded that the most appropriate approach is to impose a minimum size for containment coupled with a performance standard--preventing dust or debris from leaving the work area--and to prescribe with reasonable specificity the containment measures that are required--e.g., use of plastic or other impermeable material, removal or covering of objects in the work area - but to provide some measure of discretion with regards to the case-specific approaches to containment.

In response to EPA's request for comments on whether there are any situations where some or all of the proposed work practices are not necessary, commenters suggested that work practices were not needed during a gut rehabilitation, although two of the commenters suggested a waiver rather than an exemption in these situations. Several commenters thought that work in unoccupied structures should not require the use of lead safe work

practices, or should have an adapted set of work practices. A commenter opined that certain interior containments may not be necessary in vacant and empty housing, but that exterior work always should use lead safe work practices to protect the environment and neighborhood. A commenter stated that there are certain activities common to multifamily and rental housing that warrant special consideration from the Agency. For example, simple painting activities that occur when rental properties turn over should not require a full suite of work practices, particularly given that most state laws require apartment owners to paint each unit at turnover. The commenter suggested that EPA consider a less restrictive set of guidelines for those properties simply undergoing routine painting during the turnover process.

EPA believes that whole house gut rehabilitation projects may demolish and rebuild a structure to a point where it is effectively new construction. In this case, it would not be a modification of an existing structure, and therefore not a renovation. However, a partial-house gut rehabilitation such as a kitchen or bathroom gut rehabilitation project clearly falls within the scope of this final rule.

EPA disagrees that temporarily unoccupied or vacant housing should be *per se* exempt from the requirements of this final rule. EPA's primary concern with exempting renovations in such housing from the work practices required by this final rule is the exposure to returning residents to lead-based paint hazards created by the renovation. However, EPA recognizes that if no child under 6 or no pregnant woman resides there, the owner-occupant may so state in writing and the requirements of this rule would not apply. In addition, for routine painting, such as at unit turnover, if such painting activity does not involve disturbing more than 6 ft² of painted surfaces per room for interiors or 20 ft² for exteriors, and otherwise meet the definition of "minor repair and maintenance," the requirements of this final rule would not apply. EPA cannot see a basis for imposing a less restrictive set of requirements for projects that disturb more than 6 ft² of painted surfaces per room for interiors or 20 ft² for exteriors.

Some commenters believed that the Proposal did not adequately address the decontamination of workers and equipment involved in a renovation. They supported the proposed requirement that all personnel, tools and other items, including the exteriors of containers of waste, be free of dust and debris before leaving the work area.

However, they believed that the proposed alternative, covering the paths used to reach the exterior of the building with plastic, was not sufficiently protective. One contended that significant lead dust contamination can be tracked or carried out of a work area if workers and equipment are not properly decontaminated. This commenter further noted that workers with contaminated clothing can take that contamination home to their own children and taking contaminated equipment to another jobsite could potentially create a lead hazard at a new site. EPA agrees with these commenters and has deleted the alternative language. The final rule requires renovation firms to use precautions to ensure that all personnel, tools and other items, including the exteriors of containers of waste, to be free of dust and debris before leaving the work area. There are several ways of accomplishing this. For example, tacky mats may be put down immediately adjacent to the plastic sheeting covering the work area floor to remove dust and debris from the bottom of the workers' shoes as they leave the work area, workers may remove their shoe covers (booties) as they leave the work area, and clothing and materials may be wet-wiped and/or HEPA-vacuumed before they are removed from the work area.

Finally, in response to a commenter who was concerned about containment not impeding occupant egress in an emergency, EPA has modified the regulatory text to specify that containment must be installed in such a manner that it does not interfere with occupant and worker egress in an emergency. This can be accomplished, as noted in chapter 17 of the HUD Guidelines, by installing plastic over doors with a weak tape.

4. Prohibited and restricted practices. The final rule prohibits or restricts the use of certain work practices during regulated renovations. These practices are open flame burning or torching of lead-based paint; the use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control; and operating a heat gun above 1100 degrees Fahrenheit. These are essentially the same practices as are currently prohibited or restricted under the Lead-based Paint Activities Regulations, 40 CFR 745.227(e)(6), with the exception of dry hand scraping of lead-based paint. While this final rule and EPA's Lead-Based Paint Activities Regulations do not prohibit or restrict the use of volatile paint strippers or

other hazardous substances to remove paint, the use of these substances are prohibited for use in poorly ventilated areas by HUD's Lead Safe Housing Rule and they are regulated by OSHA.

EPA did not propose to prohibit or restrict any work practices, but instead asked for public comment regarding their prohibition or restriction. The Agency was concerned that, because these practices are commonly used during renovation work, prohibiting such practices could make certain jobs, such as preparing detailed or historic millwork for new painting, extremely difficult, if not impossible. In addition, EPA believed that use of the proposed package of training, containment, cleanup, and cleaning verification requirements would be effective in preventing the introduction of new lead-based paint hazards, even when such practices were used. EPA is modifying the proposal based on new data evaluating specific work practices and in response to comments received.

a. *The Dust Study.* EPA understood when developing the proposed rule that considerable data existed showing the potential for significant lead contamination when lead paint is disturbed by practices restricted under EPA's Lead-based Paint Activities Regulations for abatements. EPA conducted the Dust Study, in part, to determine the effectiveness of the proposed work practices. The Dust Study evaluated a variety of renovation activities, including activities that involved several practices restricted or prohibited under the abatement regulations. For example, power planing was included in the Dust Study as a representative of machines that remove lead-based paint through high speed operation. Similarly, the Dust Study also included experiments with power sanding and a needle gun. Each of these activities generated very high levels of dust. The Dust Study thus evaluated the proposed work practice standards, using a range of typical practices currently used by contractors.

In particular, the Dust Study found that renovation activities involving power planing and high temperature heat gun resulted in higher post-job renovation dust lead levels than activities using other practices. The geometric mean post-work, pre-cleaning floor dust lead levels in the work room were 32,644 $\mu\text{g}/\text{ft}^2$ for power planing and 7,737 $\mu\text{g}/\text{ft}^2$ for high temperature heat guns. More importantly, in experiments performed in compliance with this rule's requirements for containment, cleaning, and cleaning verification, the geometric mean post-job floor dust lead levels were still 148

$\mu\text{g}/\text{ft}^2$ for power planing, well over the TSCA section 403 hazard standard for floors. While the geometric mean post-job floor dust levels for the 3 similar experiments involving high temperature heat guns, i.e., experiments performed in compliance with this rule's requirements, were 36 $\mu\text{g}/\text{ft}^2$, the average post-cleaning-verification floor dust lead levels for the individual experiments were 147.5, 65.5, and less than 10 $\mu\text{g}/\text{ft}^2$. Thus, in 2 of these 3 experiments, the requirements of this final rule were insufficient to reduce the floor dust lead levels below the TSCA section 403 hazard standards for floors. In addition, power planing and use of a high temperature heat gun generated fine particle-size dust that was difficult to clean. In fact, almost all of the high post-renovation lead levels were associated with activities involving power planing and high temperature heat guns. Moreover, activities involving power planing and high temperature heat gun jobs also resulted in higher post-job tool room and observation room lead levels than other practices.

Thus, while the Dust Study confirmed that most practices prohibited or restricted under EPA's Lead-based Paint Activities Regulations do indeed produce large quantities of lead dust, it also demonstrated that, with respect to lead-based paint hazards created by machines that remove lead-based paint through high speed operation and high temperature heat guns, the use of the proposed work practices were not effective at containing or removing dust-lead hazards from the work area.

b. *Alternatives to certain practices.* As discussed above, in the proposed rule, EPA stated a concern that, because practices prohibited or restricted under EPA's Lead-based Paint Activities Regulations are commonly used during renovation work, prohibiting or restricting such practices could make certain jobs, such as preparing detailed or historic millwork for new painting, extremely difficult or, in some cases, impossible. In response to its request for comment, the Agency received information on techniques including benign strippers, steam stripping, closed planing with vacuums, and infrared removal that the commenter believed are far superior, far safer and far cheaper than some of the traditionally prohibited or restricted practices. Another commenter noted that window removal and off-site chemical stripping in a well-ventilated setting is an alternative to using heat or mechanical methods to remove lead paint on-site. Alternatively, chemical strippers can be used on-site, given adequate ventilation

and protection for workers and building occupants. EPA is therefore persuaded that there are sufficient alternatives to these practices.

c. *Conclusion.* Based on the results of the Dust Study and in response to the voluminous persuasive public comments, this final rule prohibits or restricts the use of the following practices during renovation, repair, and painting activities that are subject to the work practice requirements of this rule:

- Open-flame burning or torching.
- Machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, unless such machines are used with HEPA exhaust control.
- Operating a heat gun above 1100 degrees Fahrenheit.

EPA has concluded that these practices must be prohibited or restricted during renovation, repair, and painting activities that disturb lead-based paint because the work practices in this final rule are not effective at containing the spread of leaded dust when these practices are used, or at cleaning up lead-based paint hazards created by these practices. Thus, the work practices are not effective at minimizing exposure to lead-based paint hazards created during renovation activities when these activities are used.

This final rule does not prohibit or restrict the use of dry hand scraping. EPA has concluded based primarily on the Dust Study as corroborated by other data described below that it is not necessary to prohibit or restrict dry scraping because the containment, cleaning, and cleaning verification requirements of this rule are effective at minimizing exposure to lead-based paint hazards created by renovations and the migration of dust-lead hazards beyond the work area when dry hand scraping is employed.

The Dust Study evaluated dry hand scraping, which is restricted under EPA's lead abatement program. In contrast to the results of the activities using power planing and high temperature heat gun, average post-job dust lead levels in the two experiments in which paint was disturbed by dry hand scraping and the work practices required by this rule were used were below the regulatory dust-lead hazard standard for floors. In addition, the National Institute for Occupational Safety and Health (NIOSH) conducted a Health Hazard Evaluation (HHE) at the request of the Rhode Island Department of Health, and published a final report in June of 2000 (Ref. 36). The purpose of the evaluation was to measure worker exposure during various tasks and to

determine whether workers were exposed to hazardous amounts of lead-based paint. Notably worker exposures were compared when scraping painted surfaces using wet and dry scraping methods (wet scraping is the customary substitute for dry scraping in abatement applications). A comparison of worker exposure found statistically equivalent worker exposures. Based on the NIOSH study, EPA has determined that dry scraping is the equivalent of its only practical alternative, wet scraping.

In sum, EPA has determined based on the studies described above and the persuasive comments, including those summarized below, provided by the overwhelming majority of commenters that its approach of prohibiting or restricting certain practices in combination with the containment, cleaning, and cleaning verification, will be effective in minimizing exposure to lead-based paint hazards created during renovation activities, provide an appropriate measure of consistency with other regulatory programs, and cause minimal disruption for renovation firms.

i. *Substantial exposures.* Numerous commenters argued that the rule should prohibit certain practices based on potential health hazards, many backed up by well-documented scientific studies and proven health-protective standards. One commenter stated, after citing several scientific studies, that removing or disturbing lead paint without proper controls causes substantial contamination, posing serious risks to occupants, workers and others. Another cited numerous scientific studies demonstrating the adverse public health implications of permitting these work practices and the availability of alternative work methods. Still another cited the EPA renovation and remodeling study and a State of Maryland study as evidence that prohibited work practices may be associated with elevated blood lead levels. One commenter cited health hazard evaluations of residential lead renovation work showing that these activities produce hazardous worker exposures. Another commenter noted that the hazards of activities that are likely to produce large amounts of lead dust or fumes are well documented, stating that, for example, the Wisconsin Childhood Blood-Lead Study found that the odds of a resident child having a blood lead level in excess of 10 µg/dL increased by 5 times after renovation using open flame torching, and by 4.6 times after heat gun use. Another commenter was concerned that previously collected data may not account for different particle-size

distribution, a factor in both the potential cleaning efficacy of work areas and the toxicology of lead poisoning.

ii. *Consistency with other standards.* Some commenters urged EPA to prohibit certain high dust generating practices for the sake of consistency with other work practice standards. Numerous commenters asserted EPA's rule should be consistent with HUD requirements to avoid confusion on the part of contractors and to conform to the standard that has been in place for nearly 6 years. One commenter noted that the regulations of several other federal agencies that administer housing programs, such as the Department of Defense, Department of Agriculture, and Veterans Affairs include prohibited practices. Other commenters noted that the proposed rule conflicted with OSHA rules and would cause confusion among contractors.

Some commenters noted that EPA's proposed rule would conflict with individual state or local regulations prohibiting some or all of these practices. One commenter listed the following states and some cities that have prohibited work practices: California, Indiana, Maine, Massachusetts, Minnesota, New Jersey, Ohio, Rhode Island, Vermont, Wisconsin, Chicago, Cleveland, New Orleans, New York City, Rochester, and San Francisco. Two commenters cited state law in Indiana, under which certain work practices are prohibited and contractors using such work practices are committing a Class D felony (422, 449).

Other commenters noted that practices that are prohibited under EPA's Lead-based Paint Activities Regulations should also be prohibited for renovation work in pre-1978 properties, and noted that in developing the abatement rule EPA demonstrated through its own studies that these practices may increase the risk of elevated blood lead levels in children.

5. *Waste from renovations.* Under this final rule the certified renovator or a worker trained by and under the direction of the certified renovator is required to ensure that all personnel, tools, and other items including waste are free of dust and debris when leaving the work area. The certified renovator or a worker trained by and under the direction of the certified renovator must also contain waste to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered. At the conclusion of each work day and at the conclusion of the renovation, the certified renovator or a

worker trained by and under the direction of the certified renovator must ensure that waste that has been collected from renovation activities is stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris from the work area and prevents access to dust and debris. This final rule also requires the certified renovator or a worker trained by and under the direction of the certified renovator transporting lead-based paint waste from a work site to contain the waste to prevent releases, e.g., inside a plastic garbage bag. As described in more detail in Unit IV.D.2.c. of the preamble to the 2006 Proposal, EPA revised its solid waste regulations in 40 CFR parts 257 and 258 to make clear that lead-based paint waste generated through renovation and remodeling activities in residential settings may be disposed of in municipal solid waste landfill units or in construction and demolition (C&D) landfills. Requirements for waste disposal may vary by jurisdiction and state and local requirements may be more stringent than Federal requirements. When disposing of waste, including waste water, from renovation activities, the renovation firm must ensure that it complies with all applicable Federal, State, and local requirements.

One commenter suggested that EPA should consider requiring that lead-contaminated waste be stored in a locked area or in a lockable storage container. This commenter also suggested that to prevent any confusion on what constitutes a covered chute, a definition or clarification should be provided in the rule. Another commenter recommended the use of "sealed" rather than "covered" chutes for waste removal, as a covered chute may not be protective enough to prevent the release of significant amounts of lead-contaminated dust. This final rule requires that waste must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. With respect to the use of chutes for waste removal, the requirement for a covered chute was proposed merely to facilitate the removal of bagged or sealed waste so that it is deposited in an appropriate waste disposal container and does not fall to the ground. EPA does not, therefore, believe that this term either needs to be further defined or to require the use of a "sealed" chute.

EPA understands that renovation projects can generate a considerable amount and variety of waste material. However, EPA believes that the requirements of the final rule protect

occupants and others from potential lead-based paint hazards presented by this waste. While storing the waste in a locked container is one way to meet the performance standard of this final rule, EPA does not believe that is necessary to specify that as a requirement. The waste may be stored in the work area, which will already be delineated with signs cautioning occupants and others to keep out. EPA believes the owner/occupants have some responsibility for observing these signs. Renovation sites pose potential hazards other than lead-based paint hazards—including the potential fall hazards, sharp protrusions, etc. In sum, the certified renovator is responsible for ensuring that lead-contaminated building components and work area debris that are stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris and prevents access to the debris. Under this final rule the certified renovator must ensure that waste leaving the work area is contained (e.g., in a heavy duty plastic bag or sealed in plastic sheeting) and free of dust or debris. This imposes a reasonable performance standard without requiring a specific approach. The certified renovator is responsible for evaluating the waste generated and the characteristics of the work site to determine the most effective way of meeting this standard.

6. *Cleaning the work area—a. Final rule requirements.* Under this final rule the certified renovator or a worker under the direction of the certified renovator must clean the work area to remove dust, debris or residue. All renovation activities that disturb painted surfaces can produce dangerous quantities of leaded dust. Because very small particles of leaded dust are easily absorbed by the body when ingested or inhaled, it can create a health hazard for children. Unless this dust is properly removed, renovation and remodeling activities are likely to introduce new lead-based paint hazards. Therefore, the rule requires prescriptive cleaning practices. Ultimately, improper cleaning can increase the cost of a project because additional cleaning may be necessary during post-renovation cleaning verification.

This final rule requires that, upon completion of interior renovation activities, all paint chips and debris must be picked up. Protective sheeting must be misted and folded dirty side inward. Sheetting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheetting; this sheetting must then be misted and removed last.

Removed sheetting must be either folded and taped shut to seal or sealed in heavy-duty bags and disposed of as waste. After the sheetting has been removed from the work area, the entire area must be cleaned including the adjacent surfaces that are within 2 feet of the work area. The walls, starting from the ceiling and working down to the floor, must be vacuumed with a HEPA vacuum or wiped with a damp cloth. The final rule requires that all remaining surfaces and objects in the work area, including floors, furniture, and fixtures be thoroughly vacuumed with a HEPA vacuum. When cleaning carpets, the HEPA vacuum must be equipped with a beater bar to aid in dislodging and collecting deep dust and lead from carpets. The beater bar must be used on all passes on the carpet face during dry vacuuming. This cleaning step is intended to remove as much dust and remaining debris as possible. After vacuuming, all surfaces and objects in the work area, except for walls and carpeted or upholstered surfaces, must be wiped with a damp cloth. Wet disposable cleaning cloths of any color may be used for this purpose. In contrast, as discussed in the next section, only wet disposable cleaning cloths that are white may be used for cleaning verification. Uncarpeted floors must be thoroughly mopped using a 2-bucket mopping method that keeps the wash water separate from the rinse water, or using a wet mopping system with disposable absorbent cleaning pads and a built-in mechanism for distributing or spraying cleaning solution from a reservoir onto a floor.

When cleaning following an exterior renovation, all paint chips and debris must be picked up. Protective sheetting used for containment must be misted with water. All sheetting must be folded from the corners or ends to the middle to trap any remaining dust and either taped shut to seal or sealed in heavy duty bags. The sheetting must be disposed of as waste.

b. *Comments on the cleaning protocol.* Several commenters proposed minor changes to the cleaning procedures. Three commenters recommended that daily clean-up be required for projects lasting more than 1 day. One commenter stated that all tools and equipment should be cleaned prior to leaving the job site. One commenter indicated concern that there is no mention of wet wiping areas such as window sills. This final rule requires cleaning both in and around the work area to ensure no dust or debris remains following the renovation. The final rule also requires that all personnel, tools, and other items including waste are free

of dust and debris when leaving the work area. EPA recommends that contractors keep work areas as clean and free of dust and debris as practical. Daily cleaning is a good practice, and it may be necessary in some cases to ensure no dust or debris leaves the work area as required by this final rule. However, EPA has no basis to believe that daily cleaning is necessary in every case or even most cases. EPA also notes that the work area must be delineated by signs so that occupants and others do not enter the area. This final rule requires the work area to be contained, and to ensure that all tools, personnel, and other items, including waste, to be free of dust and debris when leaving the work area. Under this final rule, interior windowsills and most other interior surfaces in the work area must be wet wiped. The exceptions are upholstery and carpeting, which must be vacuumed with a HEPA vacuum, and walls, which may be wet wiped or vacuumed with a HEPA vacuum.

Some commenters requested clarification of the requirement to clean “in and around the work area.” In response to the two commenters that noted that the HUD Guidelines recommend cleaning 2 feet beyond the work area, EPA has modified the regulatory text to require cleaning of surfaces and objects in and within 2 feet of the work area.

One commenter argued that vacuuming was not necessary because 40 CFR 745.85 requires the certified renovator to cover all furnishings not removed from the work area, so additional cleaning is unnecessary. EPA disagrees with this commenter. Carpets and upholstered objects that remained, covered with plastic, in the work area during the renovation must be vacuumed after the plastic is removed to ensure that the surfaces did not become contaminated during the renovation due to a breach in the containment or during the removal of the containment during clean-up.

One commenter asserted that some requirements for cleaning were not prescriptive enough. The commenter suggested that the rule text, which states that the certified renovator or a worker under the direction of the certified renovator must “pick up all paint chips and debris,” could be re-worded to state that the certified renovator or a worker under the direction of the certified renovator must “collect all paint chips, debris, and dust, and, without dispersing any of it, seal this material in a heavy-duty plastic bag.” EPA agrees that additional detail would be helpful in this instance and has modified the final rule to include this

recommendation, with the exception of dust, which is collected when the protective sheeting is misted and folded inward.

One commenter stated that the cleaning procedures were excessive and problematic. This commenter asserted that the two-bucket mopping system is inappropriate for some floor types such as wood floors for which excessive water could damage the floor. The commenter suggested that EPA allow a cleaning method employing a dry or damp cloth, or any other specified methodology, to be used in order to achieve a no dust or debris level of cleaning. Three commenters asserted that EPA's definition of wet mopping system was too specific. One commenter stated that to include "a long handle, a mop head..." in the description of the wet mopping system is too prescriptive and favors a particular model of commercial product. EPA understands that the two bucket mopping system may not be appropriate for all floor types due to the quantity of water involved. However, the HUD Guidelines recommend and the Dust Study demonstrates that wet cleaning is best able to achieve desired results. This final rule allows for the use of a wet mopping system instead of the two bucket system for the cleaning of flooring. EPA has included a definition of a wet mopping system in order to allow the regulated community to use such a system in place of the traditional two-bucket mop method. EPA's Electrostatic Cloth and Wet Cloth Field Study in Residential Housing study ("Disposable Cleaning Cloth Study"), discussed in more detail in Unit IV.E.2. of the 2006 Proposal, indicates that a wet mopping system is an effective method for cleaning up lead dust (Ref. 37). EPA believes that allowing the use of a wet mopping system like those widely available in a variety of stores should alleviate concerns regarding the quantity of water used in the cleanup. In addition, EPA disagrees that the description of a wet mopping system favors a particular model of commercial product. Rather, it generally describes any number of wet mopping systems widely available in most stores. However, to alleviate concerns that a particular model of commercial product is preferred, EPA has added the phrase "or a method of equivalent efficacy" to the end of the definition of "wet mopping system."

One commenter recommended that instead of referencing a two bucket method, EPA should consider simply stating that a method be used that keeps the wash water separate from the rinse water. EPA agrees and has revised the

regulatory text to specify a method that keeps wash water separate from rinse water, giving as an example the two bucket method.

One commenter questioned the requirement to vacuum underneath a rug or carpet where feasible. The commenter suggested that EPA clarify that this does not include permanently affixed wall-to-wall carpeting. The commenter notes that it is highly unlikely that the renovation or remodeling activity conducted in a carpeted room would have created the dust embedded underneath both the layer of plastic sheeting and the installed carpeting. EPA agrees with this commenter. EPA did not intend to require vacuuming beneath permanently affixed carpets, i.e., wall to wall carpeting, but rather that removable rugs should be removed and the area beneath vacuumed. However, small, movable, area rugs should be removed from the work area prior to the renovation and the floor beneath would be cleaned as required under this final rule. Therefore, in response to this commenter, EPA has deleted the requirement to vacuum beneath rugs where feasible.

One commenter recommended four options for cleaning carpets: Removing the carpet and pad, cleaning the underlying flooring, then replacing the carpet and pad; shampooing the carpet using a vacuum attachment that removes the suds; steam cleaning the carpet using a vacuum attachment that removes the moisture; or HEPA filtered vacuuming. This final rule seeks to minimize the introduction of lead-based paint hazards to carpeted floors by requiring the certified renovator to cover the floor of the work area with plastic sheeting, carefully clean up and remove the plastic sheeting following work, and thoroughly vacuum the carpet using a HEPA vacuum with a beater bar. EPA believes this containment and cleanup protocol will minimize exposure to lead-based paint hazards created during renovation activities. EPA does not believe a renovation contractor should be responsible for removing and replacing carpet in a home when such a requirement was not within the scope of the renovation project. Also, in contrast to the effectiveness of using a HEPA on carpets, EPA does not have sufficient data on steam cleaning or shampooing to evaluate its effectiveness. Without data to demonstrate the effectiveness of shampooing or steam cleaning carpets EPA is not prepared to require these methods be used in lieu of vacuuming with a HEPA vacuum. EPA further notes that the HUD lead-safe Housing Rule

only requires HEPA vacuuming, not steam cleaning or shampooing.

c. *Vacuums equipped with HEPA filters.* Given that the HUD Guidelines recommend the use of HEPA vacuums and the OSHA Lead in Construction standard requires that vacuums be equipped with HEPA filters where vacuums are used, EPA proposed requiring the use of HEPA vacuums in its proposed work practices. Nonetheless, EPA requested comment on whether the rule should allow the use of vacuums other than vacuums equipped with HEPA filters given. Specifically, EPA requested comment on whether there are other vacuums that have the same efficiency at capturing the smaller lead particles as HEPA-equipped vacuums, along with any data that would support this performance equivalency and whether this performance specification is appropriate for leaded dust cleanup.

i. *Background.* HEPA filters were first developed by the U.S. Atomic Energy Commission during World War II to capture microscopic radioactive particles that existing filters could not remove. HEPA filters have the ability to capture particles of 0.3 microns with 99.97% efficiency. Particles both larger and smaller than 0.3 microns are easier to catch. Thus, HEPA filters capture those particles at 100%. Available information indicates that lead particles generated by renovation activities range in size from over 20 microns to 0.3 microns or less (Ref. 38).

OSHA recently completed a public review of their Lead in Construction standard (Ref. 39). OSHA concluded that the principal concerns regarding HEPA vacuums (i.e., cost and availability) have been significantly reduced since the standard was established in 1994. HEPA vacuum cleaners have an increased presence in the marketplace and their cost has decreased significantly. Therefore, OSHA continues to require the use of HEPA vacuums in work subject to the Lead in Construction Standard.

ii. *Final rule requirements.* Vacuums used as part of the work practices being finalized in this final rule must be HEPA vacuums, which are to be used and emptied in a manner that minimizes the reentry of lead into the workplace. The term "HEPA vacuum" is defined as a vacuum which has been designed with a HEPA filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the filter with none of the air leaking past it.

iii. *Comments.* Many commenters supported the use of HEPA vacuums. Some of these commenters supported the requirement that they be used because they are also required by the OSHA Lead in Construction standard. One commenter noted that the price of HEPA vacuums had decreased and were no longer significantly more expensive than non-HEPA vacuums.

Another commenter cited the Dust Study, the NAHB Lead Safe Work Practices Survey, and several other studies as supporting the conclusion that lead-safe work practices and modified lead-safe work practices, along with a two-step or three-step cleaning process using a HEPA-equipped vacuum and wet washing, greatly reduce dust lead levels and should be regarded as best management practices for renovation jobs. The commenter notes that the NAHB study found significant reductions in loading levels after cleanup using HEPA-equipped vacuum and then either wet washing or using a wet disposable cleaning cloth mop.

One commenter contended that HEPA vacuums with beater bars were not currently available on the market at the time comments were submitted. However, EPA has been able to identify commercial vacuum manufacturers as well as department store brands that currently offer HEPA vacuums with beater bar attachments.

Several commenters noted that vacuum cleaners other than HEPA vacuums were effective at removing lead dust. They cited several papers which they asserted support their conclusion, including *Comparison of Home Lead Dust Reduction Techniques on Hard Surfaces: The New Jersey Assessment of Cleaning Techniques Trial* (2002) by Rich, *et al* (Ref. 40), a study by the California Department of Health Services (Ref. 41) which the commenter contends concluded that some non-HEPA vacuums performed better than the HEPA units tested, *Comparison of Techniques to Reduce Residential Lead Dust on Carpet and Upholstery: The New Jersey Assessment of Cleaning Techniques Trial* (2002) by Yiin, *et al* (Ref. 42), and *Effectiveness of Clean up Techniques for Leaded Paint Dust* (1992) by the Canadian Mortgage and Housing Corporation (Ref. 43).

The commenter that cited the Rich, *et al* paper contended that the authors found no clear difference between the efficacy of HEPA and non-HEPA vacuums on hard surfaces (non-carpeted floors, windowsills, and window troughs), and found that non-HEPA vacuums appeared more efficient in removing particles on uncarpeted floors, which are the hard surfaces that may

best reflect exposure to children. One commenter stated that given the research literature demonstrates that there is no performance difference in lead dust removal, EPA should allow cleanup with either a HEPA or non-HEPA vacuum. Another commenter contended that a vacuum cleaner retrofitted with a HEPA filter rather than a HEPA vacuum should be required to be used as part of the work practices.

EPA disagrees with the commenters who state that the literature does not demonstrate a difference between HEPA vacuums and non-HEPA vacuums. In the Yiin, *et al* study, the authors stated that for carpets, data from the “[Environmental and Occupational Health Sciences Institute] vacuum sampling method showed a significant reduction (50.6%, $p = 0.014$) in mean lead loading for cleaning using the HEPA vacuum cleaner but did not result in a significant difference (14.0% reduction) for cleaning using the non-HEPA vacuum cleaner.” They also note that when they used wipe sampling “the results indicated that neither of the cleaning methods yielded a significant reduction in lead loading.” EPA believes the results from the wipe sampling method is less useful because as discussed in Unit III.E.8.iv. of this preamble, the Agency believes that wipe sampling on carpets is not a reliable indicator of the lead-based paint dust in the carpet. The authors report that in their study non-HEPA vacuums were more effective than HEPA vacuums on upholstery but note “[t]he reduced efficiency of the HEPA vacuum cleaner in cleaning upholstery [as compared to carpets] may be, at least partially, due to the lower pre-cleaning dust lead level and the smaller sample data set for the HEPA vacuum cleaner than for the non-HEPA vacuum cleaner.”

In the Rich, *et al* study, the authors noted that “On windowsills, the HEPA vacuum cleaner produced 22% (95% CI, 11-32%) larger reductions than the non-HEPA vacuum cleaner, and on the window troughs it produced 16% (95% CI, -4 to 33%) larger reductions than the non-HEPA vacuum cleaner.” Not only were the percent reductions greater, the post-cleaning geometric mean lead loadings for the experiments in which the HEPA vacuums were used was lower than the post-geometric mean lead loadings for the experiments in which the non-HEPA vacuums were used. On hard floors, the authors reported that the non-HEPA vacuum removed the largest quantities of lead-based paint dust. They note that this may be due in part to the fact that the initial loadings were higher where the non-HEPA vacuums were used (Pre-

cleaning geometric mean lead loadings were 200 and 155 $\mu\text{g}/\text{ft}^2$ for the two types of experiments where non-HEPA vacuum were used) as compared to the lead loadings for the experiments in which the HEPA vacuum was used (Pre-cleaning geometric mean lead loading of 100 $\mu\text{g}/\text{ft}^2$). However, the post-cleaning geometric mean lead loading for the experiments in which the HEPA vacuum was used was lower than for either of the two types of experiments where non-HEPA vacuums were used. The post-cleaning geometric mean lead loading was lower for each set of experiments in which the HEPA vacuum was used. In considering these data, EPA believes that the data on the post-cleaning lead loadings are particularly important. In assessing the performance of cleaning methods, it is not only the percent reduction that is important but also the ability to clean down to very low levels. Several studies have demonstrated that reducing lead loadings from relatively high levels to about 100 $\mu\text{g}/\text{ft}^2$ is more readily accomplished than reductions below 100 $\mu\text{g}/\text{ft}^2$ and becomes progressively harder at lower levels (Ref. 44).

One commenter stated that EPA did not have sufficient evidence showing that HEPA vacuums are significantly better at removing lead dust than non-HEPA vacuums and cited a Canadian Mortgage and Housing Corporation study from 1992 (Ref. 43). That study was a laboratory study done in a dynamic chamber under controlled conditions and used simulated lead dust. Lead stearate, a compound not typically used in lead-based paint, was used to spike the construction dust used in the experiments. This study has various limitations. It focused on how much of the quantity of leaded dust applied to a surface was present in the vacuum bag after vacuuming. There was no assessment of the size of the dust particles collected. Most importantly, the study did not measure the quantity of leaded dust that remained on the floor. Without this data, the efficacy of the non-HEPA vacuums cannot be assessed. In addition, the study is not very informative as to what will occur under real world conditions.

Two years later, the same group (Ref. 45) studied 20 test rooms where they produced lead-containing dust by power sanding walls of known lead levels. Four cleaning methods were used, of which only two produced acceptable results. The two cleaning methods that did not produce acceptable clean-ups were: (1) Dry sweeping the floor with a corn broom followed by vacuuming with a utility vacuum; and (2) vacuuming the floor with a household

vacuum cleaner followed by wet mopping with a commercial household cleaner. The other two methods that achieved clean-ups resulting in floors that passed dust clearance testing were: (3) vacuuming the floor with a utility vacuum followed by wet mopping with a 2% solution of a commercial lead-cleaning product, followed by a rinse with clean water; and (4) vacuuming with a HEPA vacuum, followed by wet mopping with trisodium phosphate, followed by a clean water rinse, followed by more vacuuming with a HEPA vacuum. The report concludes that “. . . Cleaning Methods 1 and 2 were inadequate to meet the cleanliness criteria. . .” Later it states “Cleaning Methods 3 and 4 did meet both the current and proposed HUD criteria.”

The same commenter also referred to a report submitted to HUD by the California Department of Health Services (Ref. 41). This study evaluated a range of vacuums. The efficacy of the non-HEPA vacuums varied, particularly in comparison with the HEPA vacuums. The authors of the report did not identify the attributes of the non-HEPA vacuums that were instrumental in determining their effectiveness. At best, vacuums that were effective at picking up and retaining lead-based paint dust could be classified as high performing although there were no criteria that could be discerned on what made a high performing vacuum. The report also states that HEPA models without floor tool brushes performed poorly. This may be the case. The HEPA vacuums used in EPA's Dust Study performed adequately and all of these vacuums were equipped with flip down brushes on the floor tool.

The California report contained another finding of interest. “Of special concern is the direct observation under the scanning electron microscope of lead dust particles dissolving on exposure to water to release large numbers of sub-micron lead particles. Although requiring further study, this effect suggests that vacuuming to remove most of the water soluble lead dust, followed by wet-washing would be the best cleaning strategy.” The cleaning protocol in this final rule follows this strategy by requiring, for all surfaces in and around the work area except for walls, HEPA vacuuming, followed by wet wiping or wet mopping, followed by the cleaning verification protocol.

EPA has determined that the weight of the evidence provided by these studies demonstrate that the HEPA vacuums consistently removed significant quantities of lead-based paint dust and reduced lead loadings to lower levels than did other vacuums.

While there may be some vacuums cleaners that are as effective as HEPA vacuums, EPA has not been able to define quantitatively the specific attributes of those vacuums. That is, EPA is not able to identify what criteria should be used to identify vacuums that are equivalent to HEPA vacuums in performance. The authors of the studies discussed above do not state that the vacuums used are representative of all vacuums nor do they try to identify particular aspects of the non-HEPA vacuums. Thus, EPA does not believe that it can identify in this final rule what types of vacuums can be used as substitutes for HEPA-vacuums. EPA believes it would be ineffective to identify specific makes or models of vacuums (e.g., the ones used in the studies) in this final rule given how quickly manufacturers change models, nor would that take into account new manufacturers.

EPA also disagrees with the commenter that suggested that vacuums that are retrofitted with a HEPA filter should be considered sufficient for purposes of this rule. These vacuums are not necessarily properly sealed or designed so that the air flow goes exclusively through the HEPA filter. EPA agrees with the commenter who stated that HEPA vacuums are vacuums which have been designed for the integral use of HEPA filters, in which the contaminated air flows through the HEPA filter in accordance with the instructions of its manufacturer and for which the performance standard for the operation of the filter is defined. EPA also agrees with those commenters that contended that the rule should contain a more-specific definition of HEPA vacuum. Accordingly, this final rule defines “HEPA vacuum” as a vacuum which has been designed with a HEPA filter as the last filtration stage and includes a description of what the term HEPA means. The definition of “HEPA vacuum” also specifies that the vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the filter with none of the air leaking past it.

Furthermore, EPA agrees that OSHA's requirement that HEPA vacuums should be an important consideration in determining whether HEPA vacuums should be required to be used as part of the work practices being finalized today. Because OSHA's standard covers practically all work subject to EPA's final Renovation, Repair, and Painting program regulations, and applies to all firms having an employee/employer relationship with few exceptions, there is no reason to create a separate standard for those firms not subject to

the OSHA standard, particularly in light of the data on the efficacy of HEPA vacuums versus non-HEPA vacuums discussed above. Even if EPA were able to define vacuums that were acceptable substitutes to HEPA vacuums, it is not clear that the benefits would outweigh the complications associated with creating an EPA standard that is different than that required by OSHA.

