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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.

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1247]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule; request for public comment.

SUMMARY: The Board is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation. The commentary interprets the requirements of Regulation E to facilitate compliance primarily by financial institutions that offer electronic fund transfer services to consumers.

The interim final rule provides that payroll card accounts established directly or indirectly by an employer on behalf of a consumer to which electronic fund transfers of the consumer's salary, wages, or other employee compensation are made on a recurring basis are accounts covered by Regulation E.

DATES: This interim final rule is effective July 1, 2007. Comments must be received on or before March 13, 2006.

ADDRESSES: You may submit comments, identified by Docket No. R–1247, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Ky Tran-Trong, Senior Attorney, or Daniel G. Lonergan or David A. Stein, Counsels, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Electronic Fund Transfer Act (EFTA or Act) (15 U.S.C. 1693 *et seq.*), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of types of transfers covered by the Act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The Act and regulation require disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account activity statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs. Further, the Act and regulation also prescribe restrictions on the unsolicited issuance of ATM cards and other access devices.

The official staff commentary (12 CFR part 205 (Supp. I)) is designed to facilitate compliance and provide protection from liability under sections 915 and 916 of the EFTA for financial institutions and persons subject to the Act. 15 U.S.C. 1693m(d)(1). The commentary is updated periodically to address significant questions that arise.

II. Background and Overview of Comments Received

Payroll cards have become increasingly popular with some employers, financial institutions, and payroll service providers as a means of providing a consumer's wages or other recurring compensation payments—assets that the consumer is able to access and spend via an access device that provides functionality comparable to that of a debit card. Typically, an employer, in conjunction with a bank, will provide the employee with a plastic card with a magnetic stripe; this card accesses an account (or subaccount) assigned to the individual employee. Each payday, the employer credits this account for the amount of the employee's compensation instead of providing the employee with a paper check or making a direct deposit of salary to the employee's checking account. The employee-consumer can use the payroll card to withdraw his or her funds at an ATM, and to make purchases at POS (and possibly get cash back). Some payroll cards may offer features such as convenience checks and electronic bill payment. Payroll cards are often marketed to employers as an effective means of providing wages to employees who lack a traditional banking relationship. For ''unbanked'' consumers, payroll card products can serve as substitutes for traditional transaction accounts at a financial institution.

On September 17, 2004, the Board published a notice of proposed rulemaking in the **Federal Register** (69 FR 55,996) (September 2004 proposal) to provide, among other things, that the term ''account'' under Regulation E includes payroll card accounts established by an employer for the purpose of providing an employee's compensation on a recurring basis. A payroll card account would be subject to the regulation whether it is operated or managed by the employer, a third-party payroll processor, or a depository institution.

The Board received approximately 120 comment letters on the September

2004 proposal, nearly 50 of which specifically commented on the proposed revisions addressing payroll card accounts. Comments were received from a variety of industry commenters, including banks, thrifts, credit unions, and industry trade associations. Comments were also received from consumer groups and individual consumers.

Industry commenters generally agreed that it was appropriate to cover payroll card accounts under Regulation E, but urged the Board not to cover other stored-value products so as not to discourage the continued evolution of such products. Most industry commenters also asserted that not all provisions of Regulation E should apply to payroll card accounts. In particular, industry commenters stated that institutions should not be required to provide paper periodic statements. These commenters cited various reasons, including that other means of accessing balance and transaction information, such as via a telephone and the Internet, provided more useful and timely information to consumers at less cost to financial institutions. Industry commenters also stated that payroll card users are often unbanked and chiefly interested in obtaining balance information and, further, that this population was typically transient, making paper statements difficult to deliver. Consumer groups urged the Board to expand the scope of the proposal to cover any stored-value product that is marketed or used as an account substitute, or that is used to receive payments of significant household funds, such as workers' compensation or unemployment benefits.

A final rule addressing the other proposed provisions addressing electronic check conversion transactions and other matters in the September 2004 proposal is published elsewhere in this **Federal Register**.

III. Summary of the Interim Final Rule

The Board has modified the proposed rule in light of the comments received. In order to give interested parties an opportunity to comment on the modifications made, and, in particular, on the alternative means to provide periodic statement information, the Board is publishing this interim final rule for comment.