7. Cleaning verification. This final rule requires the certified renovator to use disposable cleaning cloths after cleaning both as a fine cleaning step and as verification that the containment and cleaning have sufficiently cleaned up the lead-paint dust created by the renovation activity. Cleaning verification's usefulness is based on the combination of its fine cleaning properties and the fact that it provides feed-back to the certified renovator on the effectiveness of the cleaning. Cleaning verification is an important component of the work practices set forth in this rule and contributes to the effectiveness of the combination of training, containment, cleaning and verification at minimizing exposure to lead-based paint hazards created during renovation, remodeling and painting activities.

a. Background. As described in greater detail in Unit IV.E.2. of the preamble to the 2006 Proposal (Ref. 3), EPA began looking for an alternative to dust clearance sampling that would be quick, inexpensive, reliable, and easy to perform. EPA believed that a verification method was needed because studies have consistently shown that interior visual clearance resulted in a high percentage of false negatives, that is falsely indicating that lead loadings were below the standards used. This occurred even when using a clearance standard of 100 $\mu\text{g}/\text{ft}^2$.

i. Disposable Cleaning Cloth Study. The Disposable Cleaning Cloth Study used commercially available disposable cleaning cloths to determine whether variations of a “white glove” test could serve as an effective alternative (Ref. 37). White disposable wet and dry cleaning cloths were used to wipe windowsills and wipe floors, then they were examined to determine whether dust was visible on the cloth. This determination was made by visually comparing the cloth to a photographic standard that EPA developed to correlate to a level of contamination that is at or below the dust-lead hazard standard in 40 CFR 745.65(b). Cloths that matched or were lighter than the photographic standard were considered to have achieved “white glove.” This series of studies found that on uncarpeted floors, 91.5% of the surfaces

that achieved "white glove" using only dry cloths were confirmed by dust wipe sampling to be below the dust lead hazard standard for floors, while 97.3% of the floors that achieved "white glove" using only wet cloths were also below the hazard standard. In addition, 10 of the 11 floors where "white glove" was not achieved using dry cloths, and 20 of the 21 floors where "white glove" was not achieved using wet cloths, were nonetheless below the dust lead hazard standard. There were very few instances where "white glove" was achieved but the dust lead level was above the dust lead hazard standard. Thus, the study showed that for floors, the white glove test results were biased towards false positives. Windowsills were also tested. For the dry cloth protocol, 96.4% of the sills that achieved "white glove" were also confirmed by dust wipe sampling to be below the dust lead hazard standard for windowsills, and the one sill that did not achieve "white glove" was also below the standard. For the wet cloth protocol, all of the sills that achieved "white glove" were also below the dust lead hazard standard, as were the four sills that did not reach "white glove."

Based on the results of the Disposable Cleaning Cloth Study, the 2006 Proposal included for interior renovations, as part of the work practices, a post-renovation cleaning verification process that would follow the visual inspection and cleaning. Cleaning verification would consist of wiping the interior windowsills and uncarpeted floors with wet disposable cleaning cloths and, if necessary dry disposable cleaning cloths, and comparing each to a cleaning verification card developed and distributed by EPA.

ii. *The Dust Study.* The Dust Study (Ref. 17), which is described elsewhere in this preamble, assessed the proposed work practices. As one component of the proposed work practices, the cleaning verification was evaluated in the Dust Study. It should be noted that the Dust Study was not designed specifically to evaluate the cleaning verification in isolation of the rest of the work practices. Unlike the earlier Disposable Cleaning Cloth Study that was intended to test the effectiveness of the use of the "white glove" test in isolation, the Dust Study was meant to evaluate the effectiveness of the proposed work practices, including cleaning verification. Unlike the earlier Disposable Cleaning Cloth Study, the Dust Study involved actual renovations performed by local renovation contractors who received instruction in how to perform cleaning verification and then were left alone to determine

whether cleaning cloths matched or were lighter than the cleaning verification card. In order to maximize the information collected about cleaning verification in the Dust Study, cleaning verification was conducted after each experiment, not just those experiments that were being conducted in accordance with the proposed rule requirements for containment and cleaning.

One of the Dust Study conclusions was that cleaning verification resulted in decreases in lead levels, but was not always accurate in identifying the presence of levels above EPA dust lead hazard standards for floors and sills. This refers to the experiments involving power planing and high temperature heat guns. An examination of the cleaning verification data in the study shows that, if power planing and high temperature heat gun experiments are excluded, the values for post-renovation cleaning verification when the proposed rule work practices were used were at or below the regulatory hazard standard for floors, often significantly below the regulatory hazard standard. These results were similar for windowsills. Excluding power planing and high temperature heat gun experiments, all of the post-renovation cleaning verification windowsill sample averages for experiments conducted in accordance with the proposed rule requirements were below the regulatory dust lead hazard standard for windowsills. In addition, 26 of the 30 other experiments (using only some elements of the proposed containment and cleaning requirements) not involving power planing or high temperature heat guns had post-renovation cleaning verification sill sample averages well below the hazard standards.

b. *Cleaning verification as an alternative to clearance testing.* In determining whether cleaning verification could be seen as a qualitative alternative to clearance testing, EPA considered both the Disposable Cleaning Cloth Study and the Dust Study. Even though the Disposable Cleaning Cloth Study showed that the cleaning verification cloths that reached "white glove" were approximately 91% to 97% likely to be below the regulatory hazard standard, EPA believes the greater variability seen in the Dust Study, particularly in the experiments where the complete suite of proposed work practices were not used does not support the characterization of cleaning verification as a direct substitute for clearance testing. Cleaning verification, when used apart from the other work practices, is not as reliable a test for determining whether the

hazard standard has been achieved as clearance testing. However, the Dust Study supports the validity of cleaning verification as an effective component of the work practices. The cleaning and feedback aspects of cleaning verification are important to its contribution to the effectiveness of the work practices.

c. *Final rule requirements.* Based on a review of the Dust Study and the Disposable Cleaning Cloth Study, EPA concluded that if the practices prohibited in this final rule are avoided and the required work practices are followed, then cleaning verification is an effective component of the work practices. EPA believes that the suite of work practices as a whole are effective at addressing the lead-paint dust that is generated during renovation, repair, and painting preparation activities. Therefore, the final rule does not require dust clearance sampling after any renovations, nor does it allow the signs delineating the work area to be removed based solely on the results of a visual inspection. The final rule does require a certified renovator to perform a visual inspection to determine whether dust, debris, or residue is still present in the work area, and, if these conditions exist, they must be eliminated by re-cleaning and another visual inspection must be performed. In addition, the rule requires that after an interior work area passes the visual inspection, the cleaning of each windowsill and uncarpeted floor within the work area must be verified, as explained below. After an exterior work area passes the visual inspection, the renovation has been properly completed. In response to one commenter who was concerned about the dust that could collect on exterior windowsills during exterior projects, the final rule clarifies that the visual inspection must confirm that no dust, debris or residue remains on surfaces in and below the work area, including windowsills and the ground.

For interior renovations, after the work area has been cleaned and has passed a visual inspection, a certified renovator must wipe each interior windowsill in the work area with a wet disposable cleaning cloth and compare the cloth to a cleaning verification card developed by EPA. If the cloth matches or is lighter than the image on the card, that windowsill has passed the post-renovation cleaning verification. If the cloth is darker than the image on the card, that windowsill must be re-cleaned in accordance with § 745.85(a)(5)(ii)(B) and (C) and the certified renovator must wipe that windowsill with a new wet cloth, or the same one folded so that an unused surface is exposed, and compare it to

the cleaning verification card. If the cloth matches or is lighter than the card, that windowsill has passed. If not, the certified renovator must then wait for one hour after the surface was wiped with the second wet cleaning verification cloth or until the surface has dried, whichever is longer. Then, the certified renovator must wipe the windowsill with a dry disposable cleaning cloth. Based on the Dust Study, EPA concluded that this process need not be repeated after the first dry cloth. At that point, that windowsill has passed the post-renovation cleaning verification process. Each windowsill in the work area must pass the post-renovation cleaning verification process.

The cleaning verification protocol in the final rule is similar to what was in 2006 Proposal. By not requiring the surface to be re-cleaned after the second wet wipe and by ending the cleaning verification process after one dry cloth, this final rule is different from the Proposal. The 2006 Proposal required that the dry cloths be used until one passed verification (i.e., reached "white glove"). EPA's final rule does not require more than one dry cloth because only 3 experiments out of the 60 performed in the Dust Study failed the second wet cloth. None of these 3 experiments were performed in accordance with the requirements of this final rule; all experiments performed in accordance with the requirements of this final rule passed after either the first or second wet cloth. Based on the Dust Study, it is unlikely that dust containing lead will remain in excess of the hazard standard following two wet and one dry wipes; however EPA is concerned about the possibility of requiring potentially indefinite cleaning by renovation contractors, with the potential of making them responsible for cleaning up pre-existing dirt or grime, whether lead-contaminated or not.

After the windowsills in the work area have passed the post-renovation cleaning verification, a certified renovator must proceed with the cleaning verification process for the floors and countertops in the work area. A certified renovator must wipe no more than 40 ft² of floor or countertop area at a time with a wet disposable cleaning cloth. For floors, the renovator must use an application device consisting of a long handle and a head to which a wet disposable cleaning cloth is attached. If the floor and countertop surfaces in the work area exceed 40 ft², the certified renovator must divide the surfaces into sections, each section being no more than 40 ft², and perform the post-renovation

cleaning verification on each section separately. If the wet cloth used to wipe a particular section of surface matches or is lighter than the image on the cleaning verification card, that section has passed the post-renovation cleaning verification. If, however, on the first wiping of a section of the surface, the wet cloth does not match and is darker than the image on the cleaning verification card, the surface of that section must be re-cleaned in accordance with § 745.85(a)(5)(ii)(B) and (C). After re-cleaning, the certified renovator must wipe that section of the surface again using a new wet disposable cleaning cloth. If the second wet cloth matches or is lighter than the image on the cleaning verification card, that section of the floor has passed. If the second wet cloth does not match and is darker than the image on the verification card, the certified renovator must wait for 1 hour or until the surface has dried, whichever is longer. Then, the certified renovator must wipe each of those 40 ft² sections of the floor or countertop surfaces that did not achieve post-renovation cleaning verification using the wet cloths with a dry disposable cleaning cloth. On floors, this wiping must also be performed using an application device with a long handle and a head to which the dry cloth is attached. At that point, the floors and countertops have passed the post-renovation cleaning verification process and the warning signs may be removed.

In finalizing the work practices in this final rule, EPA has taken into consideration safety, reliability and effectiveness. EPA has concluded that these work practices, including cleaning verification, are an effective and reliable method for minimizing exposure to lead-based paint hazards created by the renovation, both during and after the renovation.

d. *Comments.* EPA received many comments on cleaning verification. The majority of the comments supported the use of dust wipe clearance testing and did not consider cleaning verification as a suitable substitute. Some of these commenters supported the use of dust wipe clearance testing for purposes of clearance. Some commenters did not support either dust wipe clearance testing or cleaning verification; they contended that visual inspection alone was sufficient and that dust clearance testing is too costly. Others questioned whether cleaning verification had been demonstrated to be valid, reliable, and effective in establishing that the work area had been adequately cleaned or that the clearance standards were met. Some contended that the cleaning

verification method showed promise, but should be subjected to additional testing, including field trials, to demonstrate its effectiveness when used by certified renovators. A minority of commenters supported the use of cleaning verification. Some supported its use rather than dust wipe-clearance testing and clearance, particularly given that renovations are not intended to remove lead-based paint. Some supported cleaning verification because it is faster, easier to implement, and less expensive than clearance testing.

i. *Cleaning verification is not a substitute for clearance testing.* Many commenters contended that cleaning verification is not a substitute technology for dust-wipe clearance testing and should not be used in this manner. EPA agrees with the commenters. As discussed in Unit III.E.8.b., based on a careful consideration of the Disposable Cleaning Cloth Study and the Dust Study, EPA has concluded that, in itself, cleaning verification should not be used as a substitute for dust wipe clearance testing.

ii. *Dust clearance testing and clearance.* Many commenters asserted that the rule should require dust clearance testing instead of the cleaning verification. Some further contended that dust clearance testing is the only proven method for verifying lead dust levels. Others supported the use of dust wipe clearance testing for purposes of clearance for the renovation. One commenter noted that even when dust clearance testing is performed it is not uncommon for clearance to be conducted up to three times on a home to make sure that lead levels are sufficiently low. Some commenters suggested that cleaning verification be used as a screen before dust clearance testing. Other commenters contended that dust clearance testing should not be required because it is expensive and time consuming and is an obstacle to completing the renovation job. Other commenters contended that dust clearance testing has been done in some jurisdictions quickly and relatively inexpensively. A few commenters contended that EPA should not require dust clearance testing because there is a difference between abatement, which is intended to eliminate lead-based paint hazards, and renovations in which the focus should be to not create any new lead-based paint hazards. Some commenters asserted that dust clearance testing should not be required because this would result in the renovator being responsible for existing lead-based paint hazards. One commenter used the example of a window replacement

project to illustrate this point. The commenter argued that, where the floor in the work area is in poor condition but outside the scope of the renovation contract, the window replacement contractor should not be responsible for making sure the floor passes a clearance standard, which may not be possible without modifying the floor.

EPA disagrees that dust clearance testing and clearance should be components of the renovation activities subject to this final rule. Dust clearance testing is used in abatement to determine whether lead-based paint hazards have been eliminated. This test is part of a specific process that involves a specialized work force (e.g., inspector, risk-assessor), typically removal of residents, and modifications to the housing in some instances to eliminate lead-based hazards (e.g., removing carpet or refinishing or sealing uncarpeted floors). Dust clearance testing is needed to determine if lead-based paint hazards have been eliminated and residents can re-occupy a house and not be exposed to lead-based paint hazards. As noted by a commenter, a home may require clearance testing be conducted up to three times before the home is determined to be free of lead-based paint hazards and it may require that floors be refinished or that carpets be replaced.

The Disposal Cleaning Cloth Study showed that wet wipes can pick up accumulated grime from floors. Applying this to the renovation context, if EPA were to require clearance, renovators might be held responsible for cleaning up pre-existing lead dust hazards that had accumulated in the grime on the floor. Based on the Dust Study, EPA has determined that all of the leaded dust generated by the renovation will have been cleaned up by two wet wipes followed by one dry wipe, where necessary. EPA is concerned about the possibility of requiring potentially indefinite cleaning by renovation contractors, with the potential of making them responsible for cleaning up pre-existing dirt or grime, whether lead-contaminated or not. Even assuming EPA has authority to require replacement of carpets and floors under some circumstances as part of a renovation project, EPA does not think as a policy matter that such an approach in which pre-existing hazards must be eliminated is appropriate. It could fundamentally change the scope of a renovation job. The time and cost of conducting clearance testing and achieving clearance is an acceptable part of the time and cost of conducting the abatement given the goal of an

abatement, the range of activities that are inherent in an abatement, and the activities that are required to be conducted to achieve clearance. Given the effectiveness of the work practices being finalized in this rulemaking, including the role of cleaning verification in minimizing exposure to lead-based paint dust generated during renovations, dust clearance testing does not provide the added value to balance the time and effort and the cost to home and building owners associated with requiring this additional step to the work practices.

As discussed in Unit II.A.6.b., there are many differences between renovations and abatements. Renovations are different from abatements in intent, implementation, type of workforce, workforce makeup, funding, and goal. Renovations are focused not on eliminating lead-based paint hazards, but rather on making repairs or improvements to a building. The vast majority of abatements are either done with funding from HUD and/or a State or local government. In addition, residents are not typically present in a residence during an abatement while they are typically present in a residence during a renovation. Thus, the purpose of dust wipe clearance testing and clearance would necessarily be different if it were used in a renovation than in an abatement. For abatements, clearance testing and clearance are used to minimize potential exposure by eliminating lead-based paint hazards after completion of the job. Clearance acts as the means to ensure that minimization and signal the end of the job. For renovations, given the presence of residents, the concern is for potential exposure both during and after the job. Dust clearance testing and clearance would only address the second part of the exposure equation. Thus, dust clearance testing conducted after renovation activities have been completed would not provide the equivalent determination of potential exposure that it does for abatement. EPA has considered this difference as one factor in its determination that given the effectiveness of the work practices being finalized in this rulemaking, including the role of cleaning verification in minimizing exposure to lead-based paint dust generated during renovations, dust clearance testing does not provide the added value to balance the time and effort and the cost to home and building owners associated with requiring this additional step to the work practices.

Although renovators should be required to address lead-based paint dust generated by renovation activities,

the Agency is not requiring renovators to take the actions required under the abatement rules to achieve clearance for lead-based paint dust not associated with the renovation and to address housing conditions not associated with the renovation.

EPA agrees that having dust wipe samples collected by a qualified person and analyzed by a qualified laboratory is an effective way to determine the quantity of lead in dust remaining after a renovation activity, but it would not necessarily show that the dust was due to the specific renovation activity. EPA also notes that in addition to providing a numerical value, dust clearance testing costs more than cleaning verification and takes longer to produce results. Results can take from 24 to 48 hours or longer and cleaning, sampling and analysis may have to be repeated depending upon the initial results. During this period, the warning signs delineating the work area would need to be maintained to protect occupants and others from the risk of exposure to lead-based paint hazards created by the renovation. Thus, EPA believes that dust clearance sampling is a poor fit for renovation work for a variety of reasons, including the greater expense associated with clearance testing, the time necessary to obtain the results of the testing and the consequent delay in the completion of the job, and the potential to expand the scope of the renovation.

EPA believes that dust clearance testing and clearance are not necessary given that the Dust Study demonstrates that cleaning verification, as an effective component of the work practices, minimizes exposure to lead-based paint hazards created by the renovation, both during and after the renovation. The cleaning and feedback aspects of cleaning verification are important to its contribution to the effectiveness of the work practices. EPA notes that unlike dust wipe clearance testing in which a small part of the work area would be tested, cleaning verification is conducted over the whole work area. Each repetition of the cleaning verification protocol further cleans the surface.

The work practices, including cleaning verification, required by this final rule are expected to minimize exposure to any newly created lead-based paint hazards created by a renovation by removing newly deposited dust, while requiring cleanup of pre-existing hazards only incidentally, to the extent such cleanup is unavoidable to address the newly created hazards. The Dust Study demonstrates that the cleaning verification protocol, used in

conjunction with the other work practices in this final rule, is effective and reliable in achieving this result.

While the requirements of this rule will, in some cases, have the ancillary benefit of removing some pre-existing dust-lead hazards, it strikes the proper balance of addressing the lead-based paint hazards create during the renovation but at the same time not requiring renovators to remediate or eliminate hazards that are beyond the scope of the work they were hired to do.

iii. *Visual inspection in lieu of cleaning verification.* Some commenters urged EPA to require only visual inspection of the work area after the cleaning following a renovation. They contend that cleaning verification is not needed. Some commenters argued that thorough cleaning in combination with a requirement that no visible dust or debris remain is adequate to address the lead dust created by the renovation activity. Most of these commenters also noted that because renovation and abatement are different that it would be inappropriate for EPA to impose additional requirements on renovation firms beyond visual inspection. Some commenters contended that the lead dust from a renovation is usually in the form of debris such as chips and splinters that can be seen with the naked eye, and the presence of this debris is an indicator to workers that the job site requires additional cleaning until no visible debris remains.

One commenter contended that cleaning after the renovation activity until the worksite passed a visual inspection was the most important determinant of whether a job would pass a dust clearance test. In support of this contention, the commenter cited the Reissman study (Ref. 22). The commenter contended that the study demonstrates that when there was no visible dust and debris present after completion of renovation or remodeling activity, there was no added risk of a child having an elevated blood lead level as compared to the risk for children living in homes where there was no reported renovation or remodeling work.

Two commenters offered an analysis of two sets of data collected by an environmental testing firm. One dataset consists of post-renovation dust samples collected in Maryland apartment units; the other consists of dust samples collected for risk assessment purposes in 41 states. No information on renovation activity is provided for the second dataset. The commenters argue that because 96.7% of the Maryland post-renovation samples and 96.1% of the other samples were below the

applicable hazard standard for the surface (floor or windowsill) tested, this suggests that visual inspection in those cases was sufficient to ensure that no dust-lead hazard existed.

One commenter cited the Dust Study (Ref. 17), the NAHB Lead Safe Work Practices Survey (Ref. 19), and several other studies as supporting the conclusion that lead-safe work practices and modified lead-safe work practices, along with a two-step or three-step cleaning process using a HEPA-equipped vacuum and wet washing, greatly reduce dust lead levels and should be regarded as best management practices for renovation jobs. The commenter notes that the NAHB study found significant reductions in loading levels after cleanup using HEPA-equipped vacuum and then either wet washing or using a wet mopping system. The commenter argues that if the work area is cleaned using these practices, it is appropriate to adopt a visual clearance standard allowing no visible dust or debris in the work area at the conclusion of the job.

Other commenters contended that visual inspection following cleaning after a renovation is not a reliable method for determining whether a lead-based paint hazard remains after cleaning. Some commenters cited a study conducted by the National Center for Healthy Housing (NCHH) showing that 67% of the visual inspections that initially passed failed when checked more carefully and 54% that eventually passed a visual inspection were found to be above the hazard standard. However, one commenter contended this was a poorly conducted study. Another commenter referred to the study "An Evaluation of the Efficacy of the Lead Hazard Reduction Treatments Prescribed in Maryland Environmental Article 6-8" conducted by NCHH for the Baltimore City Health Department in which 53% of housing identified by visual inspection as being below the hazard standard was actually above the hazard standard. Another commenter argued that NIOSH research indicates that significant lead contamination may remain on surfaces that appear clean.

During inter-Agency review, one commenter pointed to 2007 studies from Maryland and Rochester, New York that they contend show trained workers and visual inspection for dust and debris can achieve 85–90% compliance with the hazard standards following renovations in previously occupied housing. Given the lateness of the submission, EPA did not review this information. However, EPA notes that in a cover letter, the commenter states that the 2007 Maryland Study was

conducted by workers that had taken a 2–day training course, which is more training than required by this rule. Even if the studies do demonstrate this effectiveness by highly trained workers, EPA does not believe that a 85–90% effectiveness is sufficiently protective for residents.

EPA disagrees with those commenters that contended that a visual inspection following cleaning after a renovation is sufficient to ensure the lead-based paint dust generated by a renovation has been sufficiently cleaned-up. The weight-of-the-evidence clearly demonstrates that visual inspection following cleaning after a renovation is insufficient at detecting dust-lead hazards, even at levels significantly above the regulatory hazard standards. Further, EPA disagrees with the implication that easily visible paint chips and splinters are necessarily the primary materials generated during a renovation. EPA studies, including the Dust Study, show that renovation activities generate dust as well as chips and splinters. Finally, EPA disagrees with those commenters who requested the work practices in this final rule not include any verification beyond visual inspection. In the Dust Study, there were 10 renovations performed in accordance with the 2006 proposed work practices that did not involve practices prohibited by this final rule. Of those 10 renovations, 5 needed the additional cleaning verification step in order to achieve EPA's regulatory dust-lead hazard standards for floors. (EPA notes that the Dust Study Protocol did not explicitly specify that all dust and debris be eliminated prior to the cleaning verification step, only that visible debris be removed. However, the contractor running the study for EPA reported that, in practice, the renovators participating in the study eliminated all visible dust and debris as part of their typical cleaning regimen. Thus, the study protocol was slightly different from the rule requirements, which state that the renovation firm must remove all dust and debris and conduct a visual inspection before beginning the cleaning verification procedure.)

EPA does not believe that the Reissman, *et al.* study is supportive of the contention that visual inspection of the work area is sufficient because it did not evaluate the effectiveness of a visual inspection requirement. The study did not measure dust lead levels, which are the basis for this rule. Instead, it characterized the relationships between elevated blood lead levels and renovation dust and debris that spread throughout the housing. EPA notes that Reissman, *et al.* concluded that there

was a correlation between renovation activities and elevated blood lead levels.

EPA concluded that the dataset referenced by one commenter that consists of dust samples collected for risk assessment purposes in 41 States is not informative because there was no information on renovation activity collected with these dust samples. With respect to the Maryland renovation study, 96.7% is an overstatement. The author who conducted the analysis stated that:

[W]hen the maximum test values are examined rather than the mean, 9.8% of the MD sample and 12.5% of the national sample of properties with LBP surpassed at least one of the hazard thresholds of 40 µg/sf for floors and 250 µg/sf for sills. As illustrated in Exhibit 1, a fairly sizable percentage of the lead tests exceed the clearance thresholds. The failure rates are about 20 percent lower for Maryland than for the national LBP sample. However, even for Maryland, nearly one in ten apartments would fail the hazard test.

Thus, even if these were the only data available, it would not support the conclusion that visual clearance is effective.

After reviewing the NAHB Lead Safe Work Practices Survey, EPA concluded that it does not support the contention that visual inspection is sufficient to detect whether lead-based paint dust remains. While EPA agrees that use of a HEPA-vacuum and wet-washing are effective at cleaning lead-based paint dust, this does not support the case for relying on visual inspection without subsequent cleaning verification. In the NAHB study, the levels of lead-based paint dust that remained after the renovation activities were sometimes higher and sometimes lower than at the start of the renovation, but they were always at relatively high levels after the renovation--as high as 11,400 µg/ft².

In addition, the two studies conducted by the National Center for Healthy Housing as noted by commenters demonstrate that visual inspection was not effective at determining the presence of dust-lead hazards. The study "Evaluation of the HUD lead-Based Paint Hazard Control Grant Program" study conducted by NCHH corroborates these findings.

iv. Carpets and other horizontal surfaces within the work area. Some commenters were concerned that cleaning verification is not intended for use on carpeted floors. They were not confident that thorough cleaning was adequate to address potential lead hazards that might remain in carpet after the renovation. One commenter pointed to studies showing a significant correlation between dust lead in carpets and children's blood lead. As cleaning

verification is not required for carpet, commenters criticized the lack of a required method for determining that lead hazards in carpet had been eliminated. Commenters suggested EPA require clearance testing for carpeted rooms in the work area, which some argued has been demonstrated to be effective, or rely on the HUD protocol, which they asserted is widely accepted and used.

As discussed in detail in Unit IV.E. of the preamble to the 2006 Proposal, EPA did not design cleaning verification for use on carpeted floors. This was based on EPA's concerns about the validity of dust wipe sampling on carpeted floors. EPA noted that the decision to apply the clearance standard promulgated in the TSCA section 403 rulemaking to carpeted floors ultimately had little consequence, given the context in which clearance standards are used--to ensure that lead-based paint hazards have been eliminated. Typically, during an abatement, carpets that are in poor condition or are known to be highly contaminated are removed and disposed. EPA further notes that the HUD Lead-safe Housing Rule only requires HEPA vacuuming, not steam cleaning or shampooing.

While an abatement might require the removal of a lead-contaminated carpet, EPA has concluded that it is not appropriate to require carpet removal following a renovation. Even assuming EPA has authority to require removal of carpet following a renovation, this could significantly expand the cost of a renovation, and fundamentally expand the scope of the renovation activity contracted for by the homeowner or building owner by requiring removal of carpets as a result of pre-existing lead contamination.

Dust Study data on containment and information on the effectiveness of HEPA vacuums show that the use of containment and post-renovation cleaning with HEPA vacuums to remove the lead-based paint dust potentially deposited on the carpets during the renovation would reliably and effectively address lead-based paint dust generated during a renovation. Thus, rather than rely upon a dust clearance sample that may not be accurate and may require the replacement of the carpet for renovation projects in which a carpet is present, EPA is finalizing the work practices which require containment and the use of a HEPA vacuum equipped with a beater bar for cleaning.

In the absence of a practical, effective way of determining how much lead dust has been added to a carpet and whether it has been fully removed, EPA is

adopting a technology-based approach for carpets that differs from the approach used for hard-surfaced floors, by requiring use of a HEPA vacuum with a beater bar. EPA is not aware of, and commenters have not identified, a practicable approach similar to the one EPA has adopted for floors as a basis to evaluate the results of the application of work practice standards to carpets. In the absence of such an approach, EPA believes the approach adopted today is the most effective, reliable approach available for minimizing potential lead-based paint hazards in carpets created by renovations.

One commenter suggested that cleaning verification be required on other horizontal surfaces within the work area, in addition to windowsills and uncarpeted floors. EPA agrees with this commenter because the Dust Study demonstrated that, in nearly all cases, the cleaning verification step resulted in lower dust lead levels and, in most cases, the verification step was needed in order to achieve cleanup of all of the leaded dust deposited on the floors by the renovation. EPA is also concerned about the possible contamination of surfaces that are used to prepare, serve, and consume meals. EPA expects that movable surfaces, such as tables and desks, will be moved from the work area before work begins. Therefore, EPA has modified the rule to require cleaning verification on all countertops in the work area.

v. Reliability of cleaning verification. EPA received comments prior to the 2007 request for comments on the proposed work practices in light of the Dust Study. Those pre-Dust Study comments are summarized here. Commenters questioned whether cleaning verification had been demonstrated to be valid, reliable, effective, or efficient in establishing that the work area had been adequately cleaned or that the clearance standards were met. Some commenters contended that the cleaning verification method showed promise, but should be subjected to additional testing, including field trials, to demonstrate its effectiveness when used by certified renovators. Commenters on the 2006 Proposal observed that the cleaning verification protocol was supported by a single study that was conducted under conditions unlike those presented by the typical renovation. Specifically, a commenter noted that most of the housing units studied had undergone some form of abatement that would likely have reduced dust levels and the study used professional inspectors or other highly trained individuals to collect the samples according to

specified protocols. The commenter was concerned that a renovator with no experience with sample collection and little training could replicate the work of the professionals used in the study. The commenter pointed out that the study avoided testing the procedure on rough surfaces, a condition that will frequently occur in real world applications, and used a different set of wipe protocols than actually utilized by the EPA in the 2006 Proposal. Another commenter on the 2006 Proposal noted that cleaning verification had never been employed in a real-world practical setting. In addition, some of these commenters contended that the cleaning verification protocol was too complicated or too confusing to follow.

A number of commenters who provided comments in response to EPA's request for comments on the proposed work practices in light of the Dust Study quoted the sentence in the conclusion section of EPA's Dust Study that states that the cleaning verification protocol was not always accurate in identifying the presence of levels above EPA standards for floors and sills. Some of these commenters also noted the Dust Study report's discussion of factors that affected the effectiveness of cleaning verification, such as floor condition, contractor performance, job type, and dust particle characteristics. One commenter observed that while all interior experiments resulted in final passed cleaning cloths for all floor zones and for all windowsills, nearly half of the experiments in the study ended with average work room floor lead levels above EPA's dust lead hazard standard for floors of 40 $\mu\text{g}/\text{ft}^2$. The Clean Air Scientific Advisory Committee, while not asked to comment on the efficacy of the cleaning verification, contended that in the Dust Study cleaning verification did not provide sufficiently reliable results, leading to an inaccurate assessment of cleaning efficiency.

EPA disagrees with these commenters. The Dust Study did provide a real-world practical setting in which to assess the use of cleaning verification. Local renovation contractors performed actual renovations for each experiment in the study. The contractors performed cleaning verification on floors of wood, vinyl, or tile, in good, fair, or poor condition. The Dust Study used the protocols that were consistent with those in the 2006 Proposal. While the Dust Study was not designed specifically to assess cleaning verification, it did assess the effectiveness of cleaning verification both when it was used as part of the proposed rule work practices and as a

separate step after the other experiments which did not follow all the proposed work practices. Each experiment included a cleaning verification step. The contractors were instructed in how to perform cleaning verification. They independently determined whether particular cloths matched or were lighter than the cleaning verification card. In most renovations not involving the practices that EPA is prohibiting in this rule, i.e., power planing (power sanding) and high temperature heat guns, cleaning verification in combination with the other work practices were effective at reducing dust lead levels on surfaces to or below the dust lead hazard standards, regardless of the condition of the floor. Cleaning verification, as well as the other components of the work practices being finalized today were not effective when high dust generation practices such as power planing (including power sanding) and high temperature heat guns were used. These practices, as well as torching, are being prohibited in this rulemaking. Thus, EPA, in its determination on the effectiveness of cleaning verification, is focusing on the results of the experiments in the Dust Study that did not involve these prohibited practices.

Of the 10 experiments in which the proposed rule practices were used and in which the practices being prohibited in this final rule were not used, all final lead-based paint dust levels were at or below the regulatory hazard standard (taking into account the accepted level of uncertainty, i.e., within plus or minus 20%, which is the performance criteria for the National Lead Laboratory Accreditation Program). In fact, four experiments resulted in levels that were less than 10 $\mu\text{g}/\text{ft}^2$, three resulted in levels less than 30 $\mu\text{g}/\text{ft}^2$, and three resulted in levels that were approximately 40 $\mu\text{g}/\text{ft}^2$ (all were well within the level of uncertainty for this value). In four of the experiments, at least one floor area failed verification on the first wet disposable cleaning cloth, all passed on the second wet cloth. In one of the experiments, a windowsill failed the first wet cloth, but passed the second. These results were seen on floors in a variety of conditions, including good, fair and poor conditions. As a general case, in the other experiments that did not follow all the proposed work practices, the use of cleaning verification after cleaning (both baseline cleaning and cleaning following the proposed work practices) reduced, often significantly, the amount of lead dust remaining.

EPA agrees with commenters that cleaning verification should not be used

for clearance. However, while cleaning verification is not clearance testing, as described above the use of cleaning verification consistently resulted in levels of lead-based paint dust at or below the hazard standard. Also, the use of cleaning verification consistently resulted in lower levels of lead-based paint dust than remained after all types of cleaning studied when only followed by visual inspection. There is sufficient consistency in the data to support the use of cleaning verification as an effective component of the work practices being finalized today.

In response to the comment that the Disposable Cleaning Cloth Study used professional inspectors or other highly trained individuals following specified protocols, EPA intends to include cleaning verification in its training course for renovators and will use the results of the Dust Study and the Agency's observations on the experience of the contractors in the study in its development of this course.

vi. *Subjectivity of cleaning verification.* Many commenters objected to the "white glove" standard as inherently subjective, and doubted whether it would be protective. The commenters were concerned that the effectiveness of cleaning verification relies upon a renovation worker's understanding and application of the protocol, ability to define the floor sampling area or areas, and use of the cleaning verification card to determine whether a surface has been adequately cleaned. One commenter contended that, based on its experience as a subcontractor to EPA on the Disposable Cleaning Cloth Study, making the visual pass/fail determination can be quite subjective and open to interpretation. The commenter believes that it may be unrealistic to expect that renovation workers will consistently make the proper decision using the proposed verification card. Some commenters speculated that the renovator's accuracy in comparing the cleaning cloth to the verification card could depend on factors such as the renovator's visual acuity, the lighting in the room, or simply differences in judgment among renovators. Another commenter thought that the lack of corrections for surface conditions, the experience of the person conducting the visual assessment, or pre-existing conditions might bias the results of testing.

EPA agrees that visual comparison of a cleaning cloth to a cleaning verification card has an element of subjectivity because the visual comparison of cloth to card requires some exercise of judgment on the part of the person doing the comparing.

However, this does not necessarily mean that the comparison is suspect. As previously stated, the Dust Study represents a real-world test of the ability of renovators to learn how to do cleaning verification and to apply it in the field. Although one participant in the Dust Study expressed concern about the subjectivity of the test, the fact remains that cleaning verification was successfully performed by the renovation contractors in all of the experiments involving the work practices being finalized in this final rule (excluding those involving power planing (power sanding) and high temperature heat guns) and was predictive of whether renovators had cleaned-up the lead-based paint hazards created during the renovation activity to the dust-lead standard, particularly when the proposed work practices were used. These cleaning verifications were conducted by various persons in various light conditions and on various surface conditions. Further, EPA notes that cleaning verification is not simply qualitative clearance. Unlike the sampling for dust clearance testing, the cleaning verification involves a cleaning component. The act of doing the cleaning verification has been shown to lower, often significantly, the dust lead levels. Finally, in the development of its training course for contractors, EPA plans to use its data on the contractors' use of cleaning verification in the Dust Study, including their use of the cleaning verification cards.

vii. *Cost of cleaning verification.* Some commenters were concerned that the cleaning verification protocols are too impractical, burdensome, or time-consuming for many contractors to perform. However, the Dust Study found that cleaning verification only took, on average, slightly less than 13 minutes for experiments where the proposed rule requirements were followed. EPA's Final Economic Analysis estimates that the average cost of cleaning verification ranges from less than \$10 to \$30 in residences, and in public and commercial building COFs it ranges from less than \$10 to less than \$50.

viii. *Availability of cleaning verification card.* One commenter asked about the availability of the cleaning verification card, specifically, who would produce them, where would they be available, and how often do they need to be replaced. EPA intends to produce the cleaning verification cards and to make them available at accredited renovator training courses and upon request from the National Lead Information Center.

ix. *Third-parties.* Several commenters argued that a third party should perform cleaning verification (or visual inspection, in the case of exterior jobs) rather than the certified renovator. Commenters saw a conflict of interest, since by performing the cleaning verification the certified renovator is evaluating the effectiveness of his or her own work. Some thought the subjective nature of the method left it open to misinterpretation or fraud. Commenters were concerned that given the competitive pressures of the renovation industry and lack of independent oversight, it was not realistic to expect all renovators to follow the cleaning verification protocol in good faith. Others worried that a renovator might feel pressured to produce a passing result, perhaps to the point of recording false results. One commenter stated that those who would not comply with the cleaning procedure are unlikely to comply with cleaning verification.

Again, as described above, EPA addressed potential conflicts-of-interest in its lead-based paint program in the preamble to the final Lead-based Paint Activities Regulations. That discussion outlined two reasons for not requiring that inspections or risk assessments, abatements, and post-abatement clearance testing all be performed by different entities. The first was the cost savings and convenience of being able to hire just one firm to perform all necessary lead-based paint activities. The second was the potential regional scarcity of firms to perform the work. EPA believes that these considerations may be equally applicable to renovations, and perhaps more compelling, given the objective of keeping this rule simple and relatively inexpensive. EPA is concerned that a requirement that contractors engage a third party for every renovation job will add undue complication and expense to home renovations, and that it could delay completion of renovation jobs. There are estimated to be 8.4 million renovation events annually. Moreover, as stated above, it is not uncommon for regulated entities to make determinations relating to their regulated status. Thus, after weighing these competing considerations, EPA has decided to take an approach that is consistent with the approach taken in the 402(a) Lead-based Paint Activities Regulation and not require third party visual inspections, testing, or cleaning verification.

x. *Relationship between cleaning verification and the regulatory lead-based paint hazard standards.* Some commenters contend that cleaning verification is not protective because it

was designed to pass based on the regulatory hazard standard for floors. These commenters contend that this level is too high to be protective and that continuing to use this level is unwarranted given more recent data that demonstrates that lead causes neurocognitive effects at levels much lower than 10 µg/dL, the current CDC blood lead level of concern which was used in establishing the regulatory hazard standards.

EPA interprets the statutory directive to take into account safety when promulgating work practice standards as meaning that such work practice standards should be established in relation to lead-based paint hazards—as identified pursuant to TSCA section 403. There is no level of lead exposure that can yet be clearly identified, with confidence, as clearly not being associated with potentially increased risk of deleterious health effects. EPA does not believe the intent of Congress was to require elimination of all possible risk arising from a renovation, nor is EPA aware of a method that could reliably and effectively accomplish this. Given that the hazard standards are the trigger for regulation under section 402(c)(3) and that they are set through rulemaking, EPA has concluded that it makes most sense to use the same standards as the target level for safe work practices. Otherwise, the potential is created for a scheme under which any renovation activities found not to create hazards are not regulated at all, whereas renovation activities found to create hazards trigger requirements designed to leave the renovation site cleaner than the unregulated renovations. Given the Congressional intent that the section 403 hazard standards apply for purposes of subchapter IV of TSCA, EPA is applying them as the target level for safe work practices, which include the cleaning verification process, in this rule.

8. *Consistency with HUD.* Several commenters recommended that EPA adopt HUD's clearance requirement for activities other than abatement, which some commenters noted has been successfully implemented in projects in federally assisted housing. One pointed out that renovators have accepted HUD's clearance testing protocol, and implementing the "white glove" method will cause confusion in the industry and give contractors a reason for not following lead-safe work practices. A commenter recommended that EPA adopt HUD's standard for exterior clearance of visual inspection of the work area and a soil test. Commenters expressed concern that the final rule could undermine more stringent State

and local standards, and asked EPA to make clear that more stringent state and local requirements for clearance would apply despite the lack of mandatory clearance in the final rule.

This final regulation does not supersede more stringent or different requirements for interim control projects or renovations regulated by HUD, the States, or local jurisdictions. Renovation firms are still responsible for complying with all applicable Federal, State, or local laws when conducting renovations. In some cases, this may mean that dust clearance testing must be performed at the conclusion of a renovation rather than cleaning verification. EPA believes that renovation firms will be able to integrate these new requirements into their existing business practices with very little difficulty.

EPA also notes that the scope of the housing covered by HUD is different than the scope covered by this final rule. As noted by the commenter, HUD covers activities in projects in federally assisted housing. The occupancy patterns, including turn-over, will be different than in the general population covered by this final rule. While there is some overlap, there are substantial differences. Thus, EPA believes that total consistency with HUD is not needed.

9. *Optional use of clearance.* In the 2006 Proposal, EPA proposed to allow optional dust clearance sampling at the completion of renovation activities instead of the post-renovation cleaning verification described in § 745.85(b). Some commenters agreed that the decision whether to perform clearance at the conclusion of the job should be left to the homeowner. One commenter asked EPA to require that, if a resident arranged for clearance testing and found lead hazards, the contractor would have to re-clean to the resident's satisfaction.

As discussed, dust clearance sampling and cleaning verification are not surrogates and EPA is not requiring renovation firms to perform an abatement, i.e., eliminate all lead-based paint hazards, as part of a renovation. The Dust Study demonstrated that cleaning verification is quite often needed to minimize exposure to dust-lead hazards created during renovations. EPA is concerned that if dust clearance sampling were allowed instead of cleaning verification, without an accompanying requirement that the renovation firm re-clean until clearance is achieved, the rule would actually be less protective because the surfaces in the work area could be left less clean than if cleaning verification were performed.

In response to these comments, EPA has further considered the issue and decided to allow dust clearance sampling instead of cleaning verification only in certain limited situations. EPA agrees with the commenters that, if the rule were to allow clearance sampling instead of verification, EPA would have to require the renovator to achieve clearance, otherwise, there would be no check on whether the renovation had been safely performed. HUD's Lead Safe Housing Rule requires clearance to be achieved in many situations, as do several States. For example, the State of New Jersey requires dust clearance sampling and clearance in certain situations in multi-unit rental housing. As noted in Unit III.G. of this preamble, States, Territories, and Tribes may choose to have as protective as or more protective requirements than this final rule. One example of a more protective requirement would be a requirement to perform dust clearance testing and achieve clearance after renovations. Another example may be requiring that trained renovation workers demonstrate achievement of clearance levels by other cleaning verification methods, such as using newer technologies. If a firm can demonstrate, for example, using data obtained in the field, that it regularly meets the clearance standards without using the EPA specified approach but rather by using newer technology or alternative methods, a State may request that EPA evaluate such a provision as being as protective as or more protective than the methods described in this final rule.

Therefore, in situations where the contract between the renovation firm and the property owner or another regulation, such as HUD's Lead-Safe Housing Rule or a state regulation, requires dust clearance sampling by a properly qualified person and requires the certified renovator or a worker under the direction of the certified renovator to re-clean until clearance is achieved, EPA will allow the renovation firm to use both dust clearance testing and clearance instead of the cleaning verification step.

Property owners in other situations may still choose to perform dust testing at any time, such as after a renovation, including cleaning verification, has been completed. EPA recommends that property owners who choose to have dust testing performed use certified dust sampling professionals such as inspectors, risk assessors, or dust sampling technicians. EPA also recommends that property owners who wish to have dust testing performed after a renovation reach an agreement

with the renovation firm up front as to what will happen based on the results of the dust testing, such as whether additional cleaning will be performed if the surfaces do not achieve the clearance standards in 40 CFR 745.227(e)(8)(viii).

F. Recordkeeping for Renovation Firms

1. *Recordkeeping—*a. *Pre-renovation education.* 40 CFR 745.86 already requires that persons performing renovations in target housing document compliance with the lead hazard information distribution provisions of the Pre-Renovation Education Rule. Consistent with the 2006 Proposal, this final rule deletes existing 40 CFR 745.88 because it contains only sample acknowledgment statements for the purpose of documenting compliance with the information distribution requirements and is thus unnecessary. EPA received no comments on this proposed deletion. In addition, EPA received no substantive comments on the sample acknowledgment form provided with the proposed rule. New sample acknowledgment forms incorporating language consistent with this final rule and reflecting commenter editorial suggestions are available on EPA's website at <http://www.epa.gov/lead> and from the National Lead Information Center at 1-(800)-424-LEAD (5323).

In addition, as proposed in the 2006 Proposal, EPA has modified paragraph (a) of 40 CFR 745.86 to make compliance with the recordkeeping requirements the responsibility of the renovation firm, not the certified renovator. Although, as discussed below, this final rule requires the certified renovator assigned to a renovation to certify compliance with the work practice requirements for that renovation, the renovation firm may choose to delegate other tasks associated with recordkeeping requirements to someone other than a certified renovator. For example, this rule does not require a certified renovator to distribute lead hazard information to owners and occupants before a renovation, nor does it require a certified renovator to obtain the necessary acknowledgment statements or certified mail receipts. The renovation firm may decide that it is more efficient to have someone other than the certified renovator perform these tasks.

As described in Unit III.B.2. of this preamble, this final rule expands the information distribution requirements to renovations in child-occupied facilities. In proposing this expansion, the 2007 Supplemental Proposal included

associated recordkeeping requirements for firms performing renovations in child-occupied facilities. Although EPA did receive comments on extending the information distribution requirements to child-occupied facilities, none of these comments specifically addressed the recordkeeping provisions themselves. EPA has determined that the recordkeeping requirements are an important part of monitoring compliance with and ensuring the effectiveness of the information distribution provisions of this rule. Therefore, this final rule retains the existing recordkeeping requirements for pre-renovation lead hazard information distribution in target housing and extends those recordkeeping requirements to renovations in child-occupied facilities. Firms performing renovations in target housing or child-occupied facilities must obtain and retain signed and dated acknowledgements of receipt of the lead hazard information from building owners or a certificate of mailing for such information. In addition, renovation firms must obtain and retain signed and dated acknowledgments of receipt from the occupant (the resident of the housing unit being renovated or the proprietor of the child-occupied facility) or certificates of mailing for such information, or the firm must prepare a certification that documents the attempts made to provide this information to the occupants. For renovations in common areas in target housing, the firm must also document the steps taken to provide information to the tenants with access to the common area being renovated. Finally, firms performing renovations in child-occupied facilities must take steps to provide information to the parents and guardians of children under age 6 using the facility. Firms may do this by either mailing each parent or guardian the lead hazard information pamphlet and a general description of the renovation or by posting informational signs where parents and guardians are likely to see them. Informational signs must be accompanied by a posted copy of the pamphlet or information on how to obtain the pamphlet at no charge to interested parents or guardians. The firm's activities with respect to parents and guardians must also be documented.

b. *Documentation of compliance with other regulatory provisions.* This final rule provides for a number of exceptions. Unit III.A.3. of this preamble describes an exception for renovations in owner-occupied target housing that is neither the residence of

a child under age 6 or apregnant woman, nor a child-occupied facility. In order for a renovation to be eligible for this exception, the renovation firm must obtain a signed statement from the owner of the housing to the effect that he or she is the owner of the housing to be renovated, that he or she resides in the housing to be renovated, that no child under 6 or no pregnant woman resides there, that the housing is not a child-occupied facility, and that the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the work practices contained in EPA's renovation, repair, and painting rule. Consistent with the 2006 Proposal and the 2007 Supplemental Proposal, this final rule requires renovation firms to maintain this signed statement, which must include the address of the housing being renovated, for 3 years after the completion of the renovation. Again, although EPA received comments on the merits of this exception, no comments were directed specifically to the recordkeeping requirement. EPA has determined that the recordkeeping requirement is necessary to allow EPA to monitor compliance with the terms of this exception.

This final rule also requires firms performing renovations to retain documentation of compliance with the work practices and other requirements of the rule. Specifically, the firm must document that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed the tasks required by this final rule, and that the certified renovator performed the post-renovation cleaning verification. This documentation must include a copy of the certified renovator's training certificate. Finally, the documentation must include a certification by the certified renovator that the work practices were followed with narration as applicable. The certification must include the specific information listed in § 745.86(b)(7). The firm must keep this information for 3 years after the completion of the renovation.

The 2006 Proposal also included a requirement that renovation firms maintain documentation of compliance with the renovator and worker training requirements and the work practice requirements. This documentation would have had to include signed and dated descriptions of how activities performed by the certified renovator were conducted in compliance with the proposed requirements. To demonstrate

how these recordkeeping requirements might be met, EPA prepared and placed into the docket a draft recordkeeping checklist.

EPA received many comments on the substance of these recordkeeping requirements and on the draft recordkeeping checklist. Some commenters thought that the purpose of the recordkeeping requirement should be to provide important information to consumers or to serve as part of the record of whether a particular structure was lead-safe. Some, but not all of these commenters suggested that there was no need for the renovation firm to retain the records it prepares. Rather, the records should be given to the owners and occupants of the building either before or after the renovation. However, as proposed, the recordkeeping requirement served two purposes. The first is to allow EPA or an authorized State to review a renovation firm's compliance with the substantive requirements of the regulation through reviewing the records maintained for all of the renovation jobs the firm has done. The second is to remind a renovation firm what it must do to comply. EPA envisioned that renovation firms would use the recordkeeping requirements and checklist as an aid to make sure that they have done everything that they are required to do for a particular renovation. For these two purposes, there is no substitute for recordkeeping by renovation firms.

However, EPA agrees with those commenters that felt that the recordkeeping requirements were vague, particularly in light of the draft recordkeeping checklist itself and the amount of time that EPA estimated it would take a renovation firm to complete the checklist. Many commenters said that it was unclear how much detail EPA would be looking for in descriptions of how the firm complied with the various work practices, and some noted that an extensive narrative would contribute no more to compliance or enforcement than a box checked to indicate that the requirements had been complied with.

In response to these commenters, EPA has revised that draft recordkeeping checklist to be more in the nature of a checklist, with a certification that the representations on the form are true and correct. Narrative information is still required where necessary, such as an identification of the brand of test kits used, the locations where they were used, and the results. EPA has also revised the regulatory text to describe the specific information that must be provided and the specific items for which a certification of compliance is

required. The regulatory text at 40 CFR 745.86(b)(7) now contains a list of work practice elements that must be certified as having been performed. In response to two commenters that suggested that the only person truly capable of certifying that the lead-safe work practices were followed on a particular job would be the certified renovator assigned to that job, EPA is requiring the certification to be completed by the certified renovator assigned to the renovation. EPA has determined that a review of the records maintained by renovation firms will be an effective method of determining whether a particular firm is generally complying with the regulations or not.

2. *Notification to EPA.* In the 2006 Proposal, EPA requested comment on, but did not propose, a requirement that renovation firms notify EPA before beginning a covered renovation project. Most commenters supported a notification requirement, arguing notifications would provide information to EPA about where renovation activities will be occurring, so EPA could inspect ongoing renovation projects for compliance with the requirements of this rule. These commenters stated that EPA would be unable to enforce the requirements of the rule without a notification provision. Some commenters also suggested that the act of informing EPA of their activities provides a powerful incentive for renovation firms to comply. Other commenters observed that prior notification for every covered renovation would be too burdensome for the regulated community and for the Agency. Some of these commenters suggested that notifications only be required for renovations involving high-risk methods, housing where a child under age 6 or a pregnant woman resides, or renovations involving multiple rooms in a housing unit.

This final rule does not include a prior notification requirement. EPA disagrees with the notion that there is no way to enforce this regulation without a prior notification requirement. As stated above in the discussion on recordkeeping, EPA believes that a review of a renovation firm's records will demonstrate whether or not a renovation firm generally complies with the regulations. In addition, as at least one commenter noted, many renovations require a building permit from the local permitting authority. EPA can work with the local authorities to identify inspection targets. EPA can also follow up on tips and complaints.

EPA agrees with those commenters that believe that prior notification for

every project is simply too burdensome for the regulated community and for the Agency. If the streamlined, telephone-based system recommended by some of the commenters were implemented, it would reduce the initial burden on the renovation firms. However, EPA would still have to process millions of such notifications annually, and the collective burden on renovation firms and the government would be considerable. Rather than require millions of notifications annually, the great majority of which would never be reviewed, EPA prefers to use other methods for targeting renovation projects for inspections.

An initially attractive option considered by EPA was a prior notification requirement for a subset of covered renovation projects. This option could potentially reduce the notifications received to a manageable level, while preserving the benefits of a prior notification requirement, but EPA was unable to develop appropriate criteria for defining which renovations would require prior notification. EPA considered requiring prior notification for renovations using certain high-risk practices, the practices prohibited by the HUD Lead Safe Housing Rule and EPA's Lead-based Paint Activities Regulations. However, EPA ultimately decided, as described in Unit III.E.6. of this preamble, to prohibit most of those practices for covered renovations. Requiring prior notifications only for renovations in housing where a child under age 6 resides and in child-occupied facilities would not significantly reduce the notifications that would be required. EPA determined that a prior notification requirement tied to project size would not be feasible or effective, because the hazard potential from a renovation job is a combination of the size of the project and the activity being performed.

With regard to the compliance mindset mentioned by some commenters, EPA believes that the recordkeeping requirements are a less burdensome way to achieve the same goal. In fact, a prior notification requirement could lead to EPA targeting for inspection those persons who are most likely to be making an effort to comply with the substantive requirements of the regulation. The person who would not bother to comply with the substantive provisions of this rule would most likely avoid filing a prior notification to EPA before beginning a covered renovation, repair, or painting project. These persons are more likely to be performing renovations in a non-compliant manner than are persons who have complied

with a prior notification requirement and told EPA where to find them.

EPA has therefore determined that a prior notification requirement is not an effective or efficient means of facilitating the monitoring of compliance with this regulation. States, Territories, and Tribes developing their own renovation, repair, and painting programs may come to a different conclusion. These jurisdictions are free to establish prior notification schemes that make sense for their community.

G. State, Territorial, and Tribal Programs

1. *In general.* Because of the enormous number of renovation activities that occur in this country on an annual basis, EPA welcomes the help of its State, Territorial, and Tribal partners to ensure that these renovations are performed by trained persons in accordance with this final rule. This final rule establishes, in accordance with TSCA section 404 and EPA's Policy for the Administration of Environmental Programs on Indian Reservations (Ref. 46), requirements for the authorization of State, Territorial, and Tribal renovation, repair, and painting programs. The process for obtaining authorization to operate these programs in lieu of the Federal program is the same process used to authorize State, Territorial, and Tribal lead-based Paint Activity or Pre-Renovation Education programs found in 40 CFR part 745, subpart Q.

Interested States, Territories, and Indian Tribes may apply for, and receive authorization to, administer and enforce all of the elements of the new subpart E, as amended. States, Territories and Tribes may choose to administer and enforce just the existing requirements of subpart E, the pre-renovation education elements, or all of the requirements of the proposed subpart E, as amended. The 2006 Proposal and the 2007 Supplemental Proposal would not have provided for the authorization of State, Territorial, or Tribal programs that include only the training, certification, accreditation, and work practice requirements for renovation, repair, and painting programs and not the pre-renovation education provisions of subpart E. EPA proposed this approach because the Agency believes that the pre-renovation education provisions are an integral part of ensuring that consumers have the information they need to make informed decisions about renovation practices in their homes and other buildings. In addition, consistent with the proposals, this final rule encourage renovation firms to use the existing pamphlet acknowledgment

process to provide owner-occupants of target housing with the opportunity to opt out of the training, certification, and work practice requirements of the rule if they reside in the housing to be renovated, there is no child under age 6 or pregnant woman in residence, the housing does not otherwise meet the definition of child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule.

One State commenter disagreed with EPA's proposed approach and requested that EPA authorize State, Territorial or Tribal programs that incorporate only the training, certification, accreditation, and work practices of this final rule because TSCA section 404 allows states to administer and enforce the standards, regulations, or other requirements established under TSCA section 402 or TSCA section 406 or both. EPA agrees with this commenter's reading of TSCA. Therefore, this final rule provides for the authorization of State, Territorial, or Tribal programs that include either the pre-renovation education requirements of 40 CFR part 745, subpart E, or the training, certification, accreditation and work practice requirements of this rule, or both.

States, Territories, and Tribes that wish to administer and enforce the pre-renovation education provisions of subpart E, as amended, must include both target housing and child-occupied facilities within the scope of their program. Similarly, States, Territories, and Tribes that are also interested in obtaining authorization to administer and enforce the training, certification, accreditation, work practice, and recordkeeping elements of subpart E, as amended, must include both target housing and child-occupied facilities within the scope of their program. States with existing authorized pre-renovation education programs are required to demonstrate that they have modified their programs to include child-occupied facilities. These States must provide this demonstration no later than the first report submitted pursuant to 40 CFR 745.324(h) on or after April 22, 2009.

2. Process. The authorization process currently codified at 40 CFR part 745, subpart Q, will be used for the purpose of authorizing State, Territorial, and Tribal renovation, repair, and painting programs. States, Territories, and Tribes seeking authority for their programs must obtain public input, then submit an application to EPA. Applications must contain a number of items,

including a description of the State, Territorial, or Tribal program, copies of all applicable statutes, regulations, and standards, and a certification by the State Attorney General, Tribal Counsel, or an equivalent official, that the applicable legislation and regulations provide adequate legal authority to administer and enforce the program. The program description must demonstrate that the State, Territorial, or Tribal program is at least as protective as the Federal program. In this case, the Federal program consists of the requirements for training, certification, and accreditation and the work practice standards of this final rule.

One commenter suggested that EPA require States with a currently authorized TSCA 402(a) lead-based paint activities program to submit only an amended application for incorporating the TSCA section 402(c)(3) renovation, repair, and painting program requirements since many of the required documents would be the same as those submitted for the original TSCA 402(a) application. Furthermore, the commenter recommended that a letter from the State agency identified in the original 402(a) authorization application with a synopsis detailing how the State proposes to administer and enforce the renovation, repair, and painting program serve as an amended application. EPA has determined that a new application for authorization for the renovation, repair, and painting program is necessary because there may be a different State agency or consortia of agencies implementing and enforcing this program, a long time may have elapsed since most States submitted their TSCA section 402(a) program application, and many of the requirements within the elements of the renovation, repair, and painting program differ from their counterparts in the lead-based paint activities program.

To be eligible for authorization to administer and enforce the training, certification, accreditation, and work practice requirements of this final rule, State, Territorial, and Tribal renovation programs must contain certain minimum elements, e.g., work practice standards and procedures and requirements for the certification of individuals and/or firms, that are very similar to the existing minimum elements specified in 40 CFR 745.326(a) for lead-based paint activities programs. In order to be authorized, State, Territorial, or Tribal programs must have procedures and requirements for the accreditation of training programs,

which can be as simple as procedures for accepting training provided by an EPA-accredited provider, or a provider accredited by another authorized State, Territorial, or Tribal program. Procedures and requirements for the certification of renovators are also necessary. At a minimum, these must include a requirement that certified renovators have taken accredited training, and procedures and requirements for re-certification. State, Territorial, and Tribal programs applying for authorization must also include work practice standards for renovations that ensure that renovations are conducted only by certified renovation firms and the renovations are conducted using work practices at least as protective as those of the Federal program. As is the current practice with lead-based paint activities, EPA will not require State, Territorial, or Tribal programs to certify both firms and individuals that perform renovations. States, Territories and Tribes may choose to certify either firms or individuals, so long as the individuals that perform the duties of renovators are required to take accredited training.

3. Implementation. In order to provide interested States, Territories and Tribes time to develop, or begin developing renovation, repair, and painting programs in accordance with this rule, EPA will not begin to actively implement the Federal program until April 22, 2009, at which time EPA will begin accepting applications for training program accreditation. Several commenters thought 1 year would be adequate for the purpose of allowing States, Territories, and Tribes to develop their own programs, while others expressed concern that 1 year would not be enough time to get these programs developed and authorized. Most commenters who expressed an opinion on this topic generally agreed that an implementation delay is necessary. Reasons given in support of a delay were conservation of State financial and administrative resources and the fact that some States have had difficulties in retraining contractors to new State-specific requirements after the contractors had become accustomed to working under the Federal program. In contrast, some commenters argued that, in light of the 2010 goal, no delay whatsoever was warranted. This final rule retains the 1 year implementation delay set forth in the 2006 Proposal. EPA has determined that this period of time represents an appropriate balance between the need to implement this rule quickly and concerns over potential duplication of effort and additional

costs incurred by the regulated community if EPA begins accrediting training providers and certifying firms in jurisdictions that are also working towards implementing their own programs. States, Territories, and Tribes may begin the authorization process at any time after the effective date of this final rule, even after the Federal program has been implemented in their jurisdiction.

Some commenters were concerned about the effect of this rule on existing State programs. Several commenters asked EPA to expressly state that this rule does not pre-empt existing State programs and that State programs that are more stringent than the Federal program will be eligible for authorization. One commenter noted that the number of houses with lead contaminated paint is disproportionately distributed throughout the U.S. This commenter pointed out that this apparent disparity supports the need for State control of lead programs and for EPA to practice "regulatory restraint." According to this commenter, this "regulatory restraint" will allow States with more severe lead paint problems to impose stricter standards and requirements regarding certification and work practices without imposing unnecessary burdens on States with less severe problems.

This final rule does not preempt existing programs that address renovations. However, to the extent that these programs are less protective than the requirements of this final rule, the requirements of this final rule will apply. To be eligible for authorization, State, Territorial, and Tribal programs need not exactly duplicate the Federal program contained in this final rule, but they must still meet the requirement of TSCA section 404 that they be "at least as protective as" the Federal program. It would be difficult for the Agency to describe specific requirements that would make a program more or less "protective." EPA will review each program application separately against the protections provided by this final rule.

Several commenters expressed concern regarding the uniformity and consistency of State programs. Some recommended that EPA take States' concerns into account, but guarantee uniformity of State programs by prohibiting States from arbitrarily deviating from program elements. Others noted that if there are uniform regulations for approved training courses for State certification, there should be reciprocity between States since many people work in multiple States. One commenter suggested that,

in an effort to promote consistency, States institute a lead-safety test that renovators must pass prior to receiving permits to conduct work. Several commenters noted that a lack of reciprocity between States and/or duplicative or divergent certification requirements will add an unnecessary burden and level of complexity for renovation and remodeling firms, especially those working in multi-State areas. One commenter argued that this could lead to a problem in maintaining certifications similar to the problem the commenter believes exists in maintaining lead-based paint inspector, risk assessor, and other certifications associated with TSCA section 402 abatements. One suggested that EPA should exert control over the right to refuse approval of State programs unless they provide for reciprocity with the Federal program and programs of other jurisdictions approved by EPA.

The standard of EPA review for State, Territorial, and Tribal programs under TSCA section 404 is that they be "at least as protective" as the Federal program. In addition, TSCA section 404 (e) reserves the right of States and their political subdivisions to impose requirements that are more stringent than the Federal program. EPA interprets this to mean that EPA cannot compel States, Territories, and Tribes to adopt programs identical to the Federal program or to establish reciprocity provisions. However, EPA continues to encourage States, Territories, and Tribes that may be considering establishing their own renovation programs to keep reciprocity in mind as they move forward. The benefits to be derived from reciprocity arrangements with the Federal program and other authorized jurisdictions include potential cost-savings from reducing duplicative activity and the development of a professional renovation workforce more quickly, thus providing maximum flexibility to State, Territorial, or Tribal residents. In addition, the Agency encourages States, Territories and Tribes to consider the use of existing certification and accreditation procedures as they develop their programs. These existing programs need not be limited to lead-based paint. For example, a State may choose to add lead-safe renovation requirements to their existing contractor licensing programs.

H. Effective Date and Implementation Dates

This final rule is effective on June 23, 2008. This final rule will be implemented according to the following schedule:

1. As of June 23, 2008.
 - a. States, Territories, and Tribes may begin applying for authorization to administer and enforce their own renovation, repair, and painting programs. EPA will begin authorizing States, Territories, and Tribes as soon as it receives their complete applications.
 - b. No training program may provide, offer, or claim to provide training or refresher training for EPA certification as a renovator or a dust sampling technician without accreditation from EPA under 40 CFR 745.225.
2. As of April 22, 2009. Training programs for renovators or dust sampling technicians may begin applying for accreditation under 40 CFR 745.225. EPA will begin accrediting training programs as soon as it receives complete applications from training providers. Individuals who wish to become certified renovators or dust sampling technicians may begin taking accredited training as soon as it is available.
3. As of October 22, 2009. Renovation firms may begin applying for certification under 40 CFR 745.89. EPA will begin certifying renovation firms as soon as it receives their complete applications.
4. As of April 22, 2010. The rule will be fully implemented.
 - a. No firm may perform, offer, or claim to perform renovations without certification from EPA under 40 CFR 745.89 in target housing or child-occupied facilities, unless, in the case of owner-occupied target housing, the firm has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule.
 - b. All renovations must be directed by renovators certified in accordance with 40 CFR 745.90(a) and performed by certified renovators or individuals trained in accordance with 40 CFR 745.90(b)(2) in target housing or child-occupied facilities, unless, in the case of owner-occupied target housing, the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule.

c. All renovations must be performed in accordance with the work practice standards in 40 CFR 745.85 and the associated recordkeeping requirements in 40 CFR 745.86(b)(6) and (b)(7) in target housing or child-occupied facilities, unless, in the case of owner-occupied target housing, the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule.

With respect to the new renovation-specific pamphlet and the requirements of the Pre-Renovation Education Rule, as of the effective date of the rule June 23, 2008, renovators or renovation firms performing renovations in States and Indian Tribal areas without an authorized Pre-Renovation Education Rule program may provide owners and occupants with either of the following EPA pamphlets: *Protect Your Family From Lead in Your Home*; or *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*. As of December 22, 2008, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* must be used exclusively.

IV. References

The following is a list of the documents that are specifically referenced in this final rule and placed in the public docket that was established under Docket ID number EPA-HQ-OPPT-2005-0049. For information on accessing the docket, refer to the **ADDRESSES** unit at the beginning of this document.

1. U.S. Environmental Protection Agency (USEPA). Air Quality Criteria for Lead (September 29, 2006).
2. President's Task Force on Environmental Health Risks and Safety Risks to Children. Eliminating Childhood Lead Poisoning: A Federal Strategy Targeting Lead Paint Hazards (February 2000).
3. USEPA. Lead; Renovation, Repair, and Painting Program; Proposed Rule. **Federal Register** (71 FR 1588, January 10, 2006).
4. USEPA. Lead; Requirements for Lead-based Paint Activities; Final Rule. **Federal Register** (61 FR 45778, August 29, 1996).
5. USEPA. Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint

Activities Contractors; Final Rule. **Federal Register** (64 FR 31091, June 9, 1999).

6. USEPA. Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training; Final Rule. **Federal Register** (69 FR 18489, April 8, 2004).

7. USEPA, Consumer Product Safety Commission (CPSC), U.S. Department of Housing and Urban Development (HUD). Protect Your Family From Lead in Your Home (EPA 747-K-99-001, June 2003).

8. USEPA. Lead; Requirements for Hazard Education Before Renovation of Target Housing; Final Rule. **Federal Register** (63 FR 29907, June 1, 1998).

9. USEPA. Lead; Identification of Dangerous Levels of Lead; Final Rule. **Federal Register** (66 FR 1206, January 5, 2001).

10. USEPA. Reducing Lead Hazards When Remodeling Your Home (EPA747-K-97-001, September 1997).

11. USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase I, Environmental Field Sampling Study (EPA 747-R-96-007, May 1997).

12. USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase II, Worker Characterization and Blood-Lead Study (EPA 747-R-96-006, May 1997).

13. USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase III, Wisconsin Childhood Blood-Lead Study (EPA 747-R-99-002, March 1999).

14. USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase IV, Worker Characterization and Blood-Lead Study of R&R Workers Who Specialize in Renovation of Old or Historic Homes (EPA 747-R-99-001, March 1999).

15. USEPA. Lead; Renovation, Repair, and Painting Program; Supplemental Notice of Proposed Rulemaking. **Federal Register** (72 FR 31022, June 5, 2007).

16. USEPA. Lead; Renovation, Repair, and Painting Program; Notice of Availability. **Federal Register** (72 FR 12582, March 16, 2007).

17. USEPA. Characterization of Dust Lead Levels After Renovation, Repair, And Painting Activities. (November 13, 2007).

18. USEPA. Lead Safety for Remodeling, Repair, And Painting. Joint EPA/HUD Renovation Training Curriculum (EPA 747-B-03-001/2, July 2003).

19. National Association of Home Builders (NAHB). Lead Safe Work Practices Survey Project Report. Prepared by Atrium Environmental

Health and Safety Services (November 9, 2006).

20. McMillan Associates. Response to SBREFA Panel Recommendations for Further Analysis of Existing Phase III Data (August 6, 2001).

21. U.S. Department of Health and Human Services (HHS), U.S. Public Health Service (PHS), CDC. Children with Elevated Blood Lead Levels Attributed to Home Renovation and Remolding Activities--New York, 1993-1994. Morbidity and Mortality Weekly Report (45(51); 1120-1123, January 3, 1997).

22. Reissman, Dori B., Thomas D. Matte, Karen L. Gurnite, Rachel B. Kaufmann, and Jessica Leighton. "Is Home Renovation or Repair a Risk Factor for Exposure to Lead Among Children Residing in New York City?" *Journal of Urban Health: Bulletin of the New York Academy of Medicine*. Vol. 79, No. 4, 502-511, (December 2005).

23. USEPA. Lead; Requirements for Lead-based Paint Activities; Proposed Rule. **Federal Register** (59 FR 45872, September 2, 1994).

24. USEPA. Office of Pollution Prevention and Toxics (OPPT) "Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities" (March 2008).

25. S. Rep. 102-332, P.L. 102-550, Housing and Community Development Act of 1992 (July 23, 1992).

26. National Institute of Standards and Technology (NIST). Spot Test Kits for Detecting Lead in Household Paint, a Laboratory Evaluation (NISTIR 6398, May 2000).

27. HUD. National Survey of Lead and Allergens in Housing, Volume I: Analysis of Lead Hazards, Final Report, Revision 7.1. (October 31, 2002).

28. ASTM International. Standard Practice for Evaluating the Performance Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint (E 1828-01).

29. USEPA. Lead-Based Paint Pre-Renovation Education Rule; Interpretive Guidance, Part I (May 28, 1999).

30. USEPA and HUD. Lead; Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing; Final Rule. **Federal Register** (61 FR 9064, March 6, 1996).

31. USEPA, HUD. Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools. (March 2008).

32. USEPA. Lead-Based Paint Pre-Renovation Education Rule; Interpretive Guidance, Part II (October 15, 1999).

33. USEPA. Lead Sampling Technician Course (EPA 747-B-00-002, July 2000).

34. HUD. Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995).

35. USEPA. Lead Dust Minimization Work Practices for Renovation, Remodeling and Repainting; Draft Technical Manual (September 29, 1998).

36. National Institute for Occupational Safety and Health (NIOSH). Health Hazard Evaluation; Rhode Island Department of Health; HETA 96-0200-2799 (June 2000).

37. USEPA. Electrostatic Cloth and Wet Cloth Field Study in Residential Housing (September 2005).

38. United States Department of Energy. Office of Health, Safety and Security. <http://www.hss.energy.gov/csa/csp/hepa>.

39. Occupational Safety and Health Administration (OSHA), Department of Labor (DOL). Regulatory Flexibility Act Review of the Occupational Safety Standard for Lead in Construction Labor (72 FR 54826, September 27, 2007).

40. Rich, David Q. George G. Rhoads, Lih-Ming Yiin, Junfeng Zhang, Zhipeng Bai, John L. Adgate, Peter J. Ashley, and Paul J. Liroy. "Comparison of Home Lead Dust Reduction Techniques on Hard Surfaces: the New Jersey Assessment of Cleaning Techniques Trial." *Environmental Health Perspectives* 110(9): 889-893 (September 2002).

41. HUD. Evaluation of Household Vacuum Cleaners in the Removal of Settled Lead Dust from Hard Surface Floors. (December 27, 2002, revised February 2006).

42. Lih-Ming Yiin, George G. Rhoads, David Q. Rich, Junfeng Zhang, Zhipeng Bai, John L. Adgate, Peter J. Ashley, and Paul J. Liroy. "Comparison of Techniques to Reduce Residential Lead Dust on Carpet and Upholstery: the New Jersey Assessment of Cleaning Techniques Trial." *Environmental Health Perspectives* 110(12): 1233-1237. (December 2002).

43. Canadian Mortgage and Housing Corporation (CMHC). "Effectiveness of Clean up Techniques for Leaded Paint Dust." (1992).

44. USEPA. A Comparison of Post-Renovation and Remodeling Surface Cleaning Techniques. Prepared by Clemson Environmental Technologies Laboratory (December 14, 2001)

45. CMHC. "Evaluation of the Cleanup of Lead Paint Dust In Houses." Prepared by Pinchin Environmental Consultants (1995).

46. USEPA. EPA Policy for the Administration of Environmental Programs on Indian Reservations (November 8, 1984).

47. USEPA. ICR Final Rule Addendum for rulemaking entitled "Lead; Renovation, Repair, and Painting Program; Final Rule" (March 2008).

48. USEPA. Report of the Small Business Advocacy Review Panel on the Lead-based Paint Certification and Training; Renovation and Remodeling Requirements (March 3, 2000).

49. Final Regulatory Flexibility Analysis for the Lead; Renovation, Repair, and Painting Program; Final Rule (March 2008).

50. ASTM International. Standard Practice for Clearance Examinations Following Lead Hazard Reduction Activities in Single-Family Dwellings and Child-Occupied Facilities (E 2271-05).

51. ASTM International. Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities (E 2052-99).

V. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this rule is a "significant regulatory action" under section 3(f)(1) of the Executive Order because EPA estimates that it will have an annual effect on the economy of \$100 million or more. Accordingly, this action was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made based on OMB recommendations have been documented in the public docket for this rulemaking as required by section 6(a)(3)(E) of the Executive Order.

In addition, EPA has prepared an analysis of the potential costs and benefits associated with this rulemaking. This analysis is contained in the Economic Analysis (Ref. 24), which is available in the docket for this action and is briefly summarized here.

1. *Types of facilities.* This rule applies to an estimated 37.8 million pre-1978 facilities. Of these, approximately 37.7 million facilities are located in target housing, either in rental housing, owner-occupied housing where a child under age 6 resides, or owner-occupied housing where no child under age 6 resides but that otherwise meets the definition of a child-occupied facility. Approximately 100,000 facilities are child-occupied facilities in pre-1978 public or commercial buildings.