Under the interim final rule, payroll card accounts are defined as ''accounts'' for purposes of coverage under Regulation E, and include those accounts directly or indirectly established by an employer to which EFTs of the consumer's wages or other compensation are made on a recurring basis. The interim final rule incorporates a new § 205.18 to grant financial institutions flexibility in how to provide certain account transaction information to payroll card users. Under the new section, financial institutions would be granted an alternative to regularly providing paper periodic statements. In particular, instead of providing paper periodic statements under § 205.9, an institution would: (1) Make available to the consumer balance information through a readily available telephone line; (2) make available to the consumer an electronic history (such as via the Internet) of the consumer's account transactions covering at least a period of 60 days prior to the consumer's oral or written request; and (3) provide promptly upon the consumer's request, a written history of the consumer's account transactions covering at least a period of 60 days prior to the request. The history of account transactions provided electronically or upon request would set forth the same type of information required to be provided on paper periodic statements otherwise required under Regulation E, including information about any fees for EFTs imposed during the period in connection with the payroll card account.

The comments received on the proposal, and the Board's response to the comments, are discussed in the following section-by-section analysis. As discussed below, the Board is adopting these rules as interim final rules so that interested parties may comment on the new requirements. The effective date of the interim final rule is July 1, 2007.

IV. Section-by-Section Analysis

Section 205.2 Definitions 2(b) Account

The EFTA and Regulation E apply to any EFT that authorizes a financial institution to debit or credit a consumer's asset account. Under the proposed rule, the term ''account'' in § 205.2(b)(3) would be revised to include a ''payroll card account'' directly or indirectly established by an employer on behalf of a consumer to which EFTs of the consumer's wages, salary, or other employee compensation are made on a recurring basis. A payroll card account would be subject to the regulation whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution. The interim final rule redesignates current § 205.2(b)(2) as § 205.2(b)(3) and adopts the definition of payroll card accounts as proposed under § 205.2(b)(2).

Overall, the majority of commenters supported coverage of payroll card accounts under Regulation E. Many industry commenters agreed that Regulation E coverage was appropriate for payroll cards, but urged the Board to narrowly define payroll cards so as to include only those types of products that are truly intended to serve as ''accounts.'' In this regard, some industry commenters were concerned that an overly broad definition of payroll cards might have the effect of stifling the development of emerging stored-value card products.

A few industry commenters objected to the characterization of payroll cards as ''accounts'' or ''account substitutes,'' asserting that funds are added to payroll card accounts in a more limited manner than they are to traditional deposit accounts. (With a payroll card, funds can often be added to the account only by the employer and not the employee.) These industry commenters believed that payroll cards were more appropriately characterized as ''payment substitutes'' because they provide a means for replacing paper checks.

Consumers and consumer groups supported the proposal's broad coverage of financial institutions, employers, and providers, and stated that all Regulation E protections, including the provision of periodic statements, should apply to payroll card accounts. These commenters also recommended broadening the scope of the rule to encompass all cards ''marketed as substitutes'' for a bank account, as well as cards that are used to receive payments of significant household funds, such as workers' compensation, unemployment benefits, social security payments, or tax refunds.

By express definition, the coverage of EFT services under the EFTA and Regulation E depends upon whether a transaction involves an EFT to or from a consumer's account. Section 903(2) of the EFTA defines an ''account'' as a ''demand deposit, savings deposit, or other asset account * * * as described in regulations of the Board, established primarily for personal, family, or household purposes.'' The definition is broad and is not limited to traditional checking and savings accounts.[1] Under

[1] The EFTA's legislative history evidences a clear Congressional intent to define the term ''account'' broadly to ensure that ''all persons who offer equivalent EFT services involving any type of asset account are subject to the same standards and consumers owning such accounts are assured of uniform protection.'' S. Rep. No. 915, 95th Cong., 2d Sess. 9 (1978).

section 904(d) of the EFTA, ''[i]f EFT services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by [the EFTA] are made applicable to such persons and services.'' Congress has clearly expressed its expectation that the Board's regulation would keep pace with new services and assure that the Act's basic protections continue to apply to such services.[2]

In light of the characteristics of payroll card accounts, the Board believes it is appropriate to exercise its authority under sections 903(2) and 904(d) of the EFTA and determine that payroll card accounts are appropriately classified as ''accounts'' for purposes of Regulation E. Payroll card accounts are assigned to an identifiable consumer and represent a recurring stream of payments that is likely the primary source of the consumer's income. They are replenished on a recurring basis and designed for ongoing use at multiple locations and for multiple purposes. Payroll card accounts utilize the same kinds of access devices, electronic terminals, and networks as do other EFT services historically covered by the EFTA.

The interim final rule adopts a new § 205.2(b)(2) to provide that the term ''account'' includes a ''payroll card account'' directly or indirectly established by an employer on behalf of a consumer to which EFTs of the consumer's wages, salary, or other employee compensation are made on a recurring basis. (Current § 205.2(b)(2) is re-designated as § 205.2(b)(3).) Coverage under Regulation E applies whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution. The definition is unchanged from the proposal.