2. *Options evaluated.* EPA considered a variety of options for addressing the risks presented by renovation, repair, and painting actions where lead-based

paint is present. The Economic Analysis analyzed several different options for the scope of the rule, which would limit the coverage of the rule's substantive provisions depending on when the facility was built (such as pre-1960 or pre-1978), and whether or not there are children under the age of 6 or a pregnant woman residing in owner-occupied housing. In some options, coverage of the rule was phased in over time. EPA also considered different options for work practices, such as containment, cleaning, and cleaning verification.

3. *Number of events and individuals affected.* In the first year that all of the rule requirements will be in effect, there will be an estimated 8.4 million renovation, repair, and painting events where lead-safe work practices will be used due to the rule. As a result, there will be approximately 1.4 million children under the age of 6 who will be affected by having their exposure to lead dust minimized due to the rule. There will also be about 5.4 million adults who will be affected. After improved test kits for determining whether a painted surface contains lead-based paint become available (which is assumed in the analysis to occur by the second year of the rule), the number of renovation, repair, and painting events using lead-safe work practices is expected to drop to 4.4 million events per year. No change in the number of exposures avoided due to the rule is expected because the improved test kit will more accurately identify paint without lead, thus reducing the number of events unnecessarily using the required work practices.

4. *Benefits.* The Economic Analysis describes the estimated benefits of the rulemaking in qualitative and quantitative terms. Benefits result from the prevention of adverse health effects attributable to lead exposure. These health effects include impaired cognitive function in children and several illnesses in children and adults. EPA estimated the benefits of avoided incidence of IQ loss due to reduced lead exposure to children under the age of 6. There are not sufficient data at this time to develop dose-response functions for other health effects in children or for pregnant women. The benefits of avoided exposure to adults were not quantified due to uncertainties about the exposure of adults to lead in dust from renovation, repair, and painting activities in these facilities.

The rule is estimated to result in quantified benefits of approximately \$700 million to \$1,700 million in the first year. The 50-year annualized benefits provide a measure of the

steady-state benefits. The quantified IQ benefits to children are expected to be approximately \$700 million to \$1,700 million per year when annualized using a 3% discount rate, and \$700 million to \$1,800 million per year when using a 7% discount rate. The estimated benefits for the other scope options range from approximately \$300 million to \$1,700 million using a 3% discount rate and from \$300 million to \$1,800 million using a 7% discount rate. The benefits from prohibiting certain paint preparation and removal practices in renovations requiring lead-safe work practices under the rule are estimated to be \$400 million to \$900 million per year using a 3% discount rate. There are additional unquantified benefits, including other avoided health effects in children and adults.

5. *Costs.* The Economic Analysis estimates the costs of complying with the rule. Costs may be incurred by contractors that perform renovation, repair, and painting work for compensation, landlords that use their own staff to perform renovation, repair, and painting work in leased buildings; and child-occupied facilities that use their own staff to perform renovation, repair, and painting work.

The rule is estimated to result in a total cost of approximately \$800 million in the first year that all of the rule requirements will be in effect. The cost is estimated to drop to approximately \$400 million per year in the second year when the improved test kits are assumed to become available. The 50-year annualized costs provide a measure of the steady-state cost. Annualized costs of the rule are estimated to be approximately \$400 million per year using either a 3% discount rate or a 7% discount rate. Annualized costs for the other scope options range from approximately \$300 million to approximately \$700 million per year using a 3% discount rate and \$400 million to \$700 million per year using a 7% discount rate. The cost of prohibiting certain paint preparation and removal practices is estimated to cost less than \$10 million per year using either a 3% or a 7% discount rate.

6. *Net benefits.* Net benefits are the difference between benefits and costs. The rule is estimated to result in net benefits of--\$50 million to \$1,000 million in the first year, based on children's IQ benefits alone. The 50-year annualized net benefits for the rule based on children's benefits are estimated to be \$300 million to \$1,300 million per year using either a 3% or a 7% discount rate. The annualized net benefits for the other scope options range from approximately--\$50 million

to \$1,300 million per year using either a 3% or a 7% discount rate. The net benefits of prohibiting certain paint preparation and removal practices for renovations requiring lead-safe work practices are estimated to be approximately \$400 million to \$900 million per year using either a 3% or a 7% discount rate. There are additional unquantified benefits, including other avoided health effects in children and adults that are not included in the net benefits estimates.

It is important to note that the EPA analysis generates certain results that seem to indicate that more stringent control options yield smaller improvements reducing the risks of elevated blood lead levels in children than do less stringent control options. For example, the analysis estimates that using only containment of dust and debris generated during a RRP activity yields higher benefits than using all of the rule's work practices (containment, specialized cleaning, and cleaning verification). This is the opposite of what one might expect and of what is observed in the Dust Study for the 10 experiments that used the proposed rule cleaning and containment, since the benefits analysis implies that the combination of rule-style containment with rule-style cleaning and verification would result in more exposure than when such containment is combined with conventional cleaning. This is inconsistent with the Dust Study which shows that the largest decreases were observed in the 10 experiments where this final rule's practices of containment, specialized cleaning, and cleaning verification were used. Therefore, the anomalous results are likely to be artifacts of sparse underlying data and modeling assumptions. Although EPA summarizes some of the potential causes of these unexpected results in the Economic Analysis, at this time EPA is unclear as to precisely what is leading to these unexpected results. Because EPA has not determined why the benefits analyses contain anomalous results, EPA has limited confidence in the estimated benefits. EPA does not view the results as being sufficiently robust to represent the difference in magnitude of the benefits across regulatory alternatives. Nevertheless, EPA is confident that there are positive benefits.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document prepared by EPA, an amendment to an existing ICR and referred to as the ICR Final Rule Addendum (EPA ICR No. 1715.10, OMB Control Number 2070-0155) has been placed in the public docket for this rule (Ref. 47). The information collection requirements are not enforceable until OMB approves them.

The new information collection activities contained in this rule are designed to assist the Agency in meeting the core objectives of TSCA section 402, including ensuring the integrity of accreditation programs for training providers, providing for the certification of renovators, and determining whether work practice standards are being followed. EPA has carefully tailored the recordkeeping requirements so they will permit the Agency to achieve statutory objectives without imposing an undue burden on those firms that choose to be involved in renovation, repair, and painting activities.

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

Under this rule, the new information collection requirements may affect training providers and firms that perform renovation, repair, or painting for compensation. Although these firms have the option of choosing to engage in the covered activities, once a firm chooses to do so, the information collection activities contained in this rule become mandatory for that firm.

The ICR document provides a detailed presentation of the estimated burden and costs for 3 years of the program. The aggregate burden varies by year due to changes in the number of firms that will seek certification each year. The burden and cost to training providers and firms engaged in renovation, repair, and painting activities is summarized below.

It is estimated that approximately 170 training providers will incur burden to

notify EPA (or an authorizing State, Tribe, or Territory) before and after training courses. The average burden for training provider notifications is estimated at 20 to 100 hours per year, depending on the number of training courses provided. Total training provider burden is estimated to average 9,000 hours per year. There are approximately 211,000 firms estimated to become certified to engage in renovation, repair, or painting activities. The average certification burden is estimated to be 3.5 hours per firm in the year a firm is initially certified, and 0.5 hours in years that it is re-certified (which occurs every 5 years). Firms must also distribute lead hazard information to the owners and occupants of public or commercial buildings that contain child-occupied facilities and in target housing containing child-occupied facilities. Finally, firms must keep records of the work they perform; this recordkeeping is estimated to average approximately 5 hours per year per firm. Total burden for these certified firms is estimated to average 1,373,000 hours per year. Total respondent burden during the period covered by the ICR is estimated to average approximately 1,382,000 hours per year.

There are also government costs to administer the program. States, Tribes, and Territories are allowed, but are under no obligation, to apply for and receive authorization to administer these requirements. EPA will directly administer programs for States, Tribes, and Territories that do not become authorized. Because the number of States, Tribes, and Territories that will become authorized is not known, administrative costs are estimated assuming that EPA will administer the program everywhere. To the extent that other government entities become authorized, EPA's administrative costs will be lower.

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 codified in Chapter 40 of the CFR, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved

information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined in accordance with section 601 of the RFA as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or 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.

Pursuant to section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities. A summary of the IRFA, a description of the Panel process, and a summary of the Panel's recommendations can be found in Unit VIII.C. of the preamble to the 2006 Proposal (Ref. 3). A detailed discussion of the Panel's advice and recommendations is found in the Panel Report (Ref. 48).

As required by section 604 of the RFA, we also prepared a final regulatory flexibility analysis (FRFA) for this final rule. The FRFA addresses the issues raised by public comments on the IRFA, which was part of the proposal of this rule. The FRFA is available for review in the docket and is summarized below (Ref. 49).

1. *Legal basis and objectives for the rule.* As discussed in Unit II.A. of this preamble, TSCA section 402(c)(2) directs EPA to study the extent to which persons engaged in renovation, repair, and painting activities are exposed to lead or create lead-based paint hazards regularly or occasionally. After concluding this study, TSCA section 402(c)(3) further directs EPA to revise its Lead-based Paint Activities Regulations under TSCA section 402(a)

to apply to renovation or remodeling activities that create lead-based paint hazards. Because EPA's study found that activities commonly performed during renovation and remodeling create lead-based paint hazards, EPA is revising the TSCA section 402(a) regulatory scheme to apply to individuals and firms engaged in renovation, repair, and painting activities. In so doing, EPA has also taken into consideration the environmental, economic, and social impact of this final rule as provided in TSCA section 2(c). The primary objective of the rule is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in housing where children under age 6 reside and in housing where a pregnant woman resides and in housing or other buildings frequented by children under age 6.

2. *Potentially affected small entities.* Small entities include small businesses, small organizations, and small governmental jurisdictions. The small entities that are potentially directly regulated by this rule include: small businesses (including contractors and property owners and managers); small nonprofits (certain day care centers and private schools); and small governments (school districts).

In determining the number of small businesses affected by the rule, the Agency applied U.S. Economic Census data to the SBA's definition of small business. However, applying the U.S. Economic Census data requires either under or overestimating the number of small businesses affected by the rule. For example, for many construction establishments, the SBA defines small businesses as having revenues of less than \$13 million. With respect to those establishments, the U.S. Economic Census data groups all establishments with revenues of \$10 million or more into one revenue bracket. On the one hand, using data for the entire industry would overestimate the number of small businesses affected by the rule and would defeat the purpose of estimating impacts on small business. It would also underestimate the rule's impact on small businesses because the impacts would be calculated using the revenues of large businesses in addition to small businesses. On the other hand, applying the closest, albeit lower, revenue bracket would underestimate the number of small businesses affected by the rule while at the same time overestimating the impacts. Similar issues arose in estimating the fraction of property owners and managers that are small businesses. EPA has concluded that a

substantial number of small businesses will be affected by the rule. Consequently, EPA has chosen to be more conservative in estimating the cost impacts of the rule by using the closest, albeit lower, revenue bracket for which Census data is available. For other sectors (nonprofits operating day care centers or private schools), EPA assumed that all affected firms are small, which may overestimate the number of small entities affected by the rule.

The vast majority of entities in the industries affected by this rule are small. Using EPA's estimates, the renovation, repair, and painting program will affect an average of approximately 189,000 small entities.

3. *Potential economic impacts on small entities.* EPA evaluated two factors in its analysis of the rule's requirements on small entities, the number of firms that would experience the impact, and the size of the impact. Average annual compliance costs as a percentage of average annual revenues were used to assess the potential average impacts of the rule on small businesses and small governments. This ratio is a good measure of entities' ability to afford the costs attributable to a regulatory requirement, because comparing compliance costs to revenues provides a reasonable indication of the magnitude of the regulatory burden relative to a commonly available measure of economic activity. Where regulatory costs represent a small fraction of a typical entity's revenues, the financial impacts of the regulation on such entities may be considered as not significant. For non-profit organizations, impacts were measured by comparing rule costs to annual expenditures. When expenditure data were not available, however, revenue information was used as a proxy for expenditures. It is appropriate to calculate the impact ratios using annualized costs, because these costs are more representative of the continuing costs entities face to comply with the rule.

EPA estimates that there are an average of 189,000 small entities that would be affected by the renovation, repair, and painting activities program. Of these, there are an estimated 165,000 small businesses with an average impact of 0.7%, 17,000 small non-profits with an average impact of 0.1%, and 6,000 small governments with an average impact of 0.004%. These estimates are based on an average cost of approximately \$35 per renovation.

4. *Relevant Federal rules.* The requirements in this rulemaking will fit within an existing framework of other

Federal regulations that address lead-based paint. The Pre-Renovation Education Rule, discussed in Unit II.A.2. of this preamble, requires renovators to distribute a lead hazard information pamphlet to owners and occupants before conducting a renovation in target housing. This rule has been carefully crafted to harmonize with the existing pre-renovation education requirements.

Disposal of waste from renovation projects that would be regulated by this rule is covered by the Resource Conservation and Recovery Act (RCRA) regulations for solid waste. This rule does not contain specific requirements for the disposal of waste from renovations.

HUD has extensive regulations that address the conduct of interim controls, as well as other lead-based paint activities, in federally assisted housing. Some of HUD's interim controls are regulated under this rule as renovations, depending upon whether the particular interim control measure disturbs more than the threshold amount of paint. In most cases, the HUD regulations are comparable to, or more stringent than this rule. In general, persons performing HUD-regulated interim controls must have taken a course in lead-safe work practices, which is also a requirement of this rule. However, this rule does not require dust clearance testing, a process required by HUD after interim control activities that disturb more than a minimal amount of lead-based paint.

Finally, OSHA's Lead Exposure in Construction standard covers potential worker exposures to lead during many construction activities, including renovation, repair, and painting activities. Although this standard may cover many of the same projects as this final rule, the requirements themselves do not overlap. The OSHA rule addresses the protection of the worker, this EPA rule principally addresses the protection of the building occupants, particularly children under age 6 and pregnant women.

5. *Skills needed for compliance.* This rule establishes requirements for training renovators, other renovation workers, and dust sampling technicians; certifying renovators, dust sampling technicians, and entities engaged in renovation, repair, and painting activities; accrediting providers of renovation and dust sampling technician training; and for renovation work practices. Renovators and dust sampling technicians would have to take a course to learn the proper techniques for accomplishing the tasks they will perform during renovations. These courses are intended to provide

them with the information they would need to comply with the rule based on the skills they already have. Renovators would then provide on-the-job training in work practices to any other renovation workers used on a particular renovation. They would also need to document the work they have done during renovations. This does not require any special skills. Renovation firms would be required to apply for certification to perform renovations; this process does not require any special skills other than the ability to complete the application. Training providers must be knowledgeable about delivering technical training. Training providers would be required to apply for accreditation to offer renovator and dust sampling technician courses. They would also be required to provide prior notification of such courses and provide information on the students trained after each such course. Completing the accreditation application and providing the required notification information does not require any special skills.

6. *Small Business Advocacy Review Panel.* Since the earliest stages of planning for this regulation under section 402(c)(3) of TSCA, EPA has been concerned with potential small entity impacts. EPA conducted outreach to small entities, and, in 1999, convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations of representatives of the small entities that would potentially be subject to this regulation's requirements. At that time, EPA was planning an initial regulation that would apply to renovations in target housing, with requirements for public and commercial building renovations, including child-occupied facility renovations, to follow at a later date. The small entity representatives (SERs) chosen for consultation reflect that initial emphasis. They included maintenance and renovation contractors, painting and decorating contractors, multi-family housing owners and operators, training providers/consultants, and representatives from several national contractor associations, the National Multi-Housing Council, and the National Association of Home Builders. After considering the existing Lead-based Paint Activities Regulations, and taking into account preliminary stakeholder feedback, EPA identified eight key elements of a potential renovation and remodeling regulation for the SBAR Panel's consideration. These elements were:

- Applicability and scope.
- Firm certification.

- Individual training and certification.
- Accreditation of training courses.
- Work practice standards.
- Prohibited practices.
- Exterior clearance.
- Interior clearance.

EPA also developed several options for each of these key elements. Although the scope and applicability options specifically presented to the SBAR Panel covered only target housing, background information presented to the SERs and to the SBAR Panel members shows that EPA was also considering a regulation covering child-occupied facilities. The 2007 Supplemental Proposal (Ref. 15) extended the potentially regulated universe to include child-occupied facilities. When the 2007 Supplemental Proposal was issued, EPA conducted a targeted mailing campaign to specifically solicit input on the rule from child-occupied facilities, such as child care providers and kindergartens, in public or commercial buildings. More information on the SBAR Panel, its recommendations, and how EPA implemented them in the development of the program, is provided in Unit VIII.C.6. of the preamble to the 2006 Proposal (Ref. 3).

7. *Alternatives considered.* The following is a discussion of significant alternatives to the rule, originated by EPA or by commenters, that could affect the economic impacts of the rule on small entities. These alternatives would have applied to both small and large entities, but, given the large number of small entities in the industry, these alternatives would primarily affect small entities. For the reasons described below, these alternatives are not consistent with the objectives of the rule.

a. *Applicability and scope.* EPA considered a number of options for the scope and applicability of the rule: include all pre-1978 housing, all pre-1978 rental housing, all pre-1960 housing, and all pre-1960 rental housing. Although the scope and applicability options specifically presented to the SBAR Panel covered only target housing, background information presented to the SERs and to the SBAR Panel members shows that EPA was also considering a regulation covering child-occupied facilities.

The SBAR Panel recommended that EPA request public comment in the proposal on the option of limiting the housing stock affected by the rule to that constructed prior to 1960, as well as the option of covering all pre-1978 housing and other options that may help to reduce costs while achieving the

protection of public health. EPA asked for comment in the proposed rule on alternative scope options, including an option limited to buildings constructed prior to 1960. After considering the public comments, EPA has determined that limiting the rule to exclude buildings constructed on or after 1960 is not consistent with the stated objectives of the rule, in part because this would not protect children under the age of 6 and pregnant women.

b. *Staged approach.* EPA proposed a staged approach that would initially address renovations in pre-1960 target housing and child-occupied facilities, or where a child had an increased blood-lead level. EPA requested comment about whether to delay implementation for post-1960 target housing and child-occupied facilities for 1 year. Most commenters objected to the phased implementation, expressing concerns about adding complexity to implementation and about potential exposures to children in buildings built between 1960 and 1978 during the first year. After reviewing the comments, EPA determined the reduced burdens of a staged approach did not outweigh the complexity that it added to implementation.

c. *Exclude categories of contractors or renovation activities.* EPA requested comment on whether to exclude any categories of specialty contractors and whether certain renovation activities should be specifically included or excluded. In response, no commenter offered any data to show that any category of contractor or type of renovation activity should be exempt because they do not create lead-based paint hazards. All of the renovation activities in the Dust Study and the other studies in the record for the rule created lead-based paint hazards. EPA determined that it had no basis on which to exempt any category of contractor or type of renovation. However, some small jobs will be exempt from the requirements of the rule under the minor maintenance exception.

d. *Prohibited practices.* The current abatement regulations in 40 CFR part 745, subpart L prohibit the following work practices during abatement projects: Open-flame burning or torching, machine sanding or grinding, abrasive blasting or sandblasting, dry scraping of large areas, and operating a heat gun in excess of 1100 degrees Fahrenheit. EPA presented four options to the SBAR Panel on this topic: prohibit these practices during renovations; allow dry scraping and exterior flame-burning or torching; allow dry scraping and interior and

exterior flame-burning or torching; or allow all of these practices. The SBAR Panel recognized industry concerns over the feasibility of prohibiting these practices, especially when no cost-effective alternatives exist. The SBAR Panel was also concerned about the potential risks associated with these practices, but noted that reasonable training, performance, containment, and clean-up requirements may adequately address these risks.

EPA followed the SBAR Panel's recommendation and requested public comment on the cost, benefit, and feasibility of prohibiting certain work practices. In response to its request for comment in the proposed rule, the Agency received information on techniques including benign strippers, steam stripping, closed planing with vacuums, infrared removal, and chemical stripping. Therefore, EPA believes that there are cost-effective alternatives to these prohibited or restricted practices. In addition, the Dust Study (*Characterization of Dust Lead Levels after Renovation, Repair, and Painting Activities*) found that most practices prohibited or restricted under EPA's Lead-based Paint Activities Regulations produce large quantities of lead dust, and that the use of the proposed work practices were not effective at containing or removing dust-lead hazards from the work area.

EPA has concluded that these practices should be prohibited or restricted during renovation, repair, and painting activities that disturb lead-based paint because the work practices in the rule are not effective at containing the spread of leaded dust when these practices are used, or at cleaning up lead-based paint hazards created by these practices. Thus, the work practices are not effective at minimizing exposure to lead-based paint hazards created during renovation activities when these activities are used.

e. *HEPA vacuums.* The proposed rule required the use of a HEPA vacuum as part of the work practice standards for renovation activities. One commenter stated that EPA did not have sufficient evidence showing that HEPA vacuums are significantly better at removing lead dust than non-HEPA vacuums. EPA has determined that the weight of the evidence provided by the studies it reviewed demonstrates that the HEPA vacuums consistently removed significant quantities of lead-based paint dust and reduced lead loadings to lower levels than did other vacuums. While there may be some vacuums cleaners that are as effective as HEPA vacuums, EPA has not been able to define quantitatively the specific attributes of

those vacuums. That is, EPA is not able to identify what criteria should be used to identify vacuums that are equivalent to HEPA vacuums in performance. Thus, EPA does not believe that it can identify in the final rule what types of vacuums can be used as substitutes for HEPA-vacuums. Therefore, EPA has not adopted this alternative.

f. *Visual inspection in lieu of cleaning verification.* EPA requested comment on whether cleaning verification is necessary given the cleaning required by the rule. Some commenters contended that a visual inspection following cleaning after a renovation is sufficient to ensure the lead-based paint dust generated by a renovation has been sufficiently cleaned-up. EPA disagrees with those commenters who requested that the work practices in the final rule not include any verification beyond visual inspection. The weight of the evidence clearly demonstrates that visual inspection following cleaning after a renovation is insufficient at detecting dust-lead hazards, even at levels significantly above the regulatory hazard standards. Further, EPA disagrees with the implication that easily visible paint chips and splinters are necessarily the primary materials generated during a renovation. EPA studies, including the Dust Study, show that renovation activities generate dust as well as chips and splinters. Therefore, EPA has not adopted this alternative.

8. *Significant issues raised by comments on the Initial Regulatory Flexibility Analysis.* A commenter requested that the plumbing-heating-cooling industry be exempted from the rule, claiming that the rule is impractical for the industry. The commenter did not provide any supporting data as to why the rule is impractical for the plumbing-heating-cooling industry, or any data indicating that renovations conducted by plumbing, heating, or cooling contractors do not create lead hazards. By contrast, the Dust Study indicated that cutting open drywall (an activity often performed by plumbing, heating, and cooling contractors) can create a lead hazard. Therefore, EPA believes that plumbing, heating, and cooling contractors who disturb more than an exempt amount of lead-based paint can create lead hazards. EPA does not believe that there is a factual basis for exempting this, or any other, industry from the rule.

Another commenter stated that EPA's proposed rule gave little deference to HUD's rules, and thus is inconsistent with the Regulatory Flexibility Act's requirements to fit new rules within the

framework of existing Federal regulations. The commenter stated that EPA's rule needed to give greater deference to the framework established in HUD's rules (especially HUD's requirements for independent clearance examinations and its prohibition of dangerous work practices), and to clearly explain how the Renovation, Repair and Painting Rule will interface with HUD's rules to avoid confusion.

Regarding HUD's requirements for independent clearance examinations, EPA's final rule clarifies that dust clearance sampling is allowed in lieu of post-renovation cleaning verification in cases where another Federal, State, Territorial, Tribal, or local regulation requires dust clearance testing and requires the renovation firm to clean the work area until it passes clearance. This would apply to HUD-regulated renovations. Regarding the prohibition of dangerous work practices, EPA's final rule prohibits the use of the following work practices during regulated renovations: Open flame burning or torching of lead-based paint; the use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting unless such machines are used with HEPA exhaust control; and operating a heat gun above 1100 degrees Fahrenheit. EPA believes that the provisions in the final rule provide an appropriate measure of consistency with other regulatory programs (including HUD's), and will cause minimal disruption for renovation firms.

One commenter contended that EPA said that "[n]one of the housing authorities identified in section 8.2.1 as operating public housing that does not receive HUD funding qualifies as a small government under the Regulatory Flexibility Act." According to the commenter, public housing authorities are government entities, and hundreds of them are located in and are part of communities with a population of less than 50,000.

EPA's small entity analysis was not claiming that no small governments operate housing authorities, but that they would not be significantly impacted by the rule. EPA's reasoning was as follows:

- The only public housing authorities that EPA could identify that do not receive HUD funds are operated by Massachusetts, New York, Hawaii, Connecticut, and New York City.
- Massachusetts, New York, Hawaii, Connecticut, and New York City have populations over 50,000 and thus do not qualify as small governments.

- To the best of EPA's knowledge, governments with populations under 50,000 that operate public housing authorities all receive HUD funds.
- Public housing that receives funding from HUD already must comply with HUD regulations regarding lead paint and so are not likely to incur significant additional costs due to this rule.

The commenter has offered no factual information to dispute this reasoning. Therefore, the Agency believes its conclusions regarding public housing authorities operated by small governments were appropriate.

A commenter stated that the proposed rule will have a significant impact on small businesses, and that EPA's own economic analysis of this rule finds that residential property managers and lessors of residential real estate will bear the largest share of costs in association with the rule. EPA disagrees with the commenter's claim that residential property managers and lessors of residential real estate will bear the largest share of costs in association with the rule. EPA analyzed small business impacts by estimating the average cost impact ratio for each industry, calculated as the average annual compliance cost as a percentage of average annual revenues. The average cost impact ratio for lessors of real estate is below the average cost impact ratio for all small businesses under the rule. And while the average cost impact ratio for residential property managers is above the average cost impact for all small businesses under the rule, small residential property managers make up approximately 3% of the small entities impacted by the rule. Therefore, it is not accurate to claim that residential property managers and lessors of residential real estate will bear the largest share of costs in association with the rule.

Another commenter stated that given the lack of evidence showing that HEPA vacuums are significantly better at removing lead dust from floors, and because HEPA vacuums are significantly more costly than non-HEPA units, EPA should modify its proposed rule to allow cleanup with either a HEPA or non-HEPA vacuum. According to the commenter, doing so would reduce the cost to small entities in the renovation and lead mitigation businesses without compromising the level of lead dust clearance achieved by the standard.

EPA disagrees that it should modify its proposed rule to allow cleanup with a non-HEPA vacuum. EPA has determined that the weight of the evidence provided by various studies

demonstrate that the HEPA vacuums consistently removed significant quantities of lead-based paint dust and reduced lead loadings to lower levels than did other vacuums. While there may be some vacuums that are as effective as HEPA vacuums, EPA has not been able to define quantitatively the specific attributes of those vacuums. That is, EPA is not able to identify what criteria should be used to identify vacuums that are equivalent to HEPA vacuums in performance. Thus, EPA does not believe that it can identify what types of vacuums can be used as substitutes for HEPA-vacuums. EPA also notes that non-HEPA vacuums that perform as well as HEPA vacuums may not be less expensive than HEPA vacuums. For these reasons, EPA has determined that modifying its proposed rule to allow cleanup with non-HEPA vacuums would compromise the level of lead dust clearance achieved by the standard, and might not result in meaningful cost reductions.

As required by section 212 of SBREFA, EPA also is preparing a Small Entity Compliance Guide to help small entities comply with this rule. Before the date that this rule's requirements take effect for training providers, renovation firms, and renovators, the guide will be available on EPA's website at <http://www.epa.gov/lead> or from the National Lead Information Center by calling 1-800-424-LEAD (5323).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 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 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.

Under UMRA Title II, EPA has determined that this rule contains a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of \$100 million by the private sector in any 1 year, but it will not result in such expenditures by State, local, and Tribal governments in the aggregate. Accordingly, EPA has prepared a written statement under section 202 of UMRA which has been placed in the public docket for this rulemaking and is summarized here.

1. *Authorizing legislation.* This rule is issued under the authority of TSCA sections 402(c)(3), 404, 406, and 407, 15 U.S.C. 2682(c)(3), 2684, 2686, and 2687.

2. *Cost-benefit analysis.* EPA has prepared an analysis of the costs and benefits associated with this rulemaking, a copy of which is available in the docket for this rulemaking (Ref. 24). The Economic Analysis presents the costs of the rule as well as various regulatory options and is summarized in Unit III.A. of this preamble. EPA has estimated that the total annualized costs of this rulemaking are approximately \$400 million per year using either a 3% or a 7% discount rate, and that benefits are approximately \$700 to \$1,700 million per year using a 3% discount rate and \$700 to \$1,800 million per year using a 7% discount.

3. *State, local, and Tribal government input.* EPA has sought input from State, local and Tribal government representatives throughout the development of the renovation, repair, and painting program. EPA's experience in administering the existing lead-based paint activities program under TSCA section 402(a) suggests that these governments will play a critical role in the successful implementation of a national program to reduce exposures to lead-based paint hazards associated with renovation, repair, and painting activities. Consequently, as discussed in

Unit III.C.2. of the preamble to the 2006 Proposal (Ref. 3), the Agency has met with State, local, and Tribal government officials on numerous occasions to discuss renovation issues.

4. *Least burdensome option.* EPA considered a wide variety of options for addressing the risks presented by renovation activities where lead-based paint is present. As part of the development of the renovation, repair, and painting program, EPA has considered different options for the scope of the rule, various combinations of training and certification requirements for individuals who perform renovations, various combinations of work practice requirements, and various methods for ensuring that no lead-based paint hazards are left behind by persons performing renovations. The Economic Analysis analyzed several different options for the scope of the rule. Additional information on the options considered is available in Unit VIII.C.6. of the preamble for the 2006 Proposal (Ref. 3), and in the Economic Analysis (Ref. 24). EPA has determined that the preferred option is the least burdensome option available that achieves the primary objective of this rule, which is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in housing where children under age 6 reside and where a pregnant woman resides and in housing or other buildings frequented by children under age 6.

This rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA. Based on the definition of "small government jurisdiction" in RFA section 601, no State governments can be considered small. Small Territorial or Tribal governments may apply for authorization to administer and enforce this program, which would entail costs, but these small jurisdictions are under no obligation to do so.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments operate schools that are child-occupied facilities. EPA generally measures a significant impact under UMRA as being expenditures, in the aggregate, of more than 1% of small government revenues in any 1 year. As explained in Unit III.C.3., the rule is expected to result in small government impacts well under 1% of revenues. So EPA has determined that the rule does not significantly affect small governments. Nor does the rule uniquely affect small governments, as the rule is not targeted

at small governments, does not primarily affect small governments, and does not impose a different burden on small governments than on other entities that operate child-occupied facilities.

E. Federalism

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this rule does not have “federalism implications,” because 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. Thus, Executive Order 13132 does not apply to this rule. States would be able to apply for, and receive authorization to administer these requirements, but would be under no obligation to do so. In the absence of a State authorization, EPA will administer these requirements. Nevertheless, in the spirit of the objectives of this Executive Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA has consulted with representatives of State and local governments in developing the renovation, repair, and painting program. These consultations are as described in the preamble to the 2006 Proposal (Ref. 3).

F. Tribal Implications

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 9, 2000), EPA has determined that this rule does not have tribal implications because it will not have substantial direct effects on tribal governments, 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, as specified in the Order. Tribes would be able to apply for, and receive authorization to administer these requirements on Tribal lands, but Tribes would be under no obligation to do so. In the absence of a Tribal authorization, EPA will administer these requirements. While Tribes may operate child-occupied facilities covered by the rule such as kindergartens, pre-kindergartens, and day care facilities, EPA has determined that this rule would not have substantial direct effects on the Tribal governments that operate these facilities.

Thus, Executive Order 13175 does not apply to this rule. Although Executive Order 13175 does not apply to this rule, EPA consulted with Tribal officials and others by discussing potential renovation regulatory options for the renovation, repair, and painting program at several national lead program meetings hosted by EPA and other interested Federal agencies.

G. Children's Health Protection

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) applies to this rule because it is an “economically significant regulatory action” as defined by Executive Order 12866, and because the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, EPA has evaluated the environmental health or safety effects of renovation, repair, and painting projects on children. Various aspects of this evaluation are discussed in the preamble to the 2006 Proposal (Ref. 3).

The primary purpose of this rule is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in housing where children under age 6 reside and in housing or other buildings frequented by children under age 6. In the absence of this regulation, adequate work practices are not likely to be employed during renovation, repair, and painting activities. EPA's analysis indicates that there will be approximately 1.4 million children under age 6 affected by the rule. These children are projected to receive considerable benefits due to this regulation.

H. Energy Effects

This rule is not a “significant energy action” as defined in Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

I. Technology Standards

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards 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. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. In the 2006 Proposal, EPA proposed to adopt a number of work practice requirements that could be considered technical standards for performing renovation projects in residences that contain lead-based paint. As discussed in Unit VIII.I. of the 2006 Proposal, EPA identified two potentially applicable voluntary consensus standards (Ref. 3 at 1626). ASTM International (formerly the American Society for Testing and Materials) has developed two potentially applicable documents: *Standard Practice for Clearance Examinations Following Lead Hazard Reduction Activities in Single-Family Dwellings and Child-Occupied Facilities* (Ref. 50), and “Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities” (Ref. 51). With respect to the first document, EPA did not propose to require traditional clearance examinations, including dust sampling, following renovation projects. However, EPA did propose to require that a visual inspection for dust, debris, and residue be conducted after cleaning and before post-renovation cleaning verification is performed. The first ASTM document does contain information on conducting a visual inspection before collecting dust clearance samples. The second ASTM document is a comprehensive guide to identifying and controlling lead-based paint hazards. Some of the information in this document is relevant to the work practices required by the rule. Each of these ASTM documents represents state-of-the-art knowledge regarding the performance of these particular aspects of lead-based paint hazard evaluation and control practices and EPA continues to recommend the use of these documents where appropriate. However, because each of these documents is extremely detailed and encompasses many circumstances beyond the scope of this rulemaking, EPA determined that it would be impractical to incorporate these voluntary consensus standards into the rule.

In addition, this final rule contains performance standards and a process for recognizing test kits that may be used by certified renovators to determine whether components to be affected by a renovation contain lead-based paint.

EPA will recognize those kits that meet certain performance standards for limited false positives and negatives. EPA will also recognize only those kits that have been properly validated by a laboratory independent of the kit manufacturer. For most kits, this will mean participating in EPA's Environmental Technology Verification (ETV) program. With stakeholder input, EPA is adapting a voluntary consensus standard, ASTM's "Standard Practice for Evaluating the Performance Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint" (Ref. 28), for use as a testing protocol to determine whether a particular kit has met the performance standards established in this final rule.

J. Environmental Justice

Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (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 assessed the potential impact of this rule on minority and low-income populations. The results of this assessment are presented in the Economic Analysis, which is available in the public docket for this rulemaking (Ref. 24). As a result of this assessment, the Agency has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. 804(2). This rule is effective June 23, 2008.

List of Subjects in 40 CFR Part 745

Environmental protection, Child-occupied facility, Housing renovation, Lead, Lead-based paint, Renovation, Reporting and recordkeeping requirements.

Dated: March 31, 2008,

Steven L. Johnson,
Administrator.

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

PART 745—[AMENDED]

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681-2692 and 42 U.S.C. 4852d.

■ 2. Section 745.80 is revised to read as follows:

§ 745.80 Purpose.

This subpart contains regulations developed under sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this subpart is to ensure the following:

(a) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(b) Individuals performing renovations regulated in accordance with § 745.82 are properly trained; renovators and firms performing these renovations are certified; and the work practices in § 745.85 are followed during these renovations.

■ 3. Section 745.81 is revised to read as follows:

§ 745.81 Effective dates.

(a) *Training, certification and accreditation requirements and work practice standards.* The training, certification and accreditation requirements and work practice standards in this subpart are applicable in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this

part. The training, certification and accreditation requirements and work practice standards in this subpart will become effective as follows:

(1) *Training programs.* Effective June 23, 2008, no training program may provide, offer, or claim to provide training or refresher training for EPA certification as a renovator or a dust sampling technician without accreditation from EPA under § 745.225. Training programs may apply for accreditation under § 745.225 beginning April 22, 2009.

(2) *Firms.* (i) Firms may apply for certification under § 745.89 beginning October 22, 2009.

(ii) On or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under § 745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(3) *Individuals.* On or after April 22, 2010, all renovations must be directed by renovators certified in accordance with § 745.90(a) and performed by certified renovators or individuals trained in accordance with § 745.90(b)(2) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(4) *Work practices.* On or after April 22, 2010, all renovations must be performed in accordance with the work practice standards in § 745.85 and the associated recordkeeping requirements in § 745.86(b)(6) and (b)(7) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in § 745.82(a) or (c).

(5) The suspension and revocation provisions in § 745.91 are effective April 22, 2010.

(b) *Renovation-specific pamphlet.* Before December 22, 2008, renovators or firms performing renovations in States and Indian Tribal areas without an authorized program may provide owners and occupants with either of the following EPA pamphlets: *Protect Your Family From Lead in Your Home* or *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*. After that date, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* must be used exclusively.

(c) *Pre-Renovation Education Rule.* With the exception of the requirement to use the pamphlet entitled *Renovate Right: Important Lead Hazard Information for Families, Child Care*

Providers and Schools, the provisions of the Pre-Renovation Education Rule in this subpart have been in effect since June 1999.

■ 4. Section 745.82 is revised to read as follows:

§ 745.82 Applicability.

(a) This subpart applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(1) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor (certified pursuant to either Federal regulations at § 745.226 or a State or Tribal certification program authorized pursuant to § 745.324) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm²) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination.

(2) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA recognized test kit as defined in § 745.83 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm² or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(b) The information distribution requirements in § 745.84 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in §§ 745.85, 745.89, and 745.90 to the extent necessary to respond to the emergency. Emergency

renovations are not exempt from the cleaning requirements of § 745.85(a)(5), which must be performed by certified renovators or individuals trained in accordance with § 745.90(b)(2), the cleaning verification requirements of § 745.85(b), which must be performed by certified renovators, and the recordkeeping requirements of § 745.86(b)(6) and (b)(7).

(c) The training requirements in § 745.90 and the work practice standards for renovation activities in § 745.85 apply to all renovations covered by this subpart, except for renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, no pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

■ 5. Section 745.83 is amended as follows:

■ a. Remove the definitions of "Emergency renovation operations" and "Multi-family housing."

■ b. Revise the definitions of "Pamphlet," "Renovation," and "Renovator."

■ c. Add 13 definitions in alphabetical order.

§ 745.83 Definitions.

* * * * *

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas

that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

Cleaning verification card means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

Component or building component means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

Dry disposable cleaning cloth means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Firm means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

HEPA vacuum means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of

capturing particles of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Minor repair and maintenance activities are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

Pamphlet means the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term "pamphlet" also means any pamphlet developed by EPA under section 406(a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to § 745.326.

Recognized test kit means a commercially available kit recognized by EPA under § 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by

weight, in a paint chip, paint powder, or painted surface.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part (40 CFR 745.223). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

Renovator means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

Wet disposable cleaning cloth means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Wet mopping system means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

Work area means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

§ 745.84 [Removed]

■ 6. Section 745.84 is removed.

§ 745.85 [Redesignated as § 745.84]

■ 7. Section 745.85 is redesignated as § 745.84.

■ 8. Newly designated § 745.84 is amended as follows:

■ a. Revise the introductory text of paragraph (a) and revise paragraph (a)(2)(i).

■ b. Revise the introductory text of paragraph (b) and revise paragraphs (b)(2) and (b)(4).

■ c. Redesignate paragraph (c) as paragraph (d).

■ d. Add a new paragraph (c).

■ e. Revise the introductory text of newly designated paragraph (d).

§ 745.84 Information distribution requirements.

(a) *Renovations in dwelling units.* No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

* * * * *

(2) * * *

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature.

* * * * *

(b) *Renovations in common areas.* No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

* * * * *

(2) *Comply with one of the following.*

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the firm performing the renovation, or

(ii) While the renovation is ongoing, post informational signs describing the

general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants.

* * * * *

(4) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(c) *Renovations in child-occupied facilities.* No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(1)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(ii) If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet; or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature.

(B) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility.

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians.

(3) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(d) *Written acknowledgment.* The written acknowledgments required by paragraphs (a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A) of this section must:

* * * * *

■ 9. Section 745.85 is added to subpart E to read as follows:

§ 745.85 Work practice standards.

(a) *Standards for renovation activities.* Renovations must be performed by certified firms using certified renovators as directed in § 745.89. The responsibilities of certified firms are set forth in § 745.89(d) and the responsibilities of certified renovators are set forth in § 745.90(b).

(1) *Occupant protection.* Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation and must remain in place and readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(2) *Containing the work area.* Before beginning the renovation, the firm must isolate the work area so that no dust or

debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) *Interior renovations.* The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

(B) Close and cover all ducts opening in the work area with taped-down plastic sheeting or other impermeable material.

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

(E) Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(ii) *Exterior renovations.* The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation.

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces

undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering.

(D) In certain situations, the renovation firm must take extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate other buildings or other areas of the property or migrate to adjacent properties.

(3) *Prohibited and restricted practices.* The work practices listed below shall be prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited.

(ii) The use of machines that remove lead-based paint through high speed operation such as sanding, grinding, power planing, needle gun, abrasive blasting, or sandblasting, is prohibited unless such machines are used with HEPA exhaust control.

(iii) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(4) *Waste from renovations*—(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(5) *Cleaning the work area.* After the renovation has been completed, the firm must clean the work area until no dust, debris or residue remains.

(i) *Interior and exterior renovations.* The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag.

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) *Additional cleaning for interior renovations.* The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) *Walls.* Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth.

(B) *Remaining surfaces.* Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs.

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(b) *Standards for post-renovation cleaning verification*—(1) *Interiors.* (i) A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present. If dust, debris or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(1) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(2) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(3) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.

(4) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(1) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (a)(5)(ii)(B) and (a)(5)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(2) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(3) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(2) *Exteriors.* A certified renovator must perform a visual inspection to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(c) *Optional dust clearance testing.* Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another Federal, State, Territorial, Tribal, or local law or regulation requires:

(1) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this subpart.

(2) The dust clearance samples are required to be collected by a certified inspector, risk assessor or dust sampling technician.

(3) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in § 745.227(e)(8) or any applicable State, Territorial, Tribal, or local standard.

(d) *Activities conducted after post-renovation cleaning verification.* Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this subpart if they are conducted after post-renovation cleaning verification has been performed.

■ 10. Section 745.86 is revised to read as follows:

§ 745.86 Recordkeeping and reporting requirements.

(a) Firms performing renovations must retain and, if requested, make available to EPA all records necessary to demonstrate compliance with this subpart for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation, including any applicable State or Tribal laws or regulations.

(b) Records that must be retained pursuant to paragraph (a) of this section shall include (where applicable):

(1) Reports certifying that a determination had been made by an inspector (certified pursuant to either Federal regulations at § 745.226 or an EPA-authorized State or Tribal certification program) that lead-based paint is not present on the components affected by the renovation, as described in § 745.82(b)(1).

(2) Signed and dated acknowledgments of receipt as described in § 745.84(a)(1)(i), (a)(2)(i), (b)(1)(i), (c)(1)(i)(A), and (c)(1)(ii)(A).

(3) Certifications of attempted delivery as described in § 745.84(a)(2)(i) and (c)(1)(ii)(A).

(4) Certificates of mailing as described in § 745.84(a)(1)(ii), (a)(2)(ii), (b)(1)(ii), (c)(1)(i)(B), and (c)(1)(ii)(B).

(5) Records of notification activities performed regarding common area renovations, as described in § 745.84(b)(3) and (b)(4), and renovations in child-occupied facilities, as described in § 745.84(c)(2).

(6) Any signed and dated statements received from owner-occupants

documenting that the requirements of § 745.85 do not apply. These statements must include a declaration that the renovation will occur in the owner's residence, a declaration that no children under age 6 reside there, a declaration that no pregnant woman resides there, a declaration that the housing is not a child-occupied facility, the address of the unit undergoing renovation, the owner's name, an acknowledgment by the owner that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule, the signature of the owner, and the date of signature. These statements must be written in the same language as the text of the renovation contract, if any.

(7) Documentation of compliance with the requirements of § 745.85, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in § 745.85(a), and that the certified renovator performed the post-renovation cleaning verification described in § 745.85(b). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in § 745.82, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's training certificate, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors).

(B) Closing and covering all HVAC ducts in the work area (interiors).

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors).

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors).

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust.

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors).

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(v) Waste was contained on-site and while being transported off-site.

(vi) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal.

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(vii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(c) When test kits are used, the renovation firm must, within 30 days of the completion of the renovation, provide identifying information as to the manufacturer and model of the test kits used, a description of the components that were tested including their locations, and the test kit results to the person who contracted for the renovation.

(d) If dust clearance sampling is performed in lieu of cleaning verification as permitted by § 745.85(c), the renovation firm must provide, within 30 days of the completion of the renovation, a copy of the dust sampling report to the person who contracted for the renovation.

■ 11. Section 745.87 is amended by revising paragraph (e) to read as follows:

§ 745.87 Enforcement and inspections.

* * * * *

(e) Lead-based paint is assumed to be present at renovations covered by this subpart. EPA may conduct inspections and issue subpoenas pursuant to the provisions of TSCA section 11 (15 U.S.C. 2610) to ensure compliance with this subpart.

■ 12. Section 745.88 is revised to read as follows:

§ 745.88 Recognized test kits.

(a) Effective June 23, 2008, EPA recognizes the test kits that have been determined by National Institute of Standards and Technology research to meet the negative response criteria described in paragraph (c)(1) of this section. This recognition will last until EPA publicizes its recognition of the first test kit that meets both the negative response and positive response criteria in paragraph (c) of this section.

(b) No other test kits will be recognized until they are tested through EPA's Environmental Technology Verification Program or other equivalent EPA approved testing program.

(1) Effective September 1, 2008, to initiate the testing process, a test kit manufacturer must submit a sufficient number of kits, along with the instructions for using the kits, to EPA. The test kit manufacturer should first visit the following website for information on where to apply: <http://www.epa.gov/etv/howtoapply.html>.

(2) After the kit has been tested through the Environmental Technology Verification Program or other equivalent approved EPA testing program, EPA will review the report to determine whether the required criteria have been met.

(3) Before September 1, 2010, test kits must meet only the negative response criteria in paragraph (c)(1) of this section. The recognition of kits that meet only this criteria will last until EPA publicizes its recognition of the first test kits that meets both of the criteria in paragraph (c) of this section.

(4) After September 1, 2010, test kits must meet both of the criteria in paragraph (c) of this section.

(5) If the report demonstrates that the kit meets the required criteria, EPA will issue a notice of recognition to the kit manufacturer, provide them with the report, and post the information on EPA's website.

(6) If the report demonstrates that the kit does not meet the required criteria, EPA will notify the kit manufacturer and provide them with the report.

(c) *Response criteria*—(1) *Negative response criteria*. For paint containing lead at or above the regulated level, 1.0 mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a negative response less than or equal to 5% of the time.

(2) *Positive response criteria*. For paint containing lead below the regulated level, 1.0 mg/cm² or 0.5% by weight, a demonstrated probability (with 95% confidence) of a positive

response less than or equal to 10% of the time.

■ 13. Section 745.89 is added to subpart E to read as follows:

§ 745.89 Firm certification.

(a) *Initial certification*. (1) Firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(2) After EPA receives a firm's application, EPA will take one of the following actions within 90 days of the date the application is received:

(i) EPA will approve a firm's application if EPA determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When EPA approves a firm's application, EPA will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved. EPA certification allows the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete. If EPA requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request.

(iii) EPA will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (a)(2)(ii) of this section or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(b) *Re-certification*. To maintain its certification, a firm must be re-certified by EPA every 5 years.

(1) *Timely and complete application*. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and EPA does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until EPA approves its re-certification application.

(iii) If the firm fails to obtain re-certification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (a) of this section.

(2) *EPA action on an application*. After EPA receives a firm's application for re-certification, EPA will review the application and take one of the following actions within 90 days of receipt:

(i) EPA will approve a firm's application if EPA determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When EPA approves a firm's application for re-certification, EPA will issue the firm a new certificate with an expiration date 5 years from the date that the firm's current certification expires. EPA certification allows the firm to perform renovations or dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete.

(iii) EPA will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(c) *Amendment of certification.* A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(1) To amend a certification, a firm must submit a completed "Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(2) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, EPA will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(3) Amending a certification does not affect the certification expiration date.

(d) *Firm responsibilities.* Firms performing renovations must ensure that:

(1) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with § 745.90.

(2) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in § 745.90.

(3) All renovations performed by the firm are performed in accordance with the work practice standards in § 745.85.

(4) The pre-renovation education requirements of § 745.84 have been performed.

(5) The recordkeeping requirements of § 745.86 are met.

■ 14. Section 745.90 is added to subpart E to read as follows:

§ 745.90 Renovator certification and dust sampling technician certification.

(a) *Renovator certification and dust sampling technician certification.* (1) To become a certified renovator or certified dust sampling technician, an individual must successfully complete the appropriate course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part. The course completion certificate serves as proof of certification. EPA renovator certification allows the certified individual to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. EPA dust sampling technician certification allows the certified individual to perform dust clearance sampling under § 745.85(c) in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(2) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed an EPA, HUD, or EPA/HUD model renovation training course may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician.

(4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again.

(b) *Renovator responsibilities.* Certified renovators are responsible for ensuring compliance with § 745.85 at all renovations to which they are assigned. A certified renovator:

(1) Must perform all of the tasks described in § 745.85(b) and must either perform or direct workers who perform all of the tasks described in § 745.85(a).

(2) Must provide training to workers on the work practices they will be using in performing their assigned tasks.

(3) Must be physically present at the work site when the signs required by § 745.85(a)(1) are posted, while the work area containment required by § 745.85(a)(2) is being established, and while the work area cleaning required by § 745.85(a)(5) is performed.

(4) Must regularly direct work being performed by other individuals to ensure that the work practices are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area.

(5) Must be available, either on-site or by telephone, at all times that renovations are being conducted.

(6) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint.

(7) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

(8) Must prepare the records required by § 745.86(b)(7).

(c) *Dust sampling technician responsibilities.* When performing optional dust clearance sampling under § 745.85(c), a certified dust sampling technician:

(1) Must collect dust samples in accordance with § 745.227(e)(8), must send the collected samples to a laboratory recognized by EPA under TSCA section 405(b), and must compare the results to the clearance levels in accordance with § 745.227(e)(8).

(2) Must have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

■ 15. Section 745.91 is added to subpart E to read as follows:

§ 745.91 Suspending, revoking, or modifying an individual's or firm's certification.

(a)(1) *Grounds for suspending, revoking, or modifying an individual's certification.* EPA may suspend, revoke, or modify an individual's certification if the individual fails to comply with Federal lead-based paint statutes or regulations. EPA may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with § 745.85. In addition to an administrative or judicial finding of violation, execution of a consent

agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) *Grounds for suspending, revoking, or modifying a firm's certification.* EPA may suspend, revoke, or modify a firm's certification if the firm:

(i) Submits false or misleading information to EPA in its application for certification or re-certification.

(ii) Fails to maintain or falsifies records required in § 745.86.

(iii) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with Federal lead-based paint statutes or regulations. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(b) *Process for suspending, revoking, or modifying certification.* (1) Prior to taking action to suspend, revoke, or modify an individual's or firm's certification, EPA will notify the affected entity in writing of the following:

(i) The legal and factual basis for the proposed suspension, revocation, or modification.

(ii) The anticipated commencement date and duration of the suspension, revocation, or modification.

(iii) Actions, if any, which the affected entity may take to avoid suspension, revocation, or modification, or to receive certification in the future.

(iv) The opportunity and method for requesting a hearing prior to final suspension, revocation, or modification.

(2) If an individual or firm requests a hearing, EPA will:

(i) Provide the affected entity an opportunity to offer written statements in response to EPA's assertions of the legal and factual basis for its proposed action.

(ii) Appoint an impartial official of EPA as Presiding Officer to conduct the hearing.

(3) The Presiding Officer will:

(i) Conduct a fair, orderly, and impartial hearing within 90 days of the request for a hearing.

(ii) Consider all relevant evidence, explanation, comment, and argument submitted.

(iii) Notify the affected entity in writing within 90 days of completion of the hearing of his or her decision and order. Such an order is a final agency action which may be subject to judicial review. The order must contain the commencement date and duration of the suspension, revocation, or modification.

(4) If EPA determines that the public health, interest, or welfare warrants immediate action to suspend the certification of any individual or firm prior to the opportunity for a hearing, it will:

(i) Notify the affected entity in accordance with paragraph (b)(1)(i) through (b)(1)(iii) of this section, explaining why it is necessary to suspend the entity's certification before an opportunity for a hearing.

(ii) Notify the affected entity of its right to request a hearing on the immediate suspension within 15 days of the suspension taking place and the procedures for the conduct of such a hearing.

(5) Any notice, decision, or order issued by EPA under this section, any transcript or other verbatim record of oral testimony, and any documents filed by a certified individual or firm in a hearing under this section will be available to the public, except as otherwise provided by section 14 of TSCA or by part 2 of this title. Any such hearing at which oral testimony is presented will be open to the public, except that the Presiding Officer may exclude the public to the extent necessary to allow presentation of information which may be entitled to confidential treatment under section 14 of TSCA or part 2 of this title.

(6) EPA will maintain a publicly available list of entities whose certification has been suspended, revoked, modified, or reinstated.

(7) Unless the decision and order issued under paragraph (b)(3)(iii) of this section specify otherwise:

(i) An individual whose certification has been suspended must take a refresher training course (renovator or dust sampling technician) in order to make his or her certification current.

(ii) An individual whose certification has been revoked must take an initial renovator or dust sampling technician course in order to become certified again.

(iii) A firm whose certification has been revoked must reapply for certification after the revocation ends in order to become certified again. If the firm's certification has been suspended and the suspension ends less than 5 years after the firm was initially certified or re-certified, the firm does not need to do anything to re-activate its certification.

■ 16. Section 745.220 is amended by revising paragraph (a) to read as follows:

§ 745.220 Scope and applicability.

(a) This subpart contains procedures and requirements for the accreditation of training programs for lead-based

paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This subpart also requires that, except as discussed below, all lead-based paint activities, as defined in this subpart, be performed by certified individuals and firms.

* * * * *

■ 17. Section 745.225 is amended as follows:

■ a. Revise paragraph (a).

■ b. Revise the introductory text of paragraph (b), revise paragraph (b)(1)(ii), and add paragraph (b)(1)(iv)(C).

■ c. Revise the introductory text of paragraph (c), add paragraphs (c)(6)(vi), (c)(6)(vii), (c)(8)(vi), and (c)(8)(vii), and revise paragraphs (c)(8)(iv) and (c)(10).

■ d. Remove the phrase "lead-based paint activities" and add in its place the phrase "renovator, dust sampling technician, or lead-based paint activities" wherever it appears in paragraph (c)(13).

■ e. Add paragraph (c)(14)(ii)(D)(6).

■ f. Add paragraphs (d)(6) and (d)(7).

■ g. Revise the introductory text of paragraph (e).

■ h. Remove the word "activities" wherever it appears in paragraph (e)(1).

■ i. Revise paragraph (e)(2).

§ 745.225 Accreditation of training programs; target housing and child-occupied facilities.

(a) *Scope.* (1) A training program may seek accreditation to offer courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(2) Training programs may first apply to EPA for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section on or after August 31, 1998. Training programs may first apply to EPA for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section on or after April 22, 2009.

(3) A training program must not provide, offer, or claim to provide EPA-accredited lead-based paint activities courses without applying for and receiving accreditation from EPA as required under paragraph (b) of this section on or after March 1, 1999. A training program must not provide, offer, or claim to provide EPA-accredited renovator or dust sampling technician courses without applying for

and receiving accreditation from EPA as required under paragraph (b) of this section on or after June 23, 2008.

(b) *Application process.* The following are procedures a training program must follow to receive EPA accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(1) * * *

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages are considered different courses, and each must independently meet the accreditation requirements.

* * * * *

(iv) * * *

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate.

* * * * *

(c) *Requirements for the accreditation of training programs.* For a training program to obtain accreditation from EPA to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses, the program must meet the following requirements:

* * * * *

(6) * * *

(vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (d)(6) of this section. Hands-on training activities must cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification.

(vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (d)(7) of this section. Hands-on training activities must cover dust sampling methodologies.

* * * * *

(8) * * *

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of

interim certification, which is 6 months from the date of course completion.

* * * * *

(vi) The language in which the course was taught.

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual.

* * * * *

(10) Courses offered by the training program must teach the work practice standards contained in § 745.85 or § 745.227, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

* * * * *

(14) * * *

(ii) * * *

(D) * * *

(6) A digital photograph of the student.

(d) * * *

(6) *Renovator.* (i) Role and responsibility of a renovator.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on EPA, HUD, OSHA, and other Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.

(v) Renovation methods to minimize the creation of dust and lead-based paint hazards.

(vi) Interior and exterior containment and cleanup methods.

(vii) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing.

(viii) Waste handling and disposal.

(ix) Providing on-the-job training to other workers.

(x) Record preparation.

(7) *Dust sampling technician.* (i) Role and responsibility of a dust sampling technician.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on Federal, State, and local regulations and guidance that pertains to lead-based paint and renovation activities.

(iv) Dust sampling methodologies.

(v) Clearance standards and testing.

(vi) Report preparation.

* * * * *

(e) *Requirements for the accreditation of refresher training programs.* A training program may seek accreditation to offer refresher training courses in any

of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. To obtain EPA accreditation to offer refresher training, a training program must meet the following minimum requirements:

* * * * *

(2) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours.

* * * * *

■ 18. Section 745.320 is amended by revising paragraph (c) to read as follows:

§ 745.320 Scope and purpose.

* * * * *

(c) A State or Indian Tribe may seek authorization to administer and enforce all of the provisions of subpart E of this part, just the pre-renovation education provisions of subpart E of this part, or just the training, certification, accreditation, and work practice provisions of subpart E of this part. The provisions of §§ 745.324 and 745.326 apply for the purposes of such program authorizations.

* * * * *

■ 19. Section 745.324 is amended as follows:

■ a. Revise paragraph (a)(1).

■ b. Remove the phrase “lead-based paint training accreditation and certification” from the second sentence of paragraph (b)(1)(iii).

■ c. Revise paragraph (b)(2)(ii).

■ d. Revise paragraphs (e)(2)(i) and (e)(4).

■ e. Revise paragraph (f)(2).

■ f. Revise paragraph (i)(8).

§ 745.324 Authorization of State or Tribal programs.

(a) *Application content and procedures.* (1) Any State or Indian Tribe that seeks authorization from EPA to administer and enforce the provisions of subpart E or subpart L of this part must submit an application to the Administrator in accordance with this paragraph.

* * * * *

(b) * * *

(2) * * *

(ii) An analysis of the State or Tribal program that compares the program to the Federal program in subpart E or subpart L of this part, or both. This analysis must demonstrate how the program is, in the State’s or Indian Tribe’s assessment, at least as protective as the elements in the Federal program at subpart E or subpart L of this part, or

both. EPA will use this analysis to evaluate the protectiveness of the State or Tribal program in making its determination pursuant to paragraph (e)(2)(i) of this section.

* * * * *

(e) * * *

(2) * * *

(i) The State or Tribal program is at least as protective of human health and the environment as the corresponding Federal program under subpart E or subpart L of this part, or both; and

* * * * *

(4) If the State or Indian Tribe applies for authorization of State or Tribal programs under both subpart E and subpart L, EPA may, as appropriate, authorize one program and disapprove the other.

* * * * *

(f) * * *

(2) If a State or Indian Tribe does not have an authorized program to administer and enforce the pre-renovation education requirements of subpart E of this part by August 31, 1998, the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country. If a State or Indian Tribe does not have an authorized program to administer and enforce the training, certification and accreditation requirements and work practice standards of subpart E of this part by April 22, 2009, the Administrator will, by such date, enforce those provisions of subpart E of this part as the Federal program for that State or Indian Country.

* * * * *

(j) * * *

(8) By the date of such order, the Administrator will establish and enforce the provisions of subpart E or subpart L of this part, or both, as the Federal program for that State or Indian Country.

■ 20. Section 745.326 is revised to read as follows:

§ 745.326 Renovation: State and Tribal program requirements.

(a) *Program elements.* To receive authorization from EPA, a State or Tribal program must contain the following program elements:

(1) For pre-renovation education programs, procedures and requirements for the distribution of lead hazard information to owners and occupants of target housing and child-occupied facilities before renovations for compensation.

(2) For renovation training, certification, accreditation, and work practice standards programs:

(i) Procedures and requirements for the accreditation of renovation and dust sampling technician training programs.

(ii) Procedures and requirements for the certification of renovators and dust sampling technicians.

(iii) Procedures and requirements for the certification of individuals and/or firms.

(iv) Requirements that all renovations be conducted by appropriately certified individuals and/or firms.

(v) Work practice standards for the conduct of renovations.

(3) For all renovation programs, development of the appropriate infrastructure or government capacity to effectively carry out a State or Tribal program.

(b) *Pre-renovation education.* To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish clear standards for identifying renovation activities that trigger the information distribution requirements.

(2) Establish procedures for distributing the lead hazard information to owners and occupants of housing and child-occupied facilities prior to renovation activities.

(3) Require that the information to be distributed include either the pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, developed by EPA under section 406(a) of TSCA, or an alternate pamphlet or package of lead hazard information that has been submitted by the State or Tribe, reviewed by EPA, and approved by EPA for that State or Tribe. Such information must contain renovation-specific information similar to that in *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*, must meet the content requirements prescribed by section 406(a) of TSCA, and must be in a format that is readable to the diverse audience of housing and child-occupied facility owners and occupants in that State or Tribe.

(i) A State or Tribe with a pre-renovation education program approved before June 23, 2008, must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to § 745.324(h) on or after April 22, 2009.

(ii) A State or Tribe with an application for approval of a pre-renovation education program submitted but not approved before June 23, 2008, must demonstrate that it meets the requirements of this section either by amending its application or in the first report that it submits pursuant

to § 745.324(h) of this part on or after April 22, 2009.

(iii) A State or Indian Tribe submitting its application for approval of a pre-renovation education program on or after June 23, 2008, must demonstrate in its application that it meets the requirements of this section.

(c) *Accreditation of training programs.* To be considered at least as protective as the Federal program, the State or Tribal program must meet the requirements of either paragraph (c)(1) or (c)(2) of this section:

(1) The State or Tribal program must establish accreditation procedures and requirements, including:

(i) Procedures and requirements for the accreditation of training programs, including, but not limited to:

(A) Training curriculum requirements.

(B) Training hour requirements.

(C) Hands-on training requirements.

(D) Trainee competency and proficiency requirements.

(E) Requirements for training program quality control.

(ii) Procedures and requirements for the re-accreditation of training programs.

(iii) Procedures for the oversight of training programs.

(iv) Procedures and standards for the suspension, revocation, or modification of training program accreditations; or

(2) The State or Tribal program must establish procedures and requirements for the acceptance of renovation training offered by training providers accredited by EPA or a State or Tribal program authorized by EPA under this subpart.

(d) *Certification of renovators.* To be considered at least as protective as the Federal program, the State or Tribal program must:

(1) Establish procedures and requirements for individual certification that ensure that certified renovators are trained by an accredited training program.

(2) Establish procedures and requirements for re-certification.

(3) Establish procedures for the suspension, revocation, or modification of certifications.

(e) *Work practice standards for renovations.* To be considered at least as protective as the Federal program, the State or Tribal program must establish standards that ensure that renovations are conducted reliably, effectively, and safely. At a minimum, the State or Tribal program must contain the following requirements:

(1) Renovations must be conducted only by certified contractors.

(2) Renovations are conducted using lead-safe work practices that are at least

as protective to occupants as the requirements in § 745.85.

(3) Certified contractors must retain appropriate records.

■ 21. Section 745.327 is amended by revising paragraphs (b)(1)(iv) and (b)(2)(ii) to read as follows:

§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

* * * * *

(b) * * *

(1) * * *

(iv) Requirements that regulate the conduct of renovation activities as described at § 745.326.

(2) * * *

(ii) For the purposes of enforcing a renovation program, State or Tribal officials must be able to enter a firm's place of business or work site.

* * * * *

■ 22. Section 745.339 is revised to read as follows:

§ 745.339 Effective date.

States and Indian Tribes may seek authorization to administer and enforce subpart L of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce the pre-renovation education provisions of subpart E of this part pursuant to this subpart at any time. States and Indian Tribes may seek authorization to administer and enforce all of subpart E of this part pursuant to this subpart effective June 23, 2008.

[FR Doc. E8-8141 Filed 4-21-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA-HQ-OPPT-2004-0126; FRL-8358-6]

Lead Hazard Information Pamphlet; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of EPA's new lead hazard information pamphlet for renovation activities, *Renovate Right: Lead Hazard Information for Families, Child Care Providers and Schools (Renovate Right)*. There is an increased risk of exposure to lead-based paint hazards during renovation activities, particularly for children under 6 years of age. To better inform families, child care providers, and schools about the risks and to

encourage greater public health and safety during renovation activities in target housing and child-occupied facilities, EPA has developed a renovation-specific information pamphlet. This new pamphlet gives information on lead-based paint hazards, lead testing, how to select a contractor, what precautions to take during the renovation, and proper cleanup activities.

DATES: After June 23, 2008, the new pamphlet or *Protect Your Family From Lead in Your Home* may be used for compliance with the Pre-Renovation Education Rule under TSCA section 406(b). After December 22, 2008, the new pamphlet must be used exclusively.

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

For technical information contact: Mike Wilson, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number (201) 566-0521; e-mail address: wilson.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you perform renovations of target housing or child-occupied facilities for compensation. "Target housing" is defined in section 401 of TSCA as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. EPA's Renovation, Repair, and Painting rule defines a child-occupied facility as a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least 2 different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in public or commercial buildings or in target housing.

Potentially affected entities may include, but are not limited to:

- Building construction (NAICS code 236), e.g., single family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS code 238), e.g., plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.
- Real estate (NAICS code 531), e.g., lessors of residential buildings and dwellings, residential property managers.
- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 745.82. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of the Pamphlet and Other Related Information?

1. *The pamphlet.* Single copies of the pamphlet may be obtained by calling the National Lead Information Clearinghouse (NLIC) at 1-800-424-LEAD or TDD: 1-800-526-5456, or the EPA Public Information Center at (202) 260-2080. Multiple copies are available through the Government Printing Office (GPO). The public may order by calling the GPO Order Desk at (202) 512-1800, faxing (202) 512-2233, or writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Request the publication by title, *Renovate Right: Lead Hazard Information for Families, Child Care Providers and Schools*. The pamphlet is also available on EPA's website at <http://www.epa.gov/lead>. The pamphlet may be reproduced by an individual or corporation without permission from EPA.

2. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPPT-2004-0126. All documents in the docket are listed in the docket's index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

3. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>.

II. Background

EPA has determined that there is a need for a new information pamphlet that addresses renovation-specific lead exposure concerns. Existing regulations at 40 CFR part 745, subpart E, require each person who performs a renovation for compensation of target housing (as defined under 40 CFR 745.103) to provide a lead hazard information pamphlet to owners and occupants of such housing prior to commencing the renovation. These regulations implement TSCA section 406(b). The pamphlet currently used, *Protect Your Family From Lead in Your Home*, was developed as directed by TSCA section 406(a).

Renovation activities create an increased risk of exposure to lead-based paint hazards, particularly for children

under 6 years of age, and the renovation-specific pamphlet will better inform families about such risks and encourage greater public health and safety during renovation activities in target housing and child-occupied facilities. This new pamphlet gives information on lead-based paint hazards, lead testing, how to select a contractor, what precautions to take during the renovation, and proper cleanup activities, while still incorporating the information already included in the original pamphlet and required by TSCA section 406(a).

In addition, EPA has modified *Renovate Right* to provide information on new requirements to minimize the introduction of lead hazards resulting from the disturbance of lead-based paint during renovation, repair, and painting activities in target housing and child-occupied facilities. These requirements are contained in a final rule published elsewhere in today's issue of the **Federal Register**. The Renovation, Repair, and Painting rule, issued under the authority of TSCA section 402(c)(3), applies to renovations performed for compensation in target housing and child-occupied facilities. Among other things, the rule establishes requirements for training renovators and other renovation workers; for certifying renovators and renovation firms; for accrediting providers of renovation training; for renovation work practices; and for recordkeeping. The work practice standards apply to all persons who do renovation for compensation, including renovation contractors, maintenance workers in multi-family housing, painters, and contractors in other specialty trades. The rule also modifies the existing regulations at 40 CFR part 745, subpart E, that implement TSCA section 406(b) to allow and then require the distribution of *Renovate Right* instead of the current pamphlet, *Protect Your Family From Lead in Your Home*, to owners and occupants of target housing. Finally, the rule requires persons performing renovations for compensation in child-occupied facilities to provide *Renovate Right* to the owner of the building and the proprietor of the child-occupied facility. In addition, renovation firms must either: (i) Provide the pamphlet and general information on the renovation to parents or guardians of children under age 6 using the facility, or (ii) erect signs that provide general information on the renovation accompanied by the pamphlet or

information on how to obtain a copy of *Renovate Right*.

During the development of *Renovate Right*, EPA conducted focus tests to obtain feedback on the draft pamphlet's current reading level, content, and graphic presentation. EPA conducted these tests during the spring of 2004 in Washington, DC and Arlington, VA. The tests consisted of written survey questions and moderated group discussions and were conducted with a group of homeowners and separately with a group of contractors. The focus tests proved valuable in providing overall impressions of the draft pamphlet's strengths and weaknesses. As a direct result of the feedback, EPA made revisions to clarify the intended audience and goal of the pamphlet and strengthen the message that renovation and remodeling work can be done safely if done properly. Revisions included highlighting the significance of lead dust, clarifying the message about the likelihood of the presence of lead, the responsibilities of contractors, and testing options; and better describing what constitutes lead safe work practices.

In addition, EPA solicited public comments on the draft pamphlet, then entitled *Protect Your Family From Lead During Renovation, Repair & Painting*, through a **Federal Register** notice published on March 8, 2006 (71 FR 11570) (FRL-7690-8). EPA received 16 comments on the draft pamphlet, including a request that EPA consider changing the name of the pamphlet to avoid confusion with the existing pamphlet entitled *Protect Your Family From Lead in Your Home*. EPA changed the name of this new pamphlet and incorporated the remaining comments where appropriate. More information on the comments received and how EPA modified the pamphlet to address those comments can be found in the docket for this action.

List of Subjects in 40 CFR Part 745

Environmental protection, Child-occupied facility, Housing renovation, Lead, Lead-based paint, Renovation, Reporting and recordkeeping requirements.

Dated: March 31, 2008.

James Jones,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.
[FR Doc. E8-8142 Filed 4-21-08; 8:45 am]

BILLING CODE 6560-50-S



Federal Register

**Tuesday,
April 22, 2008**

Part III

Department of Defense General Services Administration

National Aeronautics and Space Administration

**48 CFR Chapter 1; and Parts 1, 2, 4, 12,
52 et al.**

**Federal Acquisition Regulations; Final
Rule and Small Entity Compliance Guide**

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2008–0003, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–25; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–25. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at <http://www.regulations.gov>.

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–25 and the specific FAR case number(s). For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–25

Item	Subject	FAR case	Analyst
I	Federal Procurement Data System Reporting (Interim)	2004–038	Woodson.
II	Electronic Subcontracting Reporting System (eSRS) (Interim)	2005–040	Cundiff.
III	Revisions to the Defense Priorities and Allocations System (DPAS)	2006–033	Davis.
IV	Use of Products Containing Recovered Materials in Service and Construction Contracts	2005–039	Clark.
V	Representations and Certifications - Tax Delinquencies	2006–011	Murphy.
VI	Enhanced Access for Small Business	2006–031	Murphy.
VII	Technical Amendment.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–25 amends the FAR as specified below:

Item I—Federal Procurement Data System Reporting (FAR Case 2004–038) (Interim)

This interim rule amends the Federal Acquisition Regulation (FAR) Subpart 4.6 to revise the process for reporting contract actions to the Federal Procurement Data System (FPDS). FPDS will allow agencies to obtain Federal procurement reports as well as several workload reports designed specifically for first-line supervisors. The use of the Federal reports will alleviate the need for individual agencies to collect, verify, and distribute statistics for a host of requirements such as the Small Business Goaling Report (SBGR), the Performance-Based Acquisition (PBA) report, the Central Contractor Registration (CCR), and the Resource Conservation and Recovery Act (RCRA) report. The rule provides questions and answers to facilitate the public’s understanding of the changes proposed in the interim for reporting contract actions under FAR Subpart 4.6.

Item II—Electronic Subcontracting Reporting System (eSRS) (FAR Case 2005–040) (Interim)

This interim rule amends the Federal Acquisition Regulation to require that small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form 294 - Subcontract Report for Individual Contracts and Standard Form 295 - Summary Subcontract Report. The eSRS is a web-based system managed by the Integrated Acquisition Environment. The eSRS is intended to streamline the small business subcontracting program reporting process and provide the data to agencies in a manner that will enable them to more effectively manage the program.

Item III—Revisions to the Defense Priorities and Allocations System (DPAS) (FAR Case 2006–033)

This final rule amends the language in the Federal Acquisition Regulation (FAR) to reflect the President’s delegation of the Defense Production Act’s priorities and allocations authorities in Executive Order 12919, and the current provisions of the Defense Priorities and Allocations System (DPAS) regulations of the Department of Commerce in 15 CFR Part 700.

FAR changes incorporated in parts 2, 11, 18, 52, and 53 benefit both the Government and industry in the

receiving of timely and proper delivery of industrial resources. Contracting officers should take notice of the changes in the FAR especially the changes to the Standard Form (SF) 26, Award/Contract and SF 1447, Solicitation/Contract, and use the revised SF 26 and SF 1447 that reflects the 15 CFR 700 citation and 2008 edition date change.

Item IV—Use of Products Containing Recovered Materials in Service and Construction Contracts (FAR Case 2005–039)

This final rule amends the Federal Acquisition Regulation (FAR) to clarify language within the FAR regarding the use of products containing recovered materials, pursuant to the Resource Conservation and Recovery Act of 1976, and Executive Order 13101 “Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.” The rule also prescribes a new clause for use in service or construction contracts, to ensure that contractors deliver and make maximum use of products containing recovered material.

Item V—Representations and Certifications - Tax Delinquencies (FAR Case 2006–011)

This final rule amends the Federal Acquisition Regulation (FAR) to add conditions regarding refusal to pay delinquent Federal taxes to standards of

contractor responsibility, causes for suspension and debarment, and the certifications regarding debarment, suspension, and proposed debarment. The changes are intended to add clarity regarding the specific circumstances under which tax delinquencies are so serious that suspension or debarment should be considered. The changes originated in response to a request from the Senate Permanent Subcommittee on Investigations.