The definition generally includes a payroll card account that represents the means by which an employer regularly pays the employee's salary or other form of compensation, and would include, for example, card accounts for seasonal workers or employees that are paid on a commission basis. Moreover, the fact that an employee may only remain in the employer's hire for a short period of time, including just one pay cycle, does not negate coverage, so long as the employer intended to make recurring payments to the payroll card account. However, if the employer only pays the employee by adding funds to an ''account'' accessible by a card in isolated or limited instances—for example, in final-paycheck situations, or only in emergency situations when the customary, non-payroll-card method of payment does not work—but otherwise intends to regularly pay the employee by another method, such as by paper check or direct-deposit, such a card ''account'' would not fall within the definition of a payroll card account.

Payroll card accounts also are covered under the interim final rule whether the funds are held in individual employee accounts or in a pooled account with some form of ''subaccounting'' maintained by a depository institution (or by a third party) that enables a determination of the amounts of money owed to particular employees. Although some commenters suggested that the manner in which such funds are held should determine whether a particular payroll card account falls within the rule, the Board has determined to adopt the definition as proposed, because it will assure broad and uniform application and compliance, and minimize potential circumvention of the rule. The Board further believes there is no substantive difference between a subaccount and an individual account for purposes of determining whether Regulation E coverage is appropriate.

As stated in the proposal, the Board is limiting the scope of this interim final rule to payroll card products. Thus, for example, ''gift'' cards issued by a merchant that can be used to purchase items in the merchant's store would not be covered by the interim final rule. In addition, comment 2(b)–2 clarifies that cards to which only one-time transfers of salary-related payments are made (*e.g.*, to pay an annual bonus), or cards exclusively used to disburse non-salary-related payments, such as petty cash or travel per diem cards, are not covered. To the extent one-time bonus payments, payments to reimburse travel expenses, or any other payment of funds (*e.g.*, if a consumer is permitted to add his or her funds) are transferred to or from a payroll card account, however, such transfers would be considered EFTs covered by the regulation. Current comment 2(b)–2 addressing examples of accounts not covered by Regulation E is redesignated as comment 2(b)–3.

Some consumer group commenters urged the Board to apply Regulation E to all card products to which an individual *might* transfer by direct deposit some portion of his or her wages, even if such cards are not ''payroll card accounts'' directly or indirectly established by an employer. These commenters asserted that such general spending cards are marketed as account substitutes and therefore should be covered under the regulation. Consumer groups also urged the Board to cover stored-value products that may be used by some consumers to hold important household funds or assets, such as workers' compensation, unemployment benefits or tax refunds.

The Board has not expanded the interim final rule in the manners suggested. Payroll cards are established directly or indirectly by an employer for the express purpose of receiving on a long-term basis, recurring payments of a consumer's wages, salary or other compensation. Accordingly, there is a greater likelihood that the account will serve as a consumer's principal transaction account, and hold significant funds for an extended period of time. In contrast, general spending cards are established by the individual consumer, and while the consumer might choose to deposit some portion of salary (as well as other funds) onto a general spending card, the consumer also may use these products like gift cards or other stored-value or prepaid cards. Under the latter situation, consumers would derive little benefit from receiving full Regulation E protections for a card that may only be used on a limited, short-term basis and which may hold minimal funds, while the costs of providing Regulation E initial disclosures, periodic statements and error resolution rights would be quite significant for the issuer. In addition, coverage of such products could impede the development of other card products generally. Similarly, although some card products may be used to transfer significant or important sums to a consumer, these products are generally designed to make one-time or a limited number of payments to consumers, and are not intended to be used on a long-term basis. Given these above considerations, the Board has determined to limit the scope of the interim final rule to payroll card accounts. The Board will monitor the development of other card products and may reconsider Regulation E coverage as these products continue to develop.

Section 205.18 Requirements for Financial Institutions Offering Payroll Card Accounts

In the proposal, the Board proposed that all of the Regulation E provisions, including initial disclosures, periodic statements, error resolution procedures, and other consumer protections, would apply to payroll card accounts. Industry commenters, however, disagreed with the Board's suggestion that all provisions of Regulation E coverage

[2] *See id.*; S. Rep. No. 1273, 95th Cong., 2d Sess. 9–10, 25–26 (1978).

should apply to payroll card accounts. In particular, most industry commenters stated that the requirement to deliver periodic statements under § 205.9 should not apply to payroll card accounts. Instead, industry commenters suggested that entities offering payroll cards should be subject to rules similar to those contained in § 205.15 of Regulation E for accounts established for the electronic transfer of government benefits (electronic benefit transfer, or EBT, accounts), which provide for alternative means of providing account information.