Item VI—Enhanced Access for Small Business (FAR Case 2006–031)

This final rule creates a different, higher dollar ceiling enabling small businesses to use the small claims procedure for appealing a contracting officer's final decision. Section 857 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) changed the ceiling under the Contract Disputes Act from \$50,000 or less to \$150,000 or less for small businesses. The ceiling remains at \$50,000 or less for other types of businesses. The change to 41 U.S.C. 608 is a ceiling change only.

Item VII—Technical Amendment

An editorial change is made at FAR 1.603–1.

Dated: April 4, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–25 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–25 is effective April 22, 2008, except for Items IV, V, and VI which are effective May 22, 2008.

Dated: April 10, 2008.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy, and Strategic Sourcing.

Dated: April 7, 2008.

David A. Drabkin,

Acting Chief Acquisition Officer & Senior Procurement Executive, Office of the Chief Acquisition Officer, U.S. General Services Administration.

Dated: April 3, 2008.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. E8–8402 Filed 4–21–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 12, and 52

[FAC 2005–25; FAR Case 2004–038; Item I; Docket 2008–0001, Sequence 6]

RIN 9000–AK94

Federal Acquisition Regulation; FAR Case 2004–038, Federal Procurement Data System Reporting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to revise the process for reporting contract actions to the Federal Procurement Data System (FPDS).

DATES: *Effective Date:* April 22, 2008.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 23, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–25, FAR case 2004–038, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2004–038” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2004–038. Follow the instructions provided to complete the “Public Comment and Submission Form”.

Please include your name, company name (if any), and “FAR Case 2004–038” on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–25, FAR case 2004–038, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any

personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. Please cite FAC 2005–25, FAR case 2004–038. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

As of October 2003, all agencies were to begin reporting FAR-based contract actions to the modified system. During Fiscal Year 2004, members of the interagency Change Control Board, as well as departmental teams working on the migration of data from the old to new system, recognized both the opportunity to standardize reporting processes and the need to revise the FAR to provide current and clear reporting requirements.

In this interim rule, the Government is establishing its commitment for Federal Procurement Data System (FPDS) data to serve as the single authoritative source of all procurement data for a host of applications and reports, such as the Central Contractor Registration (CCR), the Electronic Subcontracting Reporting System (eSRS), the Small Business Goaling Report (SBGR), and Resource Conservation and Recovery Act (RCRA) data.

The enhanced FPDS was put into production on October 1, 2003 by implementing newer technology to report contract actions. The old system had 48 data elements; the new system has 145+ elements, including who funds the contract. The new system has the ability to receive data and provide data to other applications used in the procurement community, allowing the Government to give “credit” to the agency that funds the contract action. The system is also an enabler ensuring that metrics are consistent when comparing one department, service, or organization to another.

Small agencies that do not have the staff or resources necessary to purchase the automated contract writing application necessary for reporting contract actions as required by this interim rule are encouraged to partner with a large agency and become a subscriber on their system. For information about frequently asked questions, see <https://www.fpd.gov>.

The rule amends the FAR by:

1. Revising FAR 1.106 to change the FAR segment 4.602 to 4.605, and 4.603 to 4.607.

2. Revising FAR 2.101 to add a definition for “Chief Acquisition Officer” and revising the definition for “Data Universal Numbering System number” to include that it is the identification number for Federal contractors.

3. Renaming FAR 4.601 “Definitions” and revising the section to add definitions for “assisted acquisition,” “contract action,” “contract action report (CAR),” “definitive contract,” “direct acquisition,” “entitlement program,” “generic DUNS number,” “indefinite-delivery vehicle (IDV),” “requesting agency,” and “servicing agency” as they pertain to FPDS.

4. Renaming FAR section 4.602 “General” and revising to describe the general characteristics of FPDS and identify data that will and will not be maintained in FPDS.

5. Renaming FAR section 4.603 “Policy” and revising the section to: describe the use of FPDS to maintain publicly available information about contract actions; require agencies to report actions subject to the FAR and using appropriated funds; require agencies performing assisted or direct acquisitions to report such actions; encourage agencies exempt from the FAR or using non-appropriated funds to report such actions; and require agencies awarding contracts using a mix of appropriated and non-appropriated funds to only report the full appropriated portion of the action.

6. Adding a new FAR section 4.604, Responsibilities. The new section: describes the responsibility of the Senior Procurement Executive (SPE) and head of the contracting activity for developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS describes the responsibility of the contracting officer for the submission and accuracy of the contract action report; describes how and when the contract action report is to be submitted to FPDS when a contract writing system is or is not integrated with FPDS or when the contract action is awarded pursuant to FAR 6.302–2 or in accordance with the authorities listed at FAR Subpart 18.2; and indicates the date that the Chief Acquisition Officer of each agency reporting to FPDS must submit an annual certification of the agency’s reported actions.

7. Adding a new FAR section 4.605, Procedures. The new section describes: the Procurement Instrument Identifier; and the Data Universal Numbering System (DUNS).

8. Adding a new FAR section 4.606, Reporting Data. The new section will describe: the mandatory actions

agencies must report to FPDS; the use of FPDS “Express Reporting;” the reporting requirements for agencies participating in the Small Business Competitiveness Demonstration Program; and the responsibility of the GSA Purchase Card Management to provide purchase card data to FPDS; how agencies may report other actions not specified in the subpart; and actions not to be reported to FPDS, including imprest funds transactions below the micro-purchase threshold, orders from GSA Stock and Global Supply Programs, orders against certain indefinite-delivery vehicles, purchases made using Javits-Wagner-O’Day service stores, and purchases made using non-appropriated fund activity cards, chaplain cards, individual Government personnel training orders, and Defense Printing.

9. Renumbering the existing FAR 4.603 as 4.607.

B. The Councils have developed the following list of questions and answers to facilitate the public’s understanding of the changes proposed in FAR Case 2004–038 for reporting contract actions under the Federal Acquisition Regulation (FAR), Subpart 4.6.

Question 1: What is the Federal Procurement Data System (FPDS)?

FPDS is a comprehensive mechanism for assembling, organizing, and presenting contract procurement data for the Federal Government. The system collects, processes, and disseminates official statistical data on Federal contracting. The data is used to generate reports for the three branches of Government and the general public.

Question 2: Why are we changing the way the Federal Government collects procurement data?

The way the Federal Government collects procurement data is being enhanced to satisfy the Government’s compelling need to manage and understand how and where your tax dollars are spent. Collecting data about Government procurements provides a broad picture of the overall Federal acquisition process. The ability to look at all contracts across many agencies, in greater detail, is a key component in establishing transparency, trust in our Government, and credibility in the professionals who use and perform these contracts. With an enhanced view of Federal spending we can conduct analyses to structure strategic procurements and save money, improve Governmentwide management, and establish interoperability with other Governmentwide data systems.

Question 3: What impact will the enhancements have on errors in FPDS?

Government procurement executives realize that contracts are written for extended periods of time and that modifications are routinely made to these contracts, even if just to exercise an option. As a result of inputting data regarding these contracts into FPDS, some errors will end up in FPDS. Additionally, as long as there are data elements in a contract writing system that are released to FPDS without validation, errors will continue. Regardless of the reason it happens, if we continue to allow the data to be input in FPDS without validation, the professionalism and credibility of the acquisition community is called into question. The FPDS enhancements provide the capability to correct any information that is incorrect or outdated.

Question 4: What level of effort is expected of contracting personnel in eliminating errors in procurement reported to FPDS?

We anticipate minimal effort is required of the contracting officer or contracting specialist to ensure that the data reported to FPDS is current, accurate, and complete. It is incumbent on contracting officers and agencies to assure the accuracy of all information submitted. It is also certain that if care is taken to record the data correctly the first time, it will reduce the burden to make corrections. To draw attention to the criticality of this information, the Office of Federal Procurement Policy (OFPP) will require each agency, beginning in December 2007, to certify annually that all data is accurate and complete. See http://www.whitehouse.gov/omb/procurement/memo/fpds_itr_030907.pdf.

Question 5: Why is it important for procurement data to be accurate and timely?

(a) Timely and accurate procurement data ensures that the recurring and special reports to the President, Congress, the Government Accountability Office, and the general public on the expenditure of taxpayer dollars are reliable, useful, realistic, and serve as a rational basis for assessing—

- The effect of Federal contracting on our Nation’s economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, women-owned small business concerns, and nonprofit agencies operating under the Javits-Wagner-O’Day Act are sharing in Federal contracts; and

- Measuring the impact of other Federal procurement policies and management initiatives.

(b) In addition to the above, a list of purposes for which this business information is used, includes but is not limited to the following:

- Decisions on organization structure.
- Decisions related to staffing.
- Decisions related to training.
- Assessments on the extent to which awards are made to businesses in the various socio-economic categories.
- Assessments of the impact of competition on the acquisition process.

(c) FPDS also provides the following—

- An authoritative source of information;
- Discipline in the reporting process;
- Confidence in Government acquisition practices, and reports; and
- Standardized means for collecting contract data.

Question 6: Does FPDS contain non-procurement data? If so, do we use these contracts in our statistics?

It is true several agencies have used FPDS to account for other types of awards that were not FAR based contracts. Once these actions are identified, the Government subtracts the dollars and actions from the total of FAR based actions prior to calculating totals or establishing goals.

Question 7: Why should FPDS collect non-FAR based actions?

Many agencies are already collecting other business data that is non-FAR based. In the future, FPDS will be able to accurately discern what is FAR based and non-FAR based actions. Agencies that desire internal business information and have a bona fide need for this information can request a modification to FPDS. In these cases, the business data may or may not be accessible to the public.

Question 8: What additional responsibilities will contracting officers have as a result of the FPDS enhancements?

Contracting officers will have the following additional responsibilities:

- a. The submission and accuracy of the individual contract action report (CAR), and validating the CAR prior to transmittal of the data.
- b. The review of their own CAR information as well as all FPDS information created by subordinates within their organization.

(1) Whenever a contract writing system is integrated with FPDS, confirming the CAR for accuracy prior to release of the contract award.

(2) Ensuring that the CAR is submitted within 3 business days after contract award whenever an automated contract writing system is not used.

(3) Ensuring that the CAR is submitted to FPDS within 30 days after

contract award for any actions done following FAR 6.302–2 or FAR Subpart 18.2.

(4) Including a code to identify the source of funds being used to procure needed supplies or services. Emphasis is not just on the contracting office awarding the contract, but also on reporting accurate funding information to include the funding office code of the customer agency for whom the contract, delivery order, or task order is issued, and submitting the correct information to FPDS.

Question 9: Why should the contracting officer be responsible for data reported to FPDS?

The contracting officer is ultimately responsible for the solicitation and award of a contract action and by virtue of that responsibility, the contracting officer is also responsible for all actions through close-out of the contract. The CAR is a part of the contract file documentation and as such, its accurate and timely completion rests with the contracting officer.

Question 10: How will contract specialists or other acquisition staff be affected by the enhancement to FPDS?

The enhancements will provide for data collection to be more automated. Where data collection is not automated, contracting officers will be required to approve or validate fewer elements. Overall, the enhancements will facilitate better accuracy.

Question 11: Why is there an emphasis on Indefinite Delivery Vehicles (IDV) in FPDS?

IDV's provide agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying. They are emphasized because of their increased use in every agency and in interagency contracting.

Question 12: What needs are satisfied by making procurement data publicly accessible in FPDS?

Making procurement data publicly accessible provides the public—

- a. Important information about acquisitions awarded by the Federal Government;
- b. The ability to fully understand how tax dollars are spent;
- c. An understanding where and how competition is conducted; and
- d. Information on where and with whom business opportunities exist.

Additionally, collecting data about Government procurements provides a broad picture of the overall Federal acquisition process. Having the ability to look at Federal contracts across many agencies, in greater detail, is a key ingredient to establishing trust in our Government and credibility in the

professionals who award and administer these contracts. With a transparent view of Federal spending, analyses may be conducted to structure procurements strategically and save taxpayer dollars; improve Governmentwide management; ensure appropriate small business participation; and establish interoperation with other Governmentwide data systems. This information will enable service-wide, department-wide, or Governmentwide strategic sourcing.

Question 13: Which agencies must report to FPDS and why?

Executive departments and agencies are responsible for collecting and reporting procurement data to FPDS as required by Federal Acquisition Regulations (FAR).

In addition, the recent passage of The Federal Funding Accountability and Transparency Act of 2006 has established that all officials who make Federal awards of any type have a duty to report their activities to the public. Therefore, reporting procurement data applies to the entire United States Government.

As previously stated, all levels of the Government use the reported data.

Question 14: What is the FPDS Express Reporting Application?

FPDS's Express Reporting Application allows users to report a single record for a single vendor for multiple contract actions.

Question 15: Will agencies be able to see their data just like the public can see it?

Yes. FPDS will provide the official Federal reports as well as several workload reports designed specifically for first-line supervisors and contract managers.

The use of Federal reports will alleviate the need for individual agencies to collect, verify, and distribute statistics for a host of requirements such as the Small Business Goaling Report (SBGR), the Performance-Based Acquisition (PBA) report, and the Resource Conservation and Recovery Act (RCRA) Report just to name a few.

Question 16: Does FPDS contain contract data from non-FAR agencies?

Some agencies which are not subject to the FAR may be required by other authority, statute, or at the Office of Management and Budget's direction to report non-FAR based contract action data into FPDS. For example, the Federal Funding Accountability and Transparency Act of 2006 requires a searchable website that provides public access to information about Federal expenditures.

This is not a significant regulatory action and, therefore, was not subject to

review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because contract reporting is not accomplished by the vendor community, only by Government contracting entities. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 1, 2, 4, 12, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, et seq. (FAC 2005-25, FAR case 2004-038), in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

E. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the applicable procedures in the rule are necessary to inform Federal agencies and the public when and how Federal procurement data must be reported. The action is not expected to have any impact on the vendor community. However, pursuant to Pub. L. 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 2, 4, 12, and 52

Government procurement.

Dated: April 4, 2008.

Al Matera, Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 4, 12, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 4, 12, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Amend section 1.106 in the table following the introductory paragraph by removing FAR segments "4.602" and "4.603" and adding "4.605" and "4.607" in their place, respectively.

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition "Chief Acquisition Officer"; and revising the definition "Data Universal Numbering System (DUNS) number" to read as follows:

2.101 Definitions.

*	*	*	*	*
(b)	*	*	*	*
(2)	*	*	*	*
*	*	*	*	*

Chief Acquisition Officer means an executive level acquisition official responsible for agency performance of acquisition activities and acquisition programs created pursuant to the Services Acquisition Reform Act of 2003, Section 1421 of Public Law 108-136.

*	*	*	*	*
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Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B), to identify unique business entities, which is used as the identification number for Federal contractors.

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PART 4—ADMINISTRATIVE MATTERS

4. Revise Subpart 4.6 to read as follows:

Subpart 4.6—Contract Reporting

Sec.	
4.600	Scope of subpart.
4.601	Definitions.
4.602	General.
4.603	Policy.
4.604	Responsibilities.
4.605	Procedures.
4.606	Reporting Data.
4.607	Solicitation Provisions.

4.600 Scope of subpart.

This subpart prescribes uniform reporting requirements for the Federal Procurement Data System (FPDS).

4.601 Definitions.

As used in this subpart—

Assisted acquisition means a contract, delivery or task order awarded by a servicing agency on behalf of a requesting agency. The agency providing the assistance may also administer the contract action.

Contract action means any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold, or modifications to these actions regardless of dollar value. Contract action does not include grants, cooperative agreements, other transactions, real property leases, requisitions from Federal stock, training authorizations, or other non-FAR based transactions.

Contract action report (CAR) means contract action data required to be entered into the Federal Procurement Data System (FPDS).

Definitive contract means any contract that must be reported to FPDS other than an indefinite delivery vehicle. This definition is only for FPDS, and is not intended to apply to Part 16.

Direct acquisition means an order awarded directly by the requesting agency against the servicing agency's contract. In a direct acquisition, the servicing agency awards and administers the contract but does not participate in the placement of an order.

Entitlement program means a Federal program that guarantees a certain level of benefits to persons or other entities who meet requirements set by law, such as Social Security, farm price supports, or unemployment benefits.

Generic DUNS number means a DUNS number assigned to a category of vendors not specific to any individual or entity.

Indefinite delivery vehicle (IDV) means an indefinite delivery contract that has one or more of the following clauses:

- (1) 52.216-18, Ordering.
- (2) 52.216-19, Order Limitations.
- (3) 52.216-20, Definite Quantity.
- (4) 52.216-21, Requirements.
- (5) 52.216-22, Indefinite Quantity.
- (6) Any other clause allowing ordering.

Requesting agency means the agency that has the requirement for an interagency acquisition.

Servicing agency means the agency that will conduct an assisted acquisition on behalf of the requesting agency.

4.602 General.

(a) The FPDS provides a comprehensive web-based tool for agencies to report contract actions. The resulting data provides—

(1) A basis for recurring and special reports to the President, the Congress, the Government Accountability Office, Federal executive agencies, and the general public;

(2) A means of measuring and assessing the effect of Federal contracting on the Nation's economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, women-owned small business concerns, and nonprofit agencies operating under the Javits-Wagner-O'Day Act, are sharing in Federal contracts; and

(3) A means of measuring and assessing the effect of other policy and management initiatives (e.g., performance based acquisitions and competition).

(b) FPDS does not provide reports for certain acquisition information used in the award of a contract action (e.g., subcontracting data, funding data, or accounting data).

(c) The FPDS Web site, <https://www.fpds.gov>, provides instructions for submitting data. It also provides—

(1) A complete list of departments, agencies, and other entities that submit data to the FPDS;

(2) Technical and end-user guidance;

(3) A computer-based tutorial; and

(4) Information concerning reports not generated in FPDS.

4.603 Policy.

(a) In accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), all Federal award data must be publicly accessible.

(b) Except as provided in 4.606(a)(2), executive agencies shall use FPDS to maintain publicly available information about all contract actions exceeding the micro-purchase threshold, and any modifications to those actions that change previously reported contract action report data, regardless of dollar value.

(c) Agencies awarding assisted acquisitions or direct acquisitions must report these actions and identify the Funding Agency Code from the applicable agency codes maintained by the National Institute of Standards and Technology (NIST) using NIST Special Publication 800-87, "Codes for the Identification of Federal and Federally Assisted Organizations," at <http://csrc.nist.gov/publications/nistpubs/800-87/sp800-87-Final.pdf>.

(d) Agencies exempt from the FAR are encouraged to report contract actions in FPDS.

(e) Agencies awarding contract actions with a mix of appropriated and nonappropriated funding shall only report the full appropriated portion of the contract action in FPDS.

4.604 Responsibilities.

(a) The Senior Procurement Executive in coordination with the head of the contracting activity is responsible for developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS.

(b)(1) The responsibility for the submission and accuracy of the individual contract action report (CAR) resides with the contracting officer who awarded the contract action.

(2) When a contract writing system is integrated with FPDS, the CAR must be confirmed for accuracy prior to release of the contract award.

(3) When a contract writing system is not integrated with FPDS, the CAR must be submitted to FPDS within three business days after contract award.

(4) For any action awarded in accordance with FAR 6.302-2 or pursuant to any of the authorities listed at FAR Subpart 18.2, the CAR must be submitted to FPDS within 30 days after contract award.

(5) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at 52.219-28, Post-Award Small Business Program Rerepresentation, the contracting officer must submit a modification contract action report to ensure that the updated size status is entered in FPDS-NG.

(c) The chief acquisition officer of each agency required to report its contract actions must submit to the General Services Administration (GSA), in accordance with FPDS guidance, by January 5, an annual certification of whether, and to what degree, agency CAR data for the preceding fiscal year is complete and accurate.

4.605 Procedures.

(a) *Procurement Instrument Identifier (PIID)*. Agencies must have in place a process that ensures that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award. Agencies must submit their proposed identifier format to the FPDS Program Management Office, which maintains a registry of the agency unique identifiers on the FPDS website, and must validate their use in all transactions. The PIID shall consist of alpha characters in the first positions to

indicate the agency, followed by alphanumeric characters identifying bureaus, offices, or other administrative subdivisions. Other pertinent PIID instructions can be found at <https://www.fpds.gov>.

(b) *Data Universal Numbering System (DUNS)*. The contracting officer must identify and report a DUNS number (Contractor Identification Number) for the successful offeror on a contract action. The DUNS number reported must identify the successful offeror's name and address as stated in the offer and resultant contract, and as registered in the Central Contractor Registration (CCR) database in accordance with the clause at 52.204-7, Central Contractor Registration. The contracting officer must ask the offeror to provide its DUNS number by using either the provision at 52.204-6, Data Universal Numbering System (DUNS) Number, the clause at 52.204-7, Central Contractor Registration, or the provision at 52.212-1, Instructions to Offerors—Commercial Items.

(1) Notwithstanding the inclusion of the provision at 52.204-6 in the associated solicitation or except as provided in paragraph (b)(2) of this section, the contracting officer shall use one of the generic DUNS numbers identified in CCR to report corresponding contract actions if the contract action is—

(i) With contractors located outside the United States and its outlying areas as defined in 2.101 who do not have a DUNS number, and the contracting officer determines it is impractical to obtain a DUNS number;

(ii) With students who do not have DUNS numbers;

(iii) With dependents of veterans, Foreign Service Officers, and military members assigned overseas who do not have DUNS numbers; or

(iv) For classified or national security.

(2) In accordance with agency procedures, authorized generic DUNS numbers found at <https://www.fpds.gov> may be used to report contract actions when—

(i) Specific public identification of the contracted party could endanger the mission, contractor, or recipients of the acquired goods or services; or

(ii) The agency determines it is impractical to obtain a DUNS number.

4.606 Reporting Data.

(a) *Actions required to be reported to FPDS*. (1) As a minimum, agencies must report the following contract actions over the micro-purchase threshold, regardless of solicitation process used, and agencies must report any modification to these contract actions

that change previously reported contract action data, regardless of dollar value:

(i) Definitive contracts, including purchase orders and imprest fund buys over the micro-purchase threshold awarded by a contracting officer.

(ii) Indefinite delivery vehicle (identified as an "IDV" in FPDS).

Examples of IDVs include the following:

(A) Task and Delivery Order Contracts (see Subpart 16.5), including—

(1) Government-wide acquisition contracts.

(2) Multi-agency contracts.

(B) GSA Federal supply schedules.

(C) Blanket Purchase Agreements (see 13.303).

(D) Basic Ordering Agreements (see 16.703).

(E) Any other agreement or contract against which individual orders or purchases may be placed.

(iii) All calls and orders awarded under the indefinite delivery vehicles identified in paragraph (a)(1)(ii) of this section.

(2) Agencies participating in the Small Business Competitiveness Demonstration Program (see Subpart 19.10) shall report as a contract action each award in the designated industry groups, regardless of dollar value.

(3) The GSA Office of Charge Card Management will provide the Government purchase card data, at a minimum annually, and GSA will incorporate that data into FPDS for reports.

(4) Agencies may use the FPDS Express Reporting capability for consolidated multiple action reports for a vendor when it would be overly burdensome to report each action individually. When used, Express Reporting should be done at least monthly.

(b) *Reporting Other Actions.* Agencies may submit actions other than those listed at paragraph (a)(1) of this section, and must contact the FPDS Program Office at integrated.acquisition@gsa.gov if they desire to submit any of the following types of activity:

(1) Transactions at or below the micro-purchase threshold, except as provided in paragraph (a)(2) of this section.

(2) Any non-appropriated fund (NAF) or NAF portion of a contract action using a mix of appropriated and nonappropriated funding.

(3) Lease and supplemental lease agreements for real property.

(4) Resale activity (*i.e.*, commissary or exchange activity).

(5) Revenue generating arrangements (*i.e.*, concessions).

(6) Training expenditures not issued as orders or contracts.

(7) Grants and entitlement actions.

(8) Interagency agreements, also known as interservice level agreements, memoranda of understanding, or memoranda of agreement.

(9) Letters of obligation used in the A-76 process.

(c) *Actions not reported.* The following types of contract actions are not to be reported to FPDS:

(1) Imprest fund transactions below the micro-purchase threshold, including those made via the Government purchase card (unless specific agency procedures prescribe reporting these actions).

(2) Orders from GSA stock and the GSA Global Supply Program.

(3) Purchases made at GSA or JWOD service stores, as these items stocked for resale have already been reported by GSA.

(4) Purchases made using non-appropriated fund activity cards, chaplain fund cards, individual Government personnel training orders, and Defense Printing orders.

(d) Agencies not subject to the FAR may be required by other authority (*e.g.*, statute or OMB) to report certain information to FPDS.

4.607 Solicitation Provisions.

(a) Insert the provision at 52.204-6, Data Universal Numbering System (DUNS) Number, in solicitations that—

(1) Are expected to result in a requirement for the generation of a CAR (see 4.606(a)(1)); and

(2) Do not contain the clause at 52.204-7, Central Contractor Registration.

(b) Insert the provision at 52.204-5, Women-Owned Business (Other Than Small Business), in all solicitations that—

(1) Are not set aside for small business concerns;

(2) Exceed the simplified acquisition threshold; and

(3) Are for contracts that will be performed in the United States or its outlying areas.

4.805 [Amended]

■ 5. Amend section 4.805 in paragraph (b)(9) by removing "4.601" and adding "4.603" in its place.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.301 [Amended]

■ 6. Amend section 12.301 in paragraph (b)(2) by removing the words "that are expected to exceed the threshold at 4.601(a)".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.204-5 [Amended]

■ 7. Amend section 52.204-5 by removing from the introductory text "4.603(b)" and adding "4.607(b)" in its place.

■ 8. Amend section 52.204-6 by—

■ a. Removing from the introductory text "4.603(a)" and adding "4.607(a)" in its place;

■ b. Revising the date of the provision;

■ c. Removing from paragraph (a) the word "parent";

■ d. Revising paragraph (b)(1)(i); and

■ e. Adding a sentence to the end of paragraph (b)(1)(ii).

The revised and added text reads as follows:

52.204-6 Data Universal Numbering System (DUNS) Number.

* * * * *
DATA UNIVERSAL NUMBERING
SYSTEM (DUNS) NUMBER (APR 2008)

* * * * *

(b) * * *

(1) * * *

(i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) * * * The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

* * * * *

(End of provision)

■ 9. Amend section 52.204-7 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), in the definition "Data Universal Numbering System +4 (DUNS+4) number", by removing the word "parent";

■ c. Revising paragraph (c)(1)(i); and

■ d. Adding a sentence to the end of paragraph (c)(1)(ii).

The revised and added text reads as follows:

52.204-7 Central Contractor Registration.

* * * * *
CENTRAL CONTRACTOR
REGISTRATION (APR 2008)

* * * * *

(c) * * *

(1) * * *

(i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) * * * The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

* * * * *

(End of clause)

■ 10. Amend section 52.212-1 by—

- a. Revising the date of the provision; and
- b. In paragraph (j), by removing the word “parent”; removing “<http://www.dnb.com>” and adding “<http://fedgov.dnb.com/webform>” in its place; and adding a sentence to the end of the paragraph to read as follows:

52.212-1 Instructions to Offerors—Commercial Items.

* * * * *
INSTRUCTIONS TO OFFERORS—
COMMERCIAL ITEMS (APR 2008)
* * * * *

(j) * * * The offeror should indicate that it is an offeror for a Government contract when contacting the local Dun and Bradstreet office.

* * * * *

(End of provision)

[FR Doc. E8-8447 Filed 4-21-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 19, 52, and 53

[FAC 2005-25; FAR Case 2005-040; Item II; Docket 2008-0001, Sequence 01]

RIN 9000-AK95

Federal Acquisition Regulation; FAR Case 2005-040, Electronic Subcontracting Reporting System (eSRS)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to require that small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form (SF) 294 - Subcontract Report for Individual Contracts and Standard Form 295 - Summary Subcontract Report.

DATES: *Effective Date:* April 22, 2008.

Comment Date: Interested parties should submit written comments to the FAR Secretariat on or before June 23, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005-25, FAR case 2005-040, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2005-040” under the heading “Comment or Submission”. Select the link “Send a Comment or Submission” that corresponds with FAR Case 2005-040. Follow the instructions provided to complete the “Public Comment and Submission Form”. Please include your name, company name (if any), and “FAR Case 2005-040” on your attached document.

- Fax: 202-501-4067.
- Mail: General Services

Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Diedra Wingate, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005-25, FAR case 2005-040, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501-0044 for clarification of content. Please cite FAC 2005-25, FAR case 2005-040. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the Federal Acquisition Regulation to require that small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form 294 - Subcontract Report for Individual Contracts and Standard Form 295 - Summary Subcontract Report. The eSRS is a web-based system managed by the Integrated Acquisition Environment. The eSRS is intended to streamline the small business subcontracting program reporting process and provide the data to agencies in a manner that will enable them to more effectively manage the program.

This rule implements in the FAR the use of eSRS to fulfill small business subcontracting reporting requirements. It further amends FAR 19.7 and related clauses to clarify existing small business subcontracting program requirements. The interim rule:

1. Implements the use of eSRS by—
 - Deleting references to Standard Forms 294 and 295 from Parts 1, 19, 52,

and 53 and, where appropriate, replacing them with eSRS.

- Incorporating general instructions from Standard Forms 294 and 295 into the clause at FAR 52.219-9. The language in FAR 52.219-9 differs from the SF 295 general instruction for submitting summary subcontract reports on contracts awarded by the National Aeronautics and Space Administration (NASA) in that the clause requires that the reports be submitted semiannually, rather than annually. This change reflects what NASA currently requires under its own regulations and does not impose a new burden on contractors.

- Adding a requirement that a contractor provide its prime contract number and DUNS number to its subcontractors with subcontracting plans and require that each of its subcontractors with a subcontracting plan provide the prime contract number and its own DUNS number to its subcontractors with subcontracting plans. This is necessary in order for the Government to have insight into all of the subcontracting done under a prime contract. Access to this information will enable the Government to more effectively manage the small business subcontracting program.

- Identifying what individuals/entities are responsible for acknowledging that a report has been received or rejecting the report if it has not been adequately completed.

- Revising FAR 52.219-9 to reflect use of the Year-End Supplementary Report for Small Disadvantaged Businesses in eSRS to provide the information, already required by the clause, on subcontract awards to Small Disadvantaged Businesses. Currently, the clause requires that the information be submitted along with the year-end Summary Subcontract Report. The interim rule provides for a 90-day extension beyond the date when the year-end Summary Subcontract Report is submitted.

- Revising FAR 52.219-25 to allow the report currently required by that clause to be submitted using the Small Disadvantaged Business Participation Report in eSRS, or continuing to use either the Optional Form 312 or the contractor's format.

2. Makes revisions to clarify that—
 - A contractor should have only one commercial plan in place at a time.

- A contract may have only one subcontracting plan. When a modification is issued that would require a subcontracting plan, if the contract already has a subcontracting plan, that plan should be revised to incorporate the goals associated with the modification. A separate

subcontracting plan should not be submitted.

- The goals in a subcontracting plan should be updated when options are exercised.

- Subcontracting plans are not required for subcontractors when the prime contract contains the clause at FAR 52.212-5 or the subcontractor provides a commercial item subject to the clause at FAR 52.244-6.

3. Makes these editorial changes—

- Replaces references to PRO-Net with Central Contractor Registration (CCR) since PRO-Net is an obsolete system and the former PRO-Net functionality being referenced is incorporated in CCR.

- Replaces the acronym “ISR” in Subpart 4.4 with Industrial Security Regulation so that “ISR” will only be used in the FAR to mean Individual Subcontract Report.

The Councils request specific comment on what period the year-end Summary Subcontract Report should cover. The interim rule retains the current FAR requirement (reflected in SF 295) that the report cover subcontracting done during the Government’s fiscal year. However, the eSRS, which is currently being used by some agencies, indicates that the year-end Summary Subcontract Report for a commercial subcontracting plan should reflect subcontracting performed during the contractor’s fiscal year. Therefore, some contractors who are using eSRS and have commercial plans may be reporting subcontracts awarded during their own fiscal year, whereas other contractors are reporting subcontracts awarded during the Government’s fiscal year. The Councils request comment on what period the year-end Summary Subcontract Report should cover, the Government’s fiscal year or the contractor’s fiscal year, with a rationale for the period recommended. In addition, the councils may consider adding further coverage in the FAR to mirror the instructions that are currently in SFs 294 and 295.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it concerns reporting

requirements that only apply to other than small businesses.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 1, 4, 19, 52, and 53 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005-25, FAR case 2005-040), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) applies because the interim rule contains information collection requirements. The information collection requirement subsumes the approved information collection for semi-annual summary subcontract reports on contracts awarded by NASA. Accordingly, the FAR Secretariat will forward a request for approval of the revised information collection requirement concerning OMB Control No. 9000-0006, Subcontracting Plans/ Subcontracting Reporting for Individual Contracts, and OMB Control Number 9000-0007, Summary Subcontract Report, to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through this notice.

Annual Reporting Burden:

The annual reporting burden for OMB No. 9000-0006 is estimated as follows:

Respondents: 103,908

Responses per respondent: 3

Total annual responses: 311,724

Preparation hours per response: 11.90

Total response burden hours:

3,709,515; and

The annual reporting burden for OMB No. 9000-0007 is estimated as follows:

Respondents: 103,908

Responses per respondent: 1

Total annual responses: 103,908

Preparation hours per response: 12.4

Total response burden hours:

1,288,459.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 23, 2008 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR,

and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VPR), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0006, Subcontracting Plans/Subcontracting Reporting for Individual Contracts, and/or OMB Control Number 9000-0007, Summary Subcontract Report, in all correspondence.

E. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Electronic Subcontracting Reporting System has already replaced the SFs 294 and 295 as the mechanism for submitting small business subcontracting data. This rule updates the FAR to show the current usage of the eSRS. However, pursuant to Pub. L. 98-577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 4, 19, 52, and 53

Government procurement.

Dated: April 4, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 4, 19, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 19, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 by removing from FAR Segment 19.7 OMB Control Number “9000–0006”, and adding “9000–0006 and 9000–0007” in its place; removing from FAR Segment 52.219–9 OMB Control Number “9000–0006”, and adding “9000–0006 and 9000–0007” in its place; and removing FAR Segments “SF 294” with OMB Control Number “9000–0006”, and “SF 295” with OMB Control Number “9000–0007”.

PART 4—ADMINISTRATIVE MATTERS

4.402 [Amended]

■ 3. Amend section 4.402 in paragraph (b)(2) by removing “(ISR)”.

4.403 [Amended]

■ 4. Amend section 4.403 in paragraph (c)(1) by removing “ISR” and adding “Industrial Security Regulation” in its place.

PART 19—SMALL BUSINESS PROGRAMS

■ 5. Amend section 19.701 by adding, in alphabetical order, the definition “Electronic Subcontracting Reporting System (eSRS)” to read as follows:

19.701 Definitions.

* * * * *

“*Electronic Subcontracting Reporting System (eSRS)*” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting.

* * * * *

- 6. Amend section 19.704 by—
 - a. Revising paragraphs (a)(10)(iii) and (a)(10)(iv);
 - b. Adding paragraphs (a)(10)(v) and (a)(10)(vi);
 - c. Revising paragraphs (d) introductory text and (d)(2);
 - d. Amending paragraph (d)(1) by removing “; and” and adding “;” in its place; and
 - e. Adding paragraphs (d)(3) and (d)(4).
- The revised and added text reads as follows:

19.704 Subcontracting plan requirements.

- (a) * * *
- (10) * * *
- (iii) Submit the Individual Subcontract Report (ISR), and the Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>), following the instructions in the eSRS;
- (iv) Ensure that its subcontractors with subcontracting plans agree to

submit the ISR and/or the SSR using the eSRS;

(v) Provide its prime contract number and its DUNS number and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number and its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

* * * * *

(d) A commercial plan (as defined in 19.701) is the preferred type of subcontracting plan for contractors furnishing commercial items. Once a contractor’s commercial plan has been approved, the Government shall not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item. The contractor shall—

* * * * *

(2) Submit a new commercial plan, 30 working days before the end of the Contractor’s fiscal year, to the contracting officer responsible for the uncompleted Government contract with the latest completion date. The contractor must provide to each contracting officer responsible for an ongoing contract subject to the plan, the identity of the contracting officer that will be negotiating the new plan;

(3) When the new commercial plan is approved, provide a copy of the approved plan to each contracting officer responsible for an ongoing contract that is subject to the plan; and

(4) Comply with the reporting requirements stated in paragraph (a)(10) of this section by submitting one SSR in eSRS, for all contracts covered by its commercial plan. This report will be acknowledged or rejected in eSRS by the contracting officer who approved the plan. The report shall be submitted within 30 days after the end of the Government’s fiscal year.

■ 7. Amend section 19.705–2 by adding paragraph (e) to read as follows.

19.705–2 Determining the need for a subcontracting plan.

* * * * *

(e) A contract may have no more than one plan. When a modification meets

the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

■ 8. Amend section 19.705–6 by adding paragraph (h) to read as follows.

19.705–6 Postaward responsibilities of the contracting officer.

* * * * *

(h) Acknowledging receipt of or rejecting the ISR and the SSR in the eSRS. Acknowledging receipt does not mean acceptance or approval of the report. The report shall be rejected if it is not adequately completed. Failure to meet the goals of the subcontracting plan is not a valid reason for rejecting the report.

19.705–7 [Amended]

■ 9. Amend section 19.705–7 in paragraph (d) last sentence by removing “a failure to submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms or as provided in agency regulations;” and adding “a failure to submit the ISR, or the SSR, using the eSRS, or as provided in agency regulations;” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 52.212–5 by revising the date of the clause, and paragraphs (b)(8)(i) and (b)(12) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (APR 2008)

* * * * *

(b) * * *
 (8)(i) 52.219–9, Small Business Subcontracting Plan (APR 2008) (15 U.S.C. 637(d)(4).

* * * * *

(12) 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (APR 2008) (Pub. L. 103–355, section 7102, and 10 U.S.C. 2323).

* * * * *

■ 11. Amend section 52.219–9 by—

- a. Revising the date of the clause;
- b. Adding in paragraph (b) the definition “Electronic Subcontracting Reporting System”;
- c. Revising paragraph (d)(5);

- d. Amending paragraph (d)(9) by adding “with further subcontracting possibilities” after “facility”;
 - e. Revising paragraphs (d)(10)(iii) and (d)(10)(iv);
 - f. Adding paragraphs (d)(10)(v) and (d)(10)(vi);
 - g. Amending paragraph (d)(11)(i) by removing “PRO-Net” and adding “CCR” in its place;
 - h. Revising paragraph (g); and
 - i. Redesignating paragraphs (i) and (j) as paragraphs (k) and (l), adding new paragraphs (i) and (j), and revising the newly designated paragraph (l).
- The revised and added text reads as follows:

52.219-9 Small Business Subcontracting Plan.

* * * * *

SMALL BUSINESS SUBCONTRACTING PLAN (APR 2008)

* * * * *

(b) * * *

Electronic Subcontracting Reporting System (eSRS) means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

* * * * *

(d) * * *

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

* * * * *

(10) * * *

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be

in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

* * * * *

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

* * * * *

(i) A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

* * * * *

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business

or small disadvantaged business credit from an ANC or Indian tribe.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) *SSR*.

(i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (e.g. plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of clause)

- 12. Amend section 52.219–25 by—
- a. Revising the date of the clause; and
- b. Revising paragraphs (a) last sentence and (b);
- The revised and added text reads as follows:

52.219–25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.

* * * * *

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING (APR 2008)

(a) * * * The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern is a small disadvantaged business concern certified by the Small Business Administration by using the Central Contractor Registration database or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(b) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on Optional Form 312,

Small Disadvantaged Business Participation Report, in the Contractor's own format providing the same information, or accomplished through using the Electronic Subcontracting Reporting System's Small Disadvantaged Business Participation Report. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small Business Subcontracting Plan, reports shall be submitted with the final Individual Subcontract Report at the completion of the contract.

(End of clause)

PART 53—FORMS

- 13. Revise section 53.219 to read as follows.

53.219 Small business programs.

The following form may be used in reporting small disadvantaged business contracting data: *OF 312 (10/00), Small Disadvantaged Business Participation Report.* (See Subpart 19.12.)

53.301–294 and 53.301–295 [Removed]

- 14. Remove sections 53.301–294 and 53.301–295.

[FR Doc. E8–8449 Filed 4–21–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 11, 18, 52 and 53

[FAC 2005–25; FAR Case 2006–033; Item III; Docket 2008–0001; Sequence 7]

RIN 9000–AK93

Federal Acquisition Regulation; FAR Case 2006–033, Revisions to the Defense Priorities and Allocations System (DPAS)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reflect the President's delegation of the Defense Production Act's priorities and allocations authorities in Executive Order 12919, and to reflect the current provisions of the Defense Priorities and Allocations System (DPAS) regulations

of the Department of Commerce outlined in 15 CFR Part 700.

DATES: *Effective Date:* April 22, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–25, FAR case 2006–033.

SUPPLEMENTARY INFORMATION:

A. Background

Under Title I of the Defense Production Act (50 U.S.C. App. 2061, *et seq.*), the President is authorized to require preferential acceptance and performance of contracts or orders supporting certain approved national defense and energy programs, and to allocate materials, services, and facilities in such a manner to promote these approved programs. Additional priorities authority is found in section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, and 50 U.S.C. 82.

The President delegated the priorities and allocations authorities of the Defense Production Act in E.O. 12919, as amended. The President has delegated the authority to approve a program for priorities and allocations support to the Secretaries of Defense, Energy, and Homeland Security. As part of that delegation, the President designated the Secretary of Commerce to administer the Defense Priorities and Allocations System (DPAS). The Defense Production Act authority has also been extended to support emergency preparedness activities under Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195, *et seq.*), and critical infrastructure protection and restoration.

The FAR is revised as follows:

- Subpart 2.101 revised the definition of “national defense” to include a reference to the DPAS definition, which includes critical infrastructure protection and restoration.

- Subpart 11.6, Priorities and Allocations, is revised to reflect the President's delegation of the Defense Production Act's priorities and allocations authorities in Executive Order 12919, and the current provisions of the DPAS regulations of the Department of Commerce (see 15 CFR Part 700).

- Parts 18 and 52 are revised to include the emergency acquisition text.

- Subpart 53.3 is revised to add changes to Standard Form 26 and 1447.

The Councils are publishing this rule as a final rule without comment under

41 U.S.C. 418b, because it implements the President's delegable authorities outlined in the Defense Production Act in Executive Order 12919, amended, which are not subject to negotiation. The FAR changes will not have significant effect beyond the internal operating procedures of the agency issuing the procurement policy, regulation, procedure, or form, or have a significant administrative impact on contractors or offerors.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Parts 2, 11, 18, 52, and 53, in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005-25, FAR case 2006-033), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 11, 18, 52, and 53

Government procurement.

Dated: April 4, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 11, 18, 52 and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 11, 18, 52 and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by revising the definition "National defense" to read as follows:

2.101 Definitions.

* * * * *

(b) * * *
(2) * * *

National defense means any activity related to programs for military or atomic energy production or construction, military assistance to any foreign nation, stockpiling, or space, except that for use in Subpart 11.6, see the definition in 11.601.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 3. Revise sections 11.600 through 11.603 to read as follows:

11.600 Scope of subpart.

This subpart implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce regulation in support of approved national defense, emergency preparedness, and energy programs (see 15 CFR part 700).

11.601 Definitions.

As used in this subpart—

Approved program means a program determined as necessary or appropriate for priorities and allocations support to promote the national defense by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security, under the authority of the Defense Production Act, the Stafford Act, and Executive Order 12919, or the Selective Service Act and related statutes and Executive Order 12742.

Delegate Agency means a Government agency authorized by delegation from the Department of Commerce to place priority ratings on contracts or orders needed to support approved programs.

National defense means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration. (50 U.S.C. App. § 2152).

Rated order means a prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of the DPAS regulation (15 CFR part 700).

11.602 General.

(a) Under Title I of the Defense Production Act of 1950 (50 U.S.C. App. 2061, *et seq.*), the President is authorized to require preferential acceptance and performance of

contracts and orders supporting certain approved national defense and energy programs and to allocate materials, services, and facilities in such a manner as to promote these approved programs.

(b) The President delegated the priorities and allocations authorities of the Defense Production Act in Executive Order 12919. As part of that delegation, the President designated the Secretary of Commerce to administer the DPAS. For more information, check the DPAS website at: www.bis.doc.gov/dpas.

11.603 Procedures.

(a) There are two levels of priority for rated orders established by the DPAS, identified by the rating symbols "DO" and "DX". All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated and unrated orders (see 15 CFR 700.11). The DPAS regulation contains provisions concerning the elements of a rated order (see 15 CFR 700.12); acceptance and rejection of rated orders (see 15 CFR 700.13); preferential scheduling (see 15 CFR 700.14); extension of priority ratings (flowdown) (see 15 CFR 700.15); changes or cancellations of priority ratings and rated orders (see 15 CFR 700.16); use of rated orders (see 15 CFR 700.17); and limitations on placing rated orders (see 15 CFR 700.18).

(b) The Delegate Agencies have been given authority by the Department of Commerce to place rated orders in support of approved programs (see Schedule I of the DPAS). Other U.S. Government agencies, Canada, and foreign nations may apply for priority rating authority.

(c) Rated orders shall be placed in accordance with the provisions of the DPAS.

(d) Agency heads shall ensure compliance with the DPAS by contracting activities within their agencies.

(e) Agency heads shall provide contracting activities with specific guidance on the issuance of rated orders in support of approved agency programs, including the general limitations and jurisdictional limitations on placing rated orders (see 15 CFR 700.18 and Executive Order 12919).

(f) Contracting officers shall follow agency procedural instructions concerning the use of rated orders in support of approved agency programs.

(g) Contracting officers, contractors, or subcontractors at any tier, that experience difficulty placing rated orders, obtaining timely delivery under

rated orders, locating a contractor or supplier to fill a rated order, ensuring that rated orders receive preferential treatment by contractors or suppliers, or require rating authority for items not automatically ratable under the DPAS, should promptly seek special priorities assistance in accordance with agency procedures (see 15 CFR 700.50–700.55 and 700.80).

(h) The Department of Commerce may take specific official actions (Ratings Authorizations, Directives, Letters of Understanding, Administrative Subpoenas, Demands for Information, and Inspection Authorizations) to implement or enforce the provisions of the DPAS (see 15 CFR 700.60–700.71).

(i) Contracting officers shall report promptly any violations of the DPAS in accordance with agency procedures to the Office of Strategic Industries and Economic Security, U.S. Department of Commerce, Room 3876, Washington, DC 20230, Ref: DPAS; telephone: (202) 482–3634 or fax: (202) 482–5650.

11.604 [Amended]

■ 4. Amend section 11.604 by removing from paragraph (a) the words “Defense Use” and adding “Defense, Emergency Preparedness, and Energy Program Use” in its place.

PART 18—EMERGENCY ACQUISITIONS

■ 5. Revise section 18.109 to read as follows:

18.109 Priorities and allocations.

The Defense Priorities and Allocations System (DPAS) supports approved national defense, emergency preparedness, and energy programs and was established to facilitate rapid industrial mobilization in case of a national emergency. (See Subpart 11.6.)

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.211–14 by revising the section heading, provision heading and date, and provision to read as follows:

52.211–14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use.

* * * * *

NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE, EMERGENCY PREPAREDNESS, AND ENERGY PROGRAM USE (APR 2008)

Any contract awarded as a result of this solicitation will be [] DX rated order; [] DO rated order certified for national defense, emergency preparedness, and energy program use under the Defense Priorities and

Allocations System (DPAS) (15 CFR 700), and the Contractor will be required to follow all of the requirements of this regulation. [Contracting Officer check appropriate box.] (End of provision)

52.211–15 [Amended]

■ 7. Amend section 52.211–15 by revising the date of the clause to read (APR 2008); and by removing from the clause the words “defense use” and adding “defense, emergency preparedness, and energy program use” in its place.

PART 53—FORMS

53.214 [Amended]

■ 8. Amend section 53.214 by removing from paragraph (a) “(4/85)” and adding “(APR 2008)” in its place; and by removing from paragraph (d) “(Rev. 3/2005)” and adding “(APR 2008)” in its place.

53.215–1 [Amended]

■ 9. Amend section 53.215–1 by removing from paragraph (a) “(Rev. 4/85)” and adding “(APR 2008)” in its place.

■ 10. Revise section 53.301–26 to read as follows:

53.301–26 Award/Contract.

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	PAGE OF PAGES		
2. CONTRACT (Proc. Inst. Ident.) NO.		3. EFFECTIVE DATE		4. REQUISITION/PURCHASE REQUEST/PROJECT NO.			
5. ISSUED BY		CODE	6. ADMINISTERED BY (If other than Item 5)		CODE		
7. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)				8. DELIVERY			
				<input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)			
11. SHIP TO/MARK FOR				9. DISCOUNT FOR PROMPT PAYMENT			
				10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN				ITEM
CODE		FACILITY CODE		12. PAYMENT WILL BE MADE BY			
11. SHIP TO/MARK FOR		CODE	12. PAYMENT WILL BE MADE BY		CODE		
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:			14. ACCOUNTING AND APPROPRIATION DATA				
<input type="checkbox"/> 10 U.S.C. 2304(c) () <input type="checkbox"/> 41 U.S.C. 253(c) ()							
15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT		
15G. TOTAL AMOUNT OF CONTRACT					\$		
16. TABLE OF CONTENTS							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS			
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					
CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE							
17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the terms listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
19A. NAME AND TITLE OF SIGNER (Type or Print)				20A. NAME OF CONTRACTING OFFICER			
19B. NAME OF CONTRACTOR		19C. DATE SIGNED		20B. UNITED STATES OF AMERICA			
BY _____ (Signature of person authorized to sign)				BY _____ (Signature of Contracting Officer)			

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STANDARD FORM 26 (REV. 4/2008)
Prescribed by GSA - FAR (48 CFR) 53.214(a)

■ 11. Revise section 53.301-1447 to read as follows:

53.301-1447 Solicitation/Contract.

SOLICITATION/CONTRACT				1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	PAGE OF
BIDDER/OFFEROR TO COMPLETE BLOCKS 11, 13, 15, 21, 22, & 27							
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE	4. SOLICITATION NUMBER		5. SOLICITATION TYPE <input type="checkbox"/> SEALED BIDS (IFB) <input type="checkbox"/> NEGOTIATED (RFP)		6. SOLICITATION ISSUE DATE
7. ISSUED BY CODE			8. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> EMERGING SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8(A) NAICS: SIZE STANDARD: NO COLLECT CALLS				
9. (AGENCY USE)							
10. ITEMS TO BE PURCHASED (BRIEF DESCRIPTION) <input type="checkbox"/> SUPPLIES <input type="checkbox"/> SERVICES							
11. IF OFFER IS ACCEPTED BY THE GOVERNMENT WITHIN _____ CALENDAR DAYS (60 CALENDAR DAYS UNLESS OFFEROR INSERTS A DIFFERENT PERIOD) FROM THE DATE SET FORTH IN BLOCK 9 ABOVE, THE CONTRACTOR AGREES TO HOLD ITS OFFERED PRICES FIRM FOR THE ITEMS SOLICITED HEREIN AND TO ACCEPT ANY RESULTING CONTRACT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN.				12. ADMINISTERED BY CODE			
13. CONTRACTOR OFFEROR CODE		FACILITY CODE		14. PAYMENT WILL BE MADE BY CODE			
TELEPHONE NUMBER _____ DUNS NUMBER _____ <input type="checkbox"/> CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				15. PROMPT PAYMENT DISCOUNT			
				16. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION <input type="checkbox"/> 10 U.S.C. 2304 <input type="checkbox"/> 41 U.S.C. 253 () ()			
17. ITEM NO.		18. SCHEDULE OF SUPPLIES/SERVICES	19. QUANTITY	20. UNIT	21. UNIT PRICE	22. AMOUNT	
23. ACCOUNTING AND APPROPRIATION DATA						24. TOTAL AWARD AMOUNT (FOR GOVERNMENT USE ONLY)	
25. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY CONTINUATION SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN. <input type="checkbox"/>				26. AWARD OF CONTRACT: YOUR OFFER ON SOLICITATION NUMBER SHOWN IN BLOCK 4 INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS: <input type="checkbox"/>			
27. SIGNATURE OF OFFEROR/CONTRACTOR				28. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
NAME AND TITLE OF SIGNER (TYPE OR PRINT)		DATE SIGNED		NAME OF CONTRACTING OFFICER		DATE SIGNED	

NO RESPONSE FOR REASONS CHECKED			
	CANNOT COMPLY WITH SPECIFICATIONS		CANNOT MEET DELIVERY REQUIREMENT
	UNABLE TO IDENTIFY THE ITEM(S)		DO NOT REGULARLY MANUFACTURE OR SELL THE TYPE OF ITEMS INVOLVED
OTHER (<i>Specify</i>)			
<input type="checkbox"/> WE DO	<input type="checkbox"/> WE DO NOT, DESIRE TO BE RETAINED ON THE MAILING LIST FOR FUTURE PROCUREMENT OF THE TYPE OF ITEMS INVOLVED		
NAME AND ADDRESS OF FIRM (<i>Include Zip Code</i>)		SIGNATURE	
		TYPE OR PRINT NAME AND TITLE OF SIGNER	
<p>FROM: AFFIX STAMP HERE</p> <p style="text-align: center;">TO:</p> <p>SOLICITATION NO. _____</p> <p>DATE AND LOCAL TIME _____</p>			

STANDARD FORM 1447 (REV. 4/2008) **BACK**

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 4, 12, 13, 23, and 52**

[FAC 2005–25; FAR Case 2005–039; Item IV; Docket 2007–0001; Sequence 2]

RIN 9000–AK69

Federal Acquisition Regulation; FAR Case 2005–039, Use of Products Containing Recovered Materials in Service and Construction Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify language within the FAR on the use of products containing recovered materials, pursuant to the Resource Conservation and Recovery Act of 1976, and Executive Order 13101 “Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.”

DATES: *Effective Date:* May 22, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–25, FAR case 2005–039.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 24554, May 3, 2007, to clarify language within the FAR regarding the use of products containing recovered materials, pursuant to the Resource Conservation and Recovery Act of 1976, and Executive Order 13101 “Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.” This rule revises Subpart 23.4 and associated provisions and clauses in Part 52, with conforming changes in FAR Parts 4, 12, and 13, to—

(1) Provide for consistency when referring to products containing recovered materials;

(2) Clarify that the requirement for products containing recovered materials

applies (a) when agencies require the delivery or specify the use of Environmental Protection Agency (EPA)-designated items, and (b) when agencies award contracts for services or construction unless the service or construction contract will not involve the use of such items;

(3) Prescribe a new clause for use in service and construction contracts when appropriate; and

(4) Revise the Recovered Material Certification provision to reflect the changes of this rule.

No comments were received for the proposed rule.

Note: Since the publication of the proposed rule, the FAR has already been amended to include a number of the changes proposed under this rule (see FAR Case 2004–032, Biobased Products Preference Program, (72 FR 63040, November 7, 2007)).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule. Small business concerns and other interested parties were invited to submit comments concerning the affected FAR Parts. No comments were received. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

This final rule amends and clarifies language within the FAR on the use of products containing recovered materials pursuant to the Resource Conservation and Recovery Act (RCRA) of 1976, and Executive Order 13101 “Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition. Although the statute applies to all contracts, the Office of the Federal Environmental Executive advised that language at FAR Subpart 23.4 has not been consistently implemented by Government agencies in service and construction acquisitions. The Councils recognize that the rule may affect small entities performing contracts for those agencies that have not fully implemented the program in service and construction contracts; the number of entities affected, and the extent to which they will be affected, may be significant. The rule may affect the types of products these businesses use during contract performance. Assistance is available to all firms at the Environmental Protection Agency (EPA) Comprehensive Procurement Guidelines website, <http://www.epa.gov/cpg>. EPA provides guidance on identifying products containing recovered materials, including Product Fact Sheets and a Supplier Database. Options to comply with the requirements of the rule can be as simple as

purchasing products made with recovered materials to be used in service and construction contracts. The rule does not impose new requirements that impose a burden on contractors.

The rule revises text at FAR Subpart 23.4 to clarify that the requirement for use of products containing recovered materials applies when agencies purchase EPA-designated items, and when purchasing services (including construction) that could include the use of such items. The objective of this rule is to ensure that contractors deliver and make maximum use of products containing recovered materials in contracts for services and construction.

This final rule applies to all small business entities that contract with the Federal Government for delivery of EPA-designated items or performance of services or construction contracts that involve the use of EPA-designated items. The final rule allows for procurement exemptions.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0134.

List of Subjects in 48 CFR Parts 4, 12, 13, 23, and 52

Government procurement.

Dated: April 4, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 12, 13, 23, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 12, 13, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.1202 by removing from paragraph (t) “Products” and adding “Items” in its place.

**PART 12—ACQUISITION OF
COMMERCIAL ITEMS**

■ 3. Amend section 12.301 by revising paragraph (e)(3) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(e) * * *

(3) The contracting officer may use the provisions and clauses contained in Part 23 regarding the use of products containing recovered materials and biobased products when appropriate for the item being acquired.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.006 [Amended]

■ 4. Amend section 13.006 by removing from paragraph (g) "Products" and adding "Items" in its place.

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.000 [Amended]

■ 5. Amend section 23.000 by removing from paragraph (d) "that use" and adding "containing" in its place.

■ 6. Amend section 23.401 by revising paragraph (a)(2) to read as follows:

23.401 Definitions.

* * * * *

(a) * * *

(2) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN) (available at <http://www.epa.gov/epaoswer/non-hw/procure/backgrnd.htm>).

* * * * *

23.405 [Amended]

■ 7. Amend section 23.405 by removing from paragraph (a)(1) "<http://www.epa.gov/cpg/>" and adding "<http://www.epa.gov/cpg/products.htm>" in its place.

■ 8. Amend section 23.406 by revising paragraphs (c) and (d), and adding paragraph (e) to read as follows:

23.406 Solicitation provisions and contract clauses.

* * * * *

(c) Insert the provision at 52.223-4, Recovered Material Certification, in solicitations that—

(1) Require the delivery or specify the use of EPA-designated items; or

(2) Include the clause at 52.223-17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.

(d) Insert the clause at 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-designated Items, in solicitations and contracts exceeding \$100,000 that are for, or specify the use of, EPA-designated items

containing recovered materials. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

(e) Insert the clause at 52.223-17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts, in service or construction solicitations and contracts unless the contract will not involve the use of EPA-designated items.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 52.212-5 by revising the date of the clause and paragraph (b)(25) to read as follows:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (MAY 2008)

* * * * *

(b) * * *

(25)(i) Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) (42 U.S.C. 6962(c)(3)(A)(ii)).

(ii) Alternate I (MAY 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).

* * * * *

■ 10. Amend section 52.223-4 by revising the date of the provision and the provision to read as follows:

52.223-4 Recovered Material Certification.

* * * * *

RECOVERED MATERIAL CERTIFICATION (MAY 2008)

As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, by signing this offer, that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

(End of provision)

■ 11. Amend section 52.223-9 by—

■ a. Revising the section heading;

■ b. Revising the heading and the date of clause;

■ c. Revising paragraph (b)(1); and

■ d. In Alternate I by—

■ 1. Revising the date of Alternate I; and

■ 2. Revising the introductory paragraph of the certification in paragraph (b).

■ The revised text reads as follows.

52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Items.

* * * * *

ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED ITEMS (MAY 2008)

* * * * *

(b) * * *

(1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and

* * * * *

Alternate I (MAY 2008). * * *

(b) * * *

CERTIFICATION

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated items met the applicable contract specifications or other contractual requirements.

* * * * *

■ 12. Add section 52.223-17 to read as follows:

52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.

As prescribed in 23.406(e), insert the following clause:

AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS (MAY 2008)

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(1) Competitively within a timeframe providing for compliance with the contract performance schedule;

(2) Meeting contract performance requirements; or

(3) At a reasonable price.

(b) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designated items is available at <http://www.epa.gov/cpg/products.htm>.

(End of clause)

[FR Doc. E8-8471 Filed 4-21-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 4, 9, and 52**

[FAC 2005–25; FAR Case 2006–011; Item V; Docket 2008–0001; Sequence 8]

RIN 9000–AK73

**Federal Acquisition Regulation; FAR
Case 2006–011, Representations and
Certifications – Tax Delinquencies****AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).**ACTION:** Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to add conditions regarding violation of Federal criminal tax laws and delinquent Federal taxes to standards of contractor responsibility, causes for debarment and suspension, and the certifications regarding debarment, suspension, proposed debarment, and other responsibility matters.

DATES: *Effective Date:* May 22, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208–6925 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–25, FAR case 2006–011.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule was opened to consider adding conditions regarding violation of tax laws and delinquent taxes to standards of contractor responsibility, causes for debarment and suspension, and the certifications regarding debarment, suspension, proposed debarment, and other responsibility matters. The case was initiated in response to a request from the Senate Permanent Subcommittee on Investigations (PSI), which requested implementation of the following:

“To identify noncompliance with tax law . . . the Government should be asking potential contractors, not whether they have been indicted or convicted of tax evasion, but whether they have had any criminal tax law

violation in the last three years, whether they have any outstanding tax indebtedness more than one year old, or whether they have any outstanding unresolved federal or state tax lien.”

The Councils published a proposed rule in the **Federal Register** at 72 FR 15093, March 30, 2007. The comment period closed on May 29, 2007. The Councils received comments from nine respondents.

In drafting the final rule, the Councils have made the following changes from the proposed rule:

1. Violating Federal criminal tax laws.

Change “violating tax laws, failing to pay taxes” to “violating Federal criminal tax laws” (9.406–2(a)(3), 9.407–2(a)(3), 52.209–5(a)(1)(i)(B), and 52.212–3(h)(2)).

2. Federal tax delinquency in an amount that exceeds \$3,000.

a. Change “tax delinquency” to “Federal tax delinquency in an amount that exceeds \$3000” (9.104–5(a)(2)).

b. Change “delinquent taxes or unresolved tax liens” to “delinquent Federal taxes in an amount that exceeds \$3,000” and provide detailed definition of delinquent Federal taxes (which includes unresolved tax liens), with examples (9.406–2(b)(1)(v), 9.407–2(a)(7), and comparable changes to the clauses at 52.209–5(a)(1)(i)(D) and (E) and 52.212–3(h)(4) and (5)).

3. Other matters of responsibility.

a. Move 9.408 and 9.409(a) to 9.104–5 and 9.104–6, respectively.

b. Modify the new 9.104–5(a)(1) to require the offeror to provide the information it deems necessary to demonstrate its responsibility.

c. Change the title of 52.209–5 from “Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters” to “Certification Regarding Responsibility Matters”.

In accordance with FAR 1.107 and Section 29 of the Office of Federal Procurement Policy (OFPP) Act, approval was requested to revise and extend the existing two non-statutory certification requirements at FAR 52.209–5, Certification Regarding Responsibility Matters, and FAR 52.212–3(h), Offeror Representations and Certifications—Commercial Items. The Administrator for Federal Procurement Policy approved the request on January 16, 2008. The basis for each change and analysis of all public comments follows.

1. General support for the rule.

Comments: Three respondents express general support for the proposed rule.

Response: None required.

2. Broad arguments against inclusion of tax delinquency as debarment criteria.**a. Historical.**

Comments: Two respondents comment on the inclusion of tax delinquency as a cause for debarment. One respondent notes that the Office of Management and Budget (OMB) objected to the inclusion of tax debts as a cause for debarment in 1988, when the Nonprocurement-Common Rule was finalized, on the basis that the Internal Revenue Service (IRS) had sufficient power and authority to collect taxes without using the suspension and debarment tool. The respondent suggests that it would be prudent for OMB to reconcile the philosophical/policy differences underpinning the proposed FAR case here with those pronounced under the Nonprocurement-Common Rule in 1988.

Response: Since 1988, the Government Accountability Office (GAO) has issued various reports highlighting the fact that Federal contractors fail to pay their taxes, *e.g.*,

- Financial Management: Thousands of Civilian Agency Contractors Abuse the Federal Tax System with Little Consequence. GAO–05–637 (June 2005).
- Tax Compliance: Thousands of Federal Contractors Abuse the Federal Tax System. GAO–07–742T (April 2007).

The GAO concluded that contractors’ failure to pay payroll taxes provided them with an unfair advantage in pricing their contracts.

The letter from the Senate PSI specifically requests that the Federal Acquisition Regulations include criminal tax law violations and outstanding tax indebtedness or outstanding unresolved tax liens as causes for debarment.

b. No relationship to present responsibility.

Comment: One respondent expresses concern about using the suspension and debarment process as an enforcement mechanism for violations that have no relationship to a contractor’s present responsibility to perform Government contracts.

Response: A contractor’s present responsibility to perform includes financial responsibility, as well as integrity. The rule is not intended as a tool to collect taxes for the IRS, but to provide information to the contracting officer on issues that may affect the contractor’s responsibility.

3. Conflict with Nonprocurement-Common Rule.

Comment: One respondent notes that the OMB Interagency Suspension and

Debarment Committee was established by E.O. 12549 to monitor implementation of the Nonprocurement-Common Rule and as a vehicle of coordination of Federal suspension and debarment policies and practices. If the FAR rule is finalized, it will place the two near mirror image rules in conflict with one another.

Response: Upon issuance of this final rule, the Councils believe that the OMB Interagency Suspension and Debarment Committee will consider similar changes to the Nonprocurement-Common Rule to keep the two rules parallel.

4. Other information available to the Government.

a. Government already has the necessary information.

Comment: One respondent comments that most of the information requested by the rule is already available to the Federal Government. The respondent provides examples of ready access to IRS information, including the Central Contractor Registration (CCR) Taxpayer Identification Number (TIN) match program, Federal Payment Levy Program, and a recent DoD final rule requiring the contractor to notify the contracting officer if any tax withholding would jeopardize performance of a contract.

Response: Various Federal agencies have access to some information originating with the IRS and regarding prospective contractors. This information, including a verified Taxpayer Identification Number disclosed to the CCR and levy information disclosed to the Financial Management Service in the Federal Payment Levy Program process, is not the same information that offerors are requested to certify under this rule. Contracting officers making responsibility determinations would not be able to deduce from a TIN, levy, or tax withholding whether a prospective contractor has, within a 3-year period preceding the offer, been convicted of or had a civil judgment rendered against them for violating Federal criminal tax law, or been notified of any delinquent Federal taxes in an amount that exceeds \$3,000. To a large extent, the information already released to Federal agencies involved in the procurement process would not provide the facts important to making responsibility determinations.

Furthermore, to the extent the IRS information has been disclosed to other Federal agencies, disclosure has been made under specific statutory authority allowing disclosure of the information, and use of the information once disclosed, to specifically identified

recipients for specifically identified purposes. This generally does not allow the redisclosure or reuse of this information by the recipient for reasons other than that for which it was originally received. Likewise, the information in the IRS' control cannot be disclosed or used unless specifically authorized by the Internal Revenue Code (I.R.C.) (Title 26 of the United States Code). There are both civil and criminal penalties attached to the unauthorized disclosure of this information by the IRS or, in many cases, authorized recipients. Thus even to the extent some information is in the hands of other Federal agencies, it cannot be used in making responsibility determinations.

b. Use of other electronic systems for verification.

Comment: One respondent states that the proposed rule needs to be supported by a strong system of verifications. The electronic tools are already in place, or could be easily modified so that the certifications would be more than words on paper, and this could be done without imposing an additional burden on law-abiding companies doing business with the Government. This respondent recommends that the Councils back up the certifications using verifications between the systems of flags being created in the CCR and the representations in the Online Representations and Certifications Application, so that contracting officers are immediately alerted to any discrepancies.

Response: The respondent proposes the verification enhancement of requiring the contracting officer to compare and make consistent the CCR debt flag and the offeror's proposal certification regarding tax delinquencies. The Councils do not agree with this suggestion for several reasons. There will be numerous circumstances under which the two properly would be inconsistent. First, the debt flag system is designed to cover all types of Federal debt, not just tax delinquencies. Further, even if the debt flag in CCR were related to a Federal tax debt, it would give a contracting officer no indication whether an affirmative certification was required with regard to violation of Federal criminal tax law or Federal tax delinquency. Also, the Councils have relocated the former FAR 9.408 to 9.104-5, where its requirements to ask for additional information from the offeror and refer anomalies to the suspension and debarment official will be a regular part of the determination of present responsibility, thus better serving the respondent's purpose.

5. Certification issues.

a. Subject to additional criminal penalties.

Comment: One respondent states that each certification makes the business and the individual who signs it subject to criminal penalties. The company is also subject to Civil False Claims Act (CFCA) double and treble damages, even if the violations were unintended, as the Government does not need to show intent to defraud; also, the standard of proof is only a "preponderance of evidence". An innocent mistake under another statute could lead to a CFCA violation, which could then lead to a determination of nonresponsibility under the new certification, followed by debarment and suspension proceedings.

Response: The certification is not whether the contractor violated another statute, but whether the contractor has been convicted or had a civil judgment rendered against it, or received certain notifications.

b. S Corporations or partnerships.

Comment: One respondent states that the certification could be problematic for companies that are organized as S corporations or partnerships, because it is unclear under the proposed rule whether each shareholder or partner would be required to certify that neither they nor their fellow shareholders or partners has a tax delinquency. Given that S corporations do not file corporate tax returns, but instead report the company's tax liability on the individual tax returns on the S corporation partners, the rule could impose a significant level of personal information sharing among business partners.

Response: The rule does not change the existing procedures for the certification. The existing certification at 52.209-5 and 52.212-3(h) is that "(a)(1) The Offeror certifies, to the best of its knowledge and belief, that— (i) The Offeror and/or any of its Principals . . .". The definition of principals is found at FAR 52.209-5, and includes owners and partners. The offeror already has to certify to whether it or its principals are debarred, suspended, proposed for debarment, convicted of or charged with or had a civil judgment for certain offenses. Individual certifications from each owner and each partner are not required.

c. Application to commercial items.

Comment: One respondent objects to the certification being imposed on commercial item procurements. 41 U.S.C. 430 prohibits the imposition of any certification for a commercial item that is not required to implement a statute or executive order unless the FAR Council has made a determination to impose the certification. The FAR

Council has not done so. Therefore, Part 12 acquisitions should be exempted.

Response: 41 U.S.C. 430 is the statute regarding laws inapplicable to acquisition of commercial items. It requires a covered law enacted after October 13, 1994, to be included on the list of laws inapplicable to commercial items, unless the FAR Council makes a written determination. This statute does not apply, as this regulation is not based on statute. This statute does not prohibit application of this rule to acquisitions of commercial items.

41 U.S.C. 425 is the certification statute. It forbids including a contractor certification in the FAR unless it is specifically imposed by statute, or a written justification is provided by the FAR Council to the Administrator of OFPP, and the Administrator approves the inclusion. This statute does apply. The FAR Council has obtained approval from the Administrator of OFPP for inclusion of this nonstatutory certification in the FAR.

d. Best knowledge and belief.

Comment: One respondent recommends that the certifications should include the phrase “best knowledge and belief”.

Response: The certifications already do include this phrase in the current FAR in paragraphs 52.209–5(a)(1) and 52.212–3(h). Because no change was proposed to these prefaces, they were not republished in the proposed rule.

e. Date certain.

Comment: One respondent recommends that the contractor be allowed to add a date certain, such as the end of the last calendar quarter, to the certification.

Response: The Councils have elected not to add a “date certain” requirement to the certification regarding notification of delinquent taxes because such an addition would require more, not less, work by offerors. Adding a “date certain” requirement would effectively require offerors to perform a “sweep” prior to each certification. Absent a “date certain” requirement, offerors certify to their best knowledge and belief. With the additional clarifications regarding finality and Federal tax delinquency, offerors should be able to certify with confidence without having to conduct an internal “sweep.”

6. New causes of suspension and debarment and required certification.
a. Inclusion of “any” (Federal, State, local, and foreign) tax law violation or delinquency.

Comments: The U.S. Small Business Administration, Office of Advocacy (SBA-OA) comments that the proposed rule would require a contractor to certify that it does or does not have a tax

liability not just for Federal, State or local, but also foreign jurisdictions.

Another respondent comments that the rule should clearly state whether the phrase “tax laws” refers to “any and all” tax laws. Innumerable State, local, and foreign tax statutes may be applicable to an offeror, depending on the size of the business, the number of divisions or subsidiaries, nature, and location of work being performed. A contractor who frequently submits proposals may not know on a real time basis whether any notice has been received relating to all the tax areas. The respondent recommends limiting the rule to Federal income and payroll taxes.

Another respondent comments that because a multi-state company can be under audit by hundreds of Federal, State, and local taxing authorities at one time, such a company would find it virtually impossible to comply with the proposed rule. This respondent recommends that the rule be limited to Federal entities.

Response: The Councils concur with the respondents and have narrowed the scope of the final rule to Federal tax delinquency and violation of Federal criminal tax laws, except for tax evasion, which applies to evasion of any tax, not just Federal. This should limit an offeror’s need to know on a real-time basis whether any notice has been received relating to other than Federal tax areas (*i.e.*, State, local, and foreign jurisdictions).

The Councils’ decision to remove State, local, and foreign tax violations (except for tax evasion) from the scope of this rule is because their inclusion would unduly burden the offerors and the contracting officer, who would potentially face uncertainty when assessing the impact of multi-jurisdictional tax violations on the award process.

Although the Councils do agree to limiting to Federal criminal tax law violations and Federal tax delinquency, they have not specifically limited the final rule to address just Federal income and payroll taxes, although such taxes certainly constitute the bulk of Federal taxes. Any violation of Federal criminal tax law or Federal tax delinquency can affect the contractor’s responsibility, regardless of the specific tax involved. Tracking of all Federal criminal tax violation or Federal tax delinquency (even if other than income or payroll) does not increase the complexity of the certification, but simplifies it.

b. Tax evasion, violating tax law, failing to pay taxes.

Comment: One respondent comments that the proposed rule transforms the

precisely defined FAR Subpart 9.4, “Debarment, Suspension and Ineligibility,” inclusive of a well-defined tax code definition of tax evasion, into an undefined infraction called a tax liability for any tax law.

Another respondent recommends deletion of the term “tax evasion” as a basis for suspension or disbarment, because “tax evasion” is covered by the new causes: “violating tax laws” and “failing to pay taxes”.

Response: The Councils agree that the term “tax evasion” is covered by the proposed phrases “violating tax laws”, and “failing to pay taxes”, although those phrases cover a much broader range of circumstances. However, the Councils also concur that the term “tax evasion” is a precisely-defined well-understood term, applicable to all types of taxes (Federal, state, local, and foreign) and therefore have retained the term. The final rule has been drafted so that the term “tax evasion” is no longer totally a subset of the subsequent terms.

The term “violating tax laws” has been made more specific to cover only the violation of “Federal criminal tax laws” (*e.g.*, willful failure to file). The FAR sections 9.406–2(a) and 9.407–2(a)(3) are intended to focus on criminal violations. The letter from the Permanent Subcommittee on Investigations specifically requested that the FAR should require certification with regard to criminal tax law violation. The decision to limit the cause for debarment/suspension to Federal criminal tax law violation was also based on the conclusion that violation of other than criminal tax laws probably has less bearing on contractor responsibility. Because the certification with regard to criminal tax law violation is restricted to Federal criminal tax law, it is necessary to retain “tax evasion” as well, which applies to evasion of any tax, not just Federal taxes.

The broad circumstance covered by the phrase “failing to pay taxes” is not necessarily a criminal offense, and the Councils have therefore deleted it from the specified paragraphs. The non-criminal failure to pay taxes is subsequently covered in the rule using a more precisely defined term “delinquent taxes”.

c. Delinquent taxes – need definition.

Comment: One respondent recommends a clear definition of “delinquent taxes”, which allows for due process to dispute the tax liability without penalty of debarment or suspension.

Another respondent states that use of the term “delinquent taxes” significantly lowers the standard from tax evasion. Because the IRS does not

have a clear definition of “delinquent taxes”, it is difficult to ensure compliance with the new standard. It is unclear how this definition accommodates taxpayers who are disputing tax liability.

Another respondent recommends that the certification provide that an installment agreement or offer-in-compromise not be considered a “delinquent” tax subject to reporting requirements. The respondent recommends the term “notice of delinquency” be deleted or defined to reflect the adjudication of a tax liability after due process.

A fourth respondent recommends that the definition of “delinquent taxes” be revised to specify that all avenues of appeal have been closed, to allow for due process in disputing the tax liability.

Response: The Councils agree that the definitions of “delinquent taxes” and “tax delinquency” need clarification. For purposes of the FAR rule, the definition should have two components. First, the tax liability should be finally determined (e.g., it is not a proposed liability subject to further administrative or judicial challenge and it has been assessed (“finality” element)). Second, the taxpayer must have neglected or refused to pay a liability that has become due (“delinquent” element).

The Councils considered, as a starting point, whether the definition of “delinquent taxes” used in certain provisions of the I.R.C. might be useful in defining the term for purposes of this rule. For example, I.R.C. section 7524 requires an annual notice of tax delinquency be provided to a taxpayer with a “tax delinquent account”. I.R.C. section 6103(l)(3) allows disclosure of return information to a Federal agency where an applicant for a Federal loan has a “tax delinquent account”. See also Internal Revenue Manual 11.3.29.6(8). A “tax delinquent account” for purposes of these provisions, however, is an account which shows up as being unpaid on the IRS computer systems. These provisions do not allow for the possibility for further dispute of the liability, for IRS error, or for whether the taxpayer is currently required to pay the liability. While for purposes of these provisions, this definition may be adequate, we agree that for purposes of this FAR rule a different definition is warranted.

i. Finality.

This definition should apply only to tax liabilities that are finally determined, not proposed or under valid dispute. For example, this would not apply to proposed deficiencies shown on a statutory notice of

deficiency which a taxpayer is entitled to contest in Tax Court. The liabilities should have been assessed and should generally be subject to enforced collection action, such as a tax lien or levy (although there may be something precluding the IRS from taking enforced collection action, as further discussed below).

There should be no pending administrative or judicial challenge to the underlying liability. An administrative or judicial challenge could include a refund claim, collection due process lien or levy hearing, deficiency case, interest or penalty abatement case, etc. In the case of a judicial challenge to the liability, there would be no finality until all judicial appeal rights have been exhausted.

The Councils considered whether it would provide helpful information to the contracting officer for offerors to report in the certification tax liabilities that had no remaining administrative challenge, but might still have open avenues of judicial challenge. The Councils decided that to provide due process, it would be more useful to the contracting officer and suspending and debarring official (SDO) to focus on unpaid taxes for which there is no pending administrative or judicial challenge to the underlying liability.

ii. Delinquency.

If there is a finally determined tax liability, a taxpayer should be deemed “delinquent” for purposes of this definition only if that taxpayer has refused or neglected to pay that liability when full payment is due and required.

For example, some respondents suggested that a taxpayer who has entered into an installment agreement or offer-in-compromise should not be considered to be “delinquent”. The Councils agree. A taxpayer who has entered into such an agreement with the IRS is not currently required to make full payment of the liability.

A taxpayer is also not delinquent in cases where the IRS is precluded from taking collection action, because in those cases payment from the taxpayer is also not currently due and required. For example, a taxpayer who has filed for bankruptcy protection should not be considered to be delinquent for purposes of this definition. (As discussed above, the IRS may also be precluded from taking enforced collection action in cases where the tax liability is not finally determined).

d. Unresolved tax liens.

Comment: One respondent states that the term “received notice of a tax lien” is too expansive or ambiguous because the notice could be mistaken and the lien filing could be contested. Another

respondent states that all avenues of appeal should be allowed to dispute a filed notice of tax lien.

Response: The Councils agree with these comments, but have deleted the references to “unresolved tax liens” and “received notice of a tax lien” from the final rule. It is superfluous to have separate certification/contractor responsibility requirements for delinquent taxes and for tax liens, especially since the final rule more precisely defines “delinquent taxes”.

e. Minimum threshold for reporting.

Comments: Three respondents propose minimum thresholds. The respondents suggest that the wide range in amounts of tax issues and the various stages of administration with various authorities suggest the establishment of a threshold for disclosure to contracting officers.

- One respondent states that the value of actionable information to contracting officials in assessing a contractor’s responsibility would be improved by establishing a minimum threshold level below which reporting would be unnecessary. The respondent points out that companies receive a variety of notices, often for minor amounts that by any reasonable standard would not call into question a contractor’s present responsibility. They propose \$25,000 as the threshold.

- Another respondent uses the term “materiality” in their comments and expresses a concern that a tax dispute of \$100 requires the same certification as \$1,000,000 dispute. Consequently, the respondent suggests use of threshold equal to the greater of \$100,000 or 1% of the contract bid amount.

- The SBA-OA suggests a minimum threshold of \$2,500.

Response: The Councils agree that both contractors and contracting officers will be unnecessarily burdened by the proposed rule with numerous disclosures that do not have a direct bearing on responsibility. To mitigate such a result, the Councils have set a minimum threshold of \$3,000, consistent with the legislation that was favorably reported on May 9, 2007 by the Subcommittee on Government Management, Organization and Procurement of the House Oversight and Government Reform Committee (HR 1870, Towns Substitute Amendment), but recognizing the recent inflationary adjustment to the micro-purchase threshold.

f. Increase scope of certification.

Comment: One respondent comments that the certifications should be revised to address potentially criminal behavior before it is identified by the IRS, by asking for simple certification that the

company has been paying its taxes. The respondent suggests the additional certification should be added to both FAR 52.209-5 and 52.212-3, which would read: "Have , have not , paid all payroll and corporate taxes due." These certifications would require that the contractor affirm that it is following the law, not simply that the IRS hasn't caught the company breaking the law.

Response: While the purpose of the additional proposed certification is well-intended, such a "have paid" certification would only present the contractor's position or perspective regarding its tax situation, and would not account for situations where a taxing authority and the contractor may be in dispute over whether or not the contractor has paid all taxes due. Therefore, such a certification would not provide the information pertinent to a responsibility determination. Furthermore, should a contractor check the "have not" box, it would be the other certifications that would provide more specific information regarding violation of Federal criminal tax laws or delinquent Federal taxes. Therefore, we do not believe such an additional certification would add any important information.

7. What do contracting officers do upon receipt of a positive certification? Will "de facto" debarment result?

a. Lack of clear guidance to contracting officers.

Comment: The Small Business Administration Office of Advocacy (SBA-OA) indicates that small businesses are concerned that the lack of clear guidance to contracting officers, particularly after the contractor has certified that the company has a tax liability, will create widely varying interpretations of rule.

SBA-OA raised several questions:

- Does the affirmation of a tax liability mean the lack of contractor responsibility?
- Does the affirmation of a tax liability also mean the initiation of debarment and/or suspension provisions of the FAR?
- Is the contracting officer the only decision maker in this contract determination/award process?

Another respondent comments that additional guidance is needed at FAR 9.408(a) to provide criteria by which contracting officers can assess whether a potential tax issue is of sufficient magnitude to deny award. The guidance should provide examples.

Response: There is already specific guidance to the contracting officer in the FAR. FAR 9.103 prohibits any acquisition unless the contracting officer makes an affirmative

determination of responsibility. The FAR provides the standards that the contracting officer is required to consider when determining contractor responsibility. This rule does not in any way change the process for determination of responsibility, just adds one more factor to consider.

FAR 9.408 provides specific direction to the contracting officer as to the appropriate procedures to follow when an offeror provides an affirmative response to paragraph (a)(1) of the certification at 52.209-5 or paragraph (h) of the provision 52.212-3. The contracting officer must—

- Request such additional information from the offeror as the contracting officer deems necessary in order to demonstrate the offeror's responsibility to the contracting officer; and
- Notify, prior to proceeding with award, in accordance with agency procedures, the agency official responsible for initiating debarment or suspension action, when an offeror indicates the existence of an indictment, charge, conviction, or civil judgment (now the Councils have also added Federal tax delinquency in an amount greater than \$3,000).

In order to more clearly associate these procedures to the responsibility determination required in FAR Subpart 9.1, these procedures, as well as the clause prescription for the certifications, have been moved to FAR 9.104.

Furthermore, the Councils have modified the requirement to request such additional information as the contracting officer deems necessary. The Councils specify that the request should be made promptly, upon receipt of offers, so as not to delay the procurement, and has placed the burden upon the offeror to provide the information it deems necessary to demonstrate its responsibility. When an offeror has made an affirmative response to the certification, the offeror is in a better position to know what evidence is available to mitigate the response and demonstrate its responsibility.

Several of the other revisions to the final rule, as already discussed, better define and limit the circumstances that require reporting and will eliminate many extraneous affirmations that may have little bearing on contractor responsibility.

- The broad phrases "violating tax laws, failing to pay taxes" have been replaced with "violation of Federal criminal tax law".
- Notification of "delinquent" taxes is restricted to delinquent Federal taxes in an amount that exceeds \$3,000, and "delinquent" is clearly defined, limiting applicability to tax liability that has

been finally determined and which the taxpayer has not paid when it has become due, with several examples provided.

In specific response to the SBA-OA questions—

- The affirmation of a tax liability does not necessarily mean the lack of contractor responsibility. A tax liability is just one of many factors to be evaluated by the contracting officer and, as appropriate, the SDO.

- The affirmation of a tax liability does not necessarily mean the initiation of debarment and/or suspension provisions of the FAR. If the contracting officer forwards information to the SDO, the SDO will further investigate and evaluate before deciding to initiate suspension or debarment proceedings.

- The contracting officer may consult with the SDO. The SDO may determine in advance of contract award that the contractor is presently responsible, although not with regard to the award of a particular contract.

b. Certificate of Competency.

Comment: SBA-OA was concerned that the unintended result of the rule may be denial of a Certificate of Competency (COC) ruling from SBA to an otherwise qualified small business.

Response: The policy at FAR 9.103(b) is clear with regard to making responsibility determinations involving small businesses. If the prospective contractor is a small business concern, the contracting officer shall comply with Subpart 19.6, Certificates of Competency and Determinations of Responsibility. If the contracting officer determines that an apparent successful small business lacks certain elements of responsibility, the contracting officer must refer the matter to the SBA. The final rule does not change this policy or make any exceptions to compliance with Subpart 19.6, if the contracting officer determines that a small business lacks certain elements of responsibility based upon affirmative responses to the certifications. SBA's COC regulations currently state that if a small business concern is debarred from Federal procurement, proposed or suspended from Federal procurement pending debarment to protect the Government's interests, SBA will find that small business ineligible for COC consideration.

c. De facto debarment.

Comment: One respondent states that to subject a potential contractor to an informal blacklisting or a formal contracting officer decision of nonresponsibility repeatedly for the same condition may subject the Government to a legal challenge on the basis of de facto debarment. Generally,

these matters should be referred to agency suspending and debarment officials. The respondent recommends additional regulatory or guidance language to the contracting officer.

SBA-OA questions whether the lack of clarity of the rule can result in the unintended de-facto denial of a contract to a small business bidder.

Another respondent comments that the proposed rule is not de facto debarment, but simply a good way to further ensure that contractors are indeed responsible.

Response: The Councils concur that this rule will not cause de facto debarment. This rule does not change the process at all, but just adds information for consideration in the determination of a contractor's responsibility. A contracting officer is required to make an affirmative determination of responsibility in accordance with the standards in the FAR. The rule requires the contracting officer to consider the new certifications relating to taxes in the certification at 52.209-5 or 52.212-3(h), among other information when making responsibility determinations.

- An affirmative response to one of the certifications does not necessarily mean that the contractor is not responsible. Even if the contractor is determined to be not responsible, that does not constitute a de facto debarment.

- A contracting officer is required to request additional information, and notify, prior to proceeding with award, in accordance with agency procedures, the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment, or Federal tax delinquency in an amount that exceeds \$3,000.

- Making a single determination of nonresponsibility does not constitute de facto debarment, as long as the contracting officer refers the matter to the SDO, so that the Government will not continue to deny awards to the offeror without the due process of the suspension and debarment process.

d. Incentive for contacting officer to assume guilt.

Comment: One respondent comments that while the proposed rule would not instantaneously debar a contractor nor expressly prohibit a contracting officer from awarding a contract to a company that informs the Government of the delinquent tax or unresolved tax lien notifications, there would be a strong incentive for the contracting officer to assume guilt and award the contract to another company.

Response: The respondent does not present any evidence that there would be a strong incentive for contracting officers to assume guilt and award a contract to another company when a contractor provides an affirmative response to the certification at 52.209-5 or 52.212-3(h). The contracting officer is required to follow the regulations at FAR Subpart 9.1 when making a responsibility determination. In fact, the Councils find that a contracting officer has strong incentive not to assume guilt and find an offeror nonresponsible, as such irresponsible action would be highly likely to result in a law suit.

However, in order to further prevent contracting officers from assuming anything, the final rule has been narrowed to exclude the need to certify with regard to unpaid taxes until there has been a final determination, and there are not further avenues of administrative or judicial appeal. This will protect offerors from having to report unresolved tax disputes, which may still be resolved in their favor.

8. Small business issues.

a. Impact on small businesses.

i. Will hurt small businesses.

Comments: One respondent states that because the regulations are unclear, and because some small businesses do not have the financial resources to employ lawyers or tax accountants, small businesses will simply certify they have a tax liability. SBA-OA was also concerned that without a factual basis for the certification, it is impossible for the approximately 300,000 small business registered in the CCR to fully evaluate the economic impact of the proposed regulation.

One respondent comments that this certification could hurt companies that have owned up to their mistakes and paid their relevant tax liability, interest, and penalties, a standard which particularly hurts small businesses.

Response: The basis for a certification is clearly delineated in the final rule. A small business can tell without hiring a tax accountant or lawyer whether they have been convicted of violation of Federal criminal tax law or have received a notice from the IRS regarding delinquent Federal taxes.

If the tax liability has been satisfied, then the notification need not be reported in the certification. If an offeror has been convicted of violation of Federal criminal tax law or received notification of delinquent taxes for which the liability has not been satisfied, then that information will be evaluated on a case-by-case basis to determine whether the notification of delinquent taxes or conviction of violation of Federal criminal tax law is

an indication that the offeror is not presently responsible.

ii. The proposed rule will help small businesses.

Comment: One respondent states that the organizations they represent vigorously support the Councils' efforts to better enforce the responsibility requirement for all Federal contractors. The respondent believes that further strengthening the electronic systems and FAR 9.408 will help small businesses compete.

Response: No response required.

b. Need reasonable alternatives for small business compliance.

Comment: SBA-OA states that it welcomes the efforts of the Councils to increase corporate tax accountability, but cautions this with the statement that several areas of the proposed regulation require a more balanced approach for small businesses. The SBA-OA urges the Councils to give careful consideration to the need for reasonable alternatives for small business compliance with the proposed regulation. As one alternative, the respondent recommends a minimum threshold of \$2,500.

Response: As previously stated, the Councils have revised the final rule to make it less burdensome for all respondents, including small businesses:

- Limit to Federal tax delinquency and violation of Federal criminal tax laws (except for tax evasion).

- Clearly define "delinquent taxes," limiting applicability to tax liability that has been finally determined and which the taxpayer has not paid when it has become due. To make it even clearer, examples are provided.

- Set a minimum threshold of \$3,000 (adjusted for inflation).

c. Need Initial Regulatory Flexibility Analysis.

Comment: SBA-OA stated that an Initial Regulatory Flexibility Analysis is required by Section 603 of the Regulatory Flexibility Act when a Federal rule is expected to have a significant economic impact on a substantial number of small entities. The Councils stated in the preamble to the proposed rule that they did not expect the rule to have such a significant impact on a substantial number of small entities. SBA-OA commented that the Councils did not provide a factual basis for this assessment. SBA-OA stated that the rule is likely to increase the cost of doing business with the Government, and that due to the lack of clarity in the regulation, those increased costs could be significant.

Response: The Councils worked with SBA-OA to make the impact of the rule

on small business minimal. Small businesses must already complete the certification at 52.209-5, including information on tax evasion. The new certification only requires the offeror to certify whether it has, or has not, within a three-year period preceding the offer, been convicted of violating Federal criminal tax laws or been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied. This is a very clearly defined certification, and a small business should not have difficulty identifying the correct response, especially after limiting it to delinquent Federal taxes of which it has received notice. The small business is not required to assess whether there are any unpaid tax liabilities of which it has not been notified (as some respondents requested). Either it got such notice or it did not. If it got the notice of delinquent Federal taxes, either it satisfied the liability or it did not.

After review of the final rule, SBA-OA is satisfied that the final rule achieves a more balanced approach for small business, and that a Regulatory Flexibility Analysis is not required.

9. Ways to further improve: Waiver of privacy rights; FCTCTF to resolve issues; use DCAA to monitor.

Comments: One respondent comments that the tax certification is an excellent idea and should also carry a waiver of privacy rights under I.R.C. section 6103 to permit expedited access to contractor tax records, parallel to the TIN matching process. The respondent also suggests that the joint Federal Contactor Tax Compliance Task Force (FCTCTF) is the perfect forum to resolve issues, and that the Defense Contract Audit Agency could monitor tax compliance.

Response: No waiver of privacy rights is required, because this certification creates no need for Government contracting officers to access any IRS or other tax records or submissions. Indeed, it would be improper for contracting officers to do so. The function of the certification is to provide contracting officers with information on an aspect of a prospective contractor's present responsibility (as required by FAR Subpart 9.1). Contracting officers should not, and cannot, become involved in any aspect of a tax delinquency (e.g., collection, adjudication).

The Councils cannot agree with the suggestion regarding the Federal Contactor Tax Compliance Task Force because that body's charter does not include resolving tax issues. Similarly, it is not part of Defense Contract Audit

Agency's mission to monitor tax compliance.

10. Intersection with Public Law 109-222.

Comments: One respondent references the law (presumably referring to Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109-222) requiring Federal, State and certain local contracting entities to withhold 3% of each payment made after December 31, 2010. The respondent states that it strongly opposes this arbitrary payment withholding provision and looks forward to commenting on the implementing federal regulations, while simultaneously seeking a repeal of the law.

Another respondent expresses its appreciation for the Councils seeking to address the issue of delinquent taxpayers receiving Federal contracts through certifications rather than the punitive withholding envisioned by Section 511 of Pub. L. 109-222. This respondent urges the Councils to seize this opportunity to make the FAR strong enough to obviate the need for the draconian provisions of Pub. L. 109-222, which affect all contractors, regardless of their compliance practices. This respondent points out that the construction industry, where there is already a practice of retainage, will suffer in particular from the impact of the 3% withhold. Certifications and enforcement provide a much more surgical approach to the problem of the tax gap. Tax collection should be left to the tax enforcement professionals, rather than contracting personnel.

Response: While the respondents may prefer the certifications proposed by this rule to the withholding requirements of Pub. L. 109-222, this rule is not an alternative to those 3% withholding requirements, which are statutory. Any discussion of implementation of that statute is outside the scope of this case.

11. Relocation of FAR 9.408 and 9.409.

The Councils have moved two sections, FAR 9.408 and 9.409, out of FAR Subpart 9.4, Debarment, Suspension, and Ineligibility, to FAR Subpart 9.1, Responsible Prospective Contractors, for several reasons.

First, locating the material at FAR 9.408 does not appear to be the most logical placement. The Councils have moved these directions to the contracting officer as to what to do when an offeror makes a positive response to one of the certifications under FAR 52.209-5 to 9.104-5, under the section on standards for determining the responsibility of prospective contractors.

Second, the certification no longer relates solely, or primarily, to suspension or debarment. It relates to broader considerations of an offeror's general responsibility. Thus, while certain responses on the certification could result in a referral to the Suspending and Debarment Official, the main purpose of the clause is to provide information that a contracting officer should use in the mandatory pre-award determination of an offeror's present responsibility for the purpose of awarding a contract only to such responsible offerors, the subject of Subpart 9.1. In addition, the title of the clause at FAR 52.209-5 has been shortened to the broader, and more accurate, "Certification Regarding Responsibility Matters."

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The Councils worked with SBA-OA to make the impact of the rule on small business minimal. Small businesses must already complete the certification at FAR 52.209-5, including information on tax evasion. The new certification only requires the offeror to certify whether it has, or has not, within a 3-year period preceding the offer, been convicted of violating Federal criminal tax laws or been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied. This is a very clearly defined certification, and a small business should not have difficulty identifying the correct response, especially after limiting it to delinquent Federal taxes of which it has received notice. The small business is not required to assess whether there are any unpaid tax liabilities of which it has not been notified (as some respondents requested). Either it got such notice or it did not. If it got the notice of delinquent Federal taxes, either it satisfied the liability or it did not.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the

FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000-0094 and 9000-0136.

List of Subjects in 48 CFR Parts 4, 9, and 52

Government procurement.

Dated: April 4, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 9, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 9, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.1202 by revising paragraph (e) to read as follows:

4.1202 Solicitation provision and contract clause.

* * * * *

(e) 52.209-5, Certification Regarding Responsibility Matters.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

■ 3. Add sections 9.104-5 and 9.104-6 to read as follows:

9.104-5 Certification regarding responsibility matters.

(a) When an offeror provides an affirmative response in paragraph (a)(1) of the provision at 52.209-5, Certification Regarding Responsibility Matters, or paragraph (h) of provision 52.212-3, the contracting officer shall—

(1) Promptly, upon receipt of offers, request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the contracting officer (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406-3(a) and 9.407-3(a)), the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment, or Federal tax delinquency in an amount that exceeds \$3,000.

(b) Offerors who do not furnish the certification or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the offeror nonresponsible.

9.104-6 Solicitation provision.

The contracting officer shall insert the provision at 52.209-5, Certification Regarding Responsibility Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

■ 4. Amend section 9.105-1 by revising paragraph (c)(3) to read as follows:

9.105-1 Obtaining information.

* * * * *

(c) * * *

(3) The prospective contractor—including bid or proposal information (including the certification at 52.209-5 or 52.212-3(h) (see 9.104-5)), questionnaire replies, financial data, information on production equipment, and personnel information.

* * * * *

■ 5. Amend section 9.406-2 by removing from paragraph (a)(3) “tax evasion,” and adding “tax evasion, violating Federal criminal tax laws,” in its place; and by adding paragraph (b)(1)(v) to read as follows:

9.406-2 Causes for debarment.

* * * * *

(b) * * *

(1) * * *

(v) Delinquent Federal taxes in an amount that exceeds \$3,000.

(A) Federal taxes are considered delinquent for purposes of this provision if both of the following criteria apply:

(1) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(2) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(B) *Examples.* (1) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(2) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C.

§ 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(3) *The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159.* The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(4) *The taxpayer has filed for bankruptcy protection.* The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

* * * * *

■ 6. Amend section 9.407-2 by—

■ a. Removing from paragraph (a)(3) “tax evasion,” and adding “tax evasion, violating Federal criminal tax laws,” in its place;

■ b. Removing from the end of paragraph (a)(6) the word “or”;

■ c. Redesignating paragraph (a)(7) as paragraph (a)(8); and

■ d. Adding a new paragraph (a)(7) to read as follows:

9.407-2 Causes for suspension.

(a) * * *

(7) Delinquent Federal taxes in an amount that exceeds \$3,000. See the criteria at 9.406-2(b)(1)(v) for determination of when taxes are delinquent; or

* * * * *

9.408 [Removed and reserved]

■ 7. Remove and reserve section 9.408.

■ 8. Amend section 9.409 by revising the section heading; by removing paragraph (a); and by removing the paragraph designation (b). The revised heading reads as follows:

9.409 Contract clause.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 52.209-5 by—

■ a. Revising the section heading;

■ b. Removing from the introductory paragraph “9.409(a)” and adding “9.104-6” in its place;

- c. Revising the clause heading and the date;
- d. Removing from paragraph (a)(1)(i)(B) “tax evasion, or receiving stolen property; and” and adding “tax evasion, violating Federal criminal tax laws, or receiving stolen property;” in its place; and
- e. Removing from the end of paragraph (a)(1)(i)(C) the period and adding “; and” in its place; and
- f. Adding paragraph (a)(1)(i)(D) to read as follows:

52.209-5 Certification Regarding Responsibility Matters.

* * * * *

CERTIFICATION REGARDING RESPONSIBILITY MATTERS (MAY 2008)

(a)(1) * * *

(i) * * *

(D) Have , have not , within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples. (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

* * * * *

■ 10. Amend section 52.212-3 by—

- a. Revising the date of the clause;
- b. Removing from paragraph (h) “*Debarment, Suspension or Ineligibility for Award*” and adding “*Responsibility Matters*” in its place;
- c. Removing from the end of paragraph (h)(1) the word “and”;
- d. Removing from paragraph (h)(2) “tax evasion, or receiving stolen property; and” and adding “tax evasion, violating Federal criminal tax laws, or receiving stolen property;” in its place;
- e. Removing from paragraph (h)(3) “offenses.” and adding “offenses enumerated in paragraph (h)(2) of this clause; and” in its place; and
- f. Adding paragraph (h)(4) to read as follows:

52.212-3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFER REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (MAY 2008)

* * * * *

(h) * * *

(4) Have, have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) *Examples.* (A) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is

entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

[FR Doc. E8-8508 Filed 4-21-08; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 33

[FAC 2005-25; FAR Case 2006-031; Item VI; Docket 2008-0001; Sequence 9]

RIN 9000-AK79

Federal Acquisition Regulation; FAR Case 2006-031, Enhanced Access for Small Business

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 857 of the John Warner National Defense Authorization Act for Fiscal Year 2007.

DATES: *Effective Date:* May 22, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Procurement Analyst, at (202) 208-6925 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAC 2005-25, FAR case 2006-031.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the *Federal Register* at 72 FR 46950 on August 22, 2007. No

public comments were received in response to the proposed rule. This final rule makes no change to the proposed rule.

Section 857 creates a different, higher dollar ceiling to enable small businesses to use the small claims procedure to appeal a contracting officer's final decision. This rule amends the FAR to add the ceiling at 33.211(a)(4)(v).

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, General Services Administration, and National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it does not change the rules for buying and does not add an information collection requirement. It will have a small positive impact because small businesses will be able to more easily use the special contract appeals procedure.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 33

Government procurement.

Dated: April 4, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 33 as set forth below:

PART 33—PROTESTS, DISPUTES, AND APPEALS

■ 1. The authority citation for 48 CFR part 33 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 33.211 by revising paragraph (a) to read as follows:

33.211 Contracting officer's decision.

(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall—

(1) Review the facts pertinent to the claim;

(2) Secure assistance from legal and other advisors;

(3) Coordinate with the contract administration officer or contracting office, as appropriate; and

(4) Prepare a written decision that shall include—

(i) A description of the claim or dispute;

(ii) A reference to the pertinent contract terms;

(iii) A statement of the factual areas of agreement and disagreement;

(iv) A statement of the contracting officer's decision, with supporting rationale;

(v) Paragraphs substantially as follows:

"This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number.

With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's—

(1) Small claim procedure for claims of \$50,000 or less or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), \$150,000 or less; or

(2) Accelerated procedure for claims of \$100,000 or less.

Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision"; and

(vi) Demand for payment prepared in accordance with 32.610(b) in all cases where the decision results in a finding that the contractor is indebted to the Government.

* * * * *

[FR Doc. E8-8427 Filed 4-21-08; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1

[FAC 2005-25; Item VII; Docket FAR-2008-0001; Sequence 10]

Federal Acquisition Regulation; Technical Amendment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes an amendment to the Federal Acquisition Regulation in order to make an editorial change.

DATES: *Effective Date:* April 22, 2008.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FAC 2005-25, Technical Amendment.

SUPPLEMENTARY INFORMATION:

List of Subjects in 48 CFR Part 1

Government procurement.

Dated: April 4, 2008.

Al Matera,

Director, Office of Acquisition Policy.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 1 as set forth below:

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for 48 CFR part 1 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 1.603-1 by revising the last sentence to read as follows:

1.603-1 General.

* * * These selections and appointments shall be consistent with Office of Federal Procurement Policy's (OFPP) standards for skill-based training in performing contracting and purchasing duties as published in OFPP Policy Letter No. 05-01, Developing and Managing the Acquisition Workforce, April 15, 2005.

[FR Doc. E8-8422 Filed 4-21-08; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR—2008—0003, Sequence 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–25; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–25 which amend

the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–25 which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Diedra Wingate, FAR Secretariat, (202) 208-4052. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–25

Item	Subject	FAR case	Analyst
I	Federal Procurement Data System Reporting (Interim)	2004–038	Woodson.
II	Electronic Subcontracting Reporting System (eSRS) (Interim)	2005–040	Cundiff.
III	Revisions to the Defense Priorities and Allocations System (DPAS)	2006–033	Davis.
*IV	Use of Products Containing Recovered Materials in Service and Construction Contracts	2005–039	Clark.
V	Representations and Certifications - Tax Delinquencies	2006–011	Murphy.
VI	Enhanced Access for Small Business	2006–031	Murphy.
VII	Technical Amendment.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–25 amends the FAR as specified below:

Item I—Federal Procurement Data System Reporting (FAR Case 2004–038) (Interim)

This interim rule amends the Federal Acquisition Regulation (FAR) Subpart 4.6 to revise the process for reporting contract actions to the Federal Procurement Data System (FPDS). FPDS will allow agencies to obtain Federal procurement reports as well as several workload reports designed specifically for first-line supervisors. The use of the Federal reports will alleviate the need for individual agencies to collect, verify, and distribute statistics for a host of requirements such as the Small Business Goaling Report (SBGR), the Performance-Based Acquisition (PBA) report, the Central Contractor Registration (CCR), and the Resource Conservation and Recovery Act (RCRA) report. The rule provides questions and answers to facilitate the public’s understanding of the changes proposed in the interim for reporting contract actions under FAR Subpart 4.6.

Item II—Electronic Subcontracting Reporting System (eSRS) (FAR Case 2005–040) (Interim)

This interim rule amends the Federal Acquisition Regulation to require that small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form 294 - Subcontract Report for Individual Contracts and Standard Form 295 - Summary Subcontract Report. The eSRS is a web-based system managed by the Integrated Acquisition Environment. The eSRS is intended to streamline the small business subcontracting program reporting process and provide the data to agencies in a manner that will enable them to more effectively manage the program.

Item III—Revisions to the Defense Priorities and Allocations System (DPAS) (FAR Case 2006–033)

This final rule amends the language in the Federal Acquisition Regulation (FAR) to reflect the President’s delegation of the Defense Production Act’s priorities and allocations authorities in Executive Order 12919, and the current provisions of the Defense Priorities and Allocations System (DPAS) regulations of the Department of Commerce in 15 CFR Part 700.

FAR changes incorporated in parts 2, 11, 18, 52, and 53 benefit both the Government and industry in the

receiving of timely and proper delivery of industrial resources. Contracting officers should take notice of the changes in the FAR especially the changes to the Standard Form (SF) 26, Award/Contract and SF 1447, Solicitation/Contract, and use the revised SF 26 and SF 1447 that reflects the 15 CFR 700 citation and 2008 edition date change.

Item IV—Use of Products Containing Recovered Materials in Service and Construction Contracts (FAR Case 2005–039)

This final rule amends the Federal Acquisition Regulation (FAR) to clarify language within the FAR regarding the use of products containing recovered materials, pursuant to the Resource Conservation and Recovery Act of 1976, and Executive Order 13101 “Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition.” The rule also prescribes a new clause for use in service or construction contracts, to ensure that contractors deliver and make maximum use of products containing recovered material.

Item V—Representations and Certifications - Tax Delinquencies (FAR Case 2006–011)

This final rule amends the Federal Acquisition Regulation (FAR) to add conditions regarding refusal to pay delinquent Federal taxes to standards of

contractor responsibility, causes for suspension and debarment, and the certifications regarding debarment, suspension, and proposed debarment. The changes are intended to add clarity regarding the specific circumstances under which tax delinquencies are so serious that suspension or debarment should be considered. The changes originated in response to a request from the Senate Permanent Subcommittee on Investigations.

Item VI—Enhanced Access for Small Business (FAR Case 2006–031)

This final rule creates a different, higher dollar ceiling enabling small businesses to use the small claims procedure for appealing a contracting officer's final decision. Section 857 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) changed the ceiling under the Contract Disputes Act from \$50,000 or less to \$150,000 or less for small businesses. The ceiling remains at

\$50,000 or less for other types of businesses. The change to 41 U.S.C. 608 is a ceiling change only.

Item VII—Technical Amendment

An editorial change is made at FAR 1.603–1.

Dated: April 4, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–8419 Filed 4–21–08; 8:45 am]

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Federal Register

**Tuesday,
April 22, 2008**

Part IV

The President

**Proclamation 8241—Small Business Week,
2008**

Presidential Documents

Title 3—

Proclamation 8241 of April 17, 2008

The President

Small Business Week, 2008

By the President of the United States of America

A Proclamation

In communities across America, small business owners are working hard to turn their dreams into enterprises. Small Business Week is a time to celebrate the many achievements of small business owners, entrepreneurs, and employees, who contribute to the vitality and prosperity of our Nation and create new job opportunities for our citizens.

Small businesses are the backbone of the American economy, and my Administration is committed to fostering an environment in which the entrepreneurial spirit can thrive. By keeping taxes low, we leave more money in the hands of Americans to save, spend, and invest. This year, we have also temporarily expanded incentives to help small businesses invest in new equipment and expand their enterprises. We have also expanded market access and opened new markets for American goods and services abroad, helping our small businesses compete in the global economy. To make health care more affordable and accessible, we continue to support Association Health Plans so small businesses can band together to get the same discounts that big companies receive.

The underpinnings of our economy are strong, competitive, and resilient enough to overcome the challenges we face, and in the long run, Americans can be confident that our economy will continue to grow. During Small Business Week and throughout the year, we recognize the determination and ingenuity of America's workers and entrepreneurs who play a vital role in building a more prosperous future for our country.

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 20 through April 26, 2008, as Small Business Week. I call upon all Americans to observe this week with appropriate ceremonies, activities, and programs that celebrate the achievements of small business owners and their employees and encourage the development of new small businesses.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth 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.

A handwritten signature in black ink, appearing to read "George W. Bush". The signature is written in a cursive style with a large, sweeping initial "G".

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Federal Register

Vol. 73, No. 78

Tuesday, April 22, 2008

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Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2008-2009 Marketing; published 4-21-08

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FAR Case 2005040, Electronic Subcontracting Reporting System; published 4-22-08

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Medicaid Program: Health Care-Related Taxes; published 2-22-08

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Airworthiness Directives: Honeywell International Inc. ATF3 6 and ATF3 6A Series Turbofan Engines; published 3-18-08

McDonnell Douglas Model DC-8-55, et al. Airplanes; published 3-18-08

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT Agricultural Marketing Service**

Milk in the Appalachian, Florida, and Southeast Marketing Areas: Tentative Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders; comments due by 4-29-08; published 2-29-08 [FR 08-00881]

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User Fees for 2008 Crop Cotton Classification Services to Growers; comments due by 5-2-08; published 4-17-08 [FR 08-01148]

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Assessments of the Highly Pathogenic Avian Influenza

Subtype H5N1 Status of Denmark and France; Availability; comments due by 4-28-08; published 3-27-08 [FR E8-06241]

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Common Crop Insurance Regulations: Grape and Table Grape Crop Insurance Provisions; comments due by 4-29-08; published 2-29-08 [FR E8-03850]

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Fisheries of the Exclusive Economic Zone Off Alaska: Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area; comments due by 4-28-08; published 2-27-08 [FR E8-03697]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current

session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

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H.R. 5813/P.L. 110-200

To amend Public Law 110-196 to provide for a temporary extension of programs authorized by the Farm Security and Rural Investment Act of 2002 beyond April 18, 2008. (Apr. 18, 2008; 122 Stat. 695)

S. 550/P.L. 110-201

To preserve existing judgeships on the Superior Court of the District of Columbia. (Apr. 18, 2008; 122 Stat. 696)

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