Industry commenters commonly cited one or more of the following justifications for not requiring paper periodic statements: (1) Some payroll card holders are transient, complicating the mailing of statements; (2) payroll card holders are sufficiently informed about their accounts by ''real-time'' balance and recent-transaction information available by other means, such as on-line, through telephone voice-response units, or ATMs; (3) payroll cards seek to eliminate employer paper payroll costs, and a mailed statement could reduce expected savings to employers; (4) the cost of mailing statements could increase payroll card fees, potentially lowering both employer as well as employee interest in using the cards; and (5) imposing a costly regulatory requirement could inhibit the development of a card product that is safer for employees than carrying cash, potentially cheaper than using a check-casher, and is a potential means for transitioning the unbanked to a full banking relationship.

In contrast, consumer group commenters asserted that payroll card accounts should be treated the same as other consumer accounts for all purposes under the EFTA, including the requirement to provide paper periodic statements. These commenters noted that periodic statements assist consumers in tracking their account balances and transactions and, importantly, allow consumers to discover unauthorized transfers or other errors involving their accounts.

The periodic statement requirement is an important aspect of the EFTA's protections. When it addressed EBT programs in 1994, the Board recognized that periodic statements are a central component of Regulation E's disclosure scheme. However, in the EBT final rule, the Board exercised its exception authority under section 904(c) of the EFTA to provide relief from the requirement to provide a periodic statement if: (1) Account balance information is made available to benefit recipients via telephone and electronic terminals; and (2) a written account history is provided upon request. The Board determined that granting EBT providers relief from the periodic statement requirements was appropriate in light of the availability of other means of obtaining account information to benefit recipients, the limited types of transactions involved for EBT accounts, and the expense of routinely mailing monthly statements to all recipients given the low margins associated with administering EBT programs. *See* 59 FR 10,678, 10,681 (March 7, 1994).

As part of this rulemaking, the Board has conducted focus group testing of identified payroll card holders to obtain information regarding how actual payroll card users manage and use their accounts in order to better understand their account information needs. Participants in the Board-sponsored focus groups included both consumers who received paper periodic statements for their payroll card accounts, and those who did not.

Generally, focus group participants found their cards convenient to use, and most used their cards not only to withdraw cash, but also to make purchases on a regular basis. A significant number of participants believed that receiving pay on payroll cards is more convenient than receiving a paper paycheck each pay period, although a few participants expressed a preference for receiving tangible, paper evidence of pay each pay period. Many participants, particularly those that do not have a checking account, have all of their pay deposited onto their payroll card and pay all of their expenses from the account. Other participants used the payroll card as a small savings account, while paying all of their expenses out of another bank account.

The majority of focus group participants regularly checked their balances over the telephone, or checked balance and transaction information on-line, some multiple times per week. Although some limited transaction information was available through the telephone, most focus group participants chose not to access their transaction information by phone. Participants indicated that more transaction information was available on-line than was available via the telephone, which made verification of transactions easier on-line.

For those participants who received paper periodic statements, most stated that they generally filed their statements as a record of account activity, but otherwise rarely used them to track transactions or look for errors. The lack of periodic statement use was generally attributed to the fact that the participants monitored their payroll account information more frequently during the month via the telephone or on-line, and thus, participants felt that they did not need to review their statement when it arrived. While a few participants wanted to receive or to continue to receive paper statements, others indicated a clear preference for using alternative means of obtaining account information, in particular on-line and by phone, to monitor account activity and avoid errors.

The Board notes that nearly all of the focus group participants had some means of on-line access; consequently the participants may not be representative of the current or future payroll card holder population overall with respect to their ability to access account information on-line. Nevertheless, the Board believes that the focus groups provided helpful insight regarding how consumers use and manage their payroll card accounts.

After a review of the comments and data from the focus groups, and further analysis, the Board has concluded that it is appropriate to provide flexibility in connection with the periodic statement requirement for payroll card accounts. As was the case when the Board considered rules governing EBT products in 1994, the Board is persuaded at this time that the alternative methods of providing account transaction information currently made available by many payroll card providers can give payroll card users a means of tracking their account balances and transactions that is comparable to that provided by paper periodic statements. Moreover, information obtained via the telephone or on-line is typically updated on a daily basis, in contrast to periodic statements which only provide information as of the end of each statement cycle. Thus, consumers using telephone and on-line methods often have access to more timely information through these methods. Access to more timely information may be particularly critical to consumers who may need to track their account balances on a transaction-by-transaction basis to ensure they do not overdraw their accounts.

The Board has also weighed the potential burden of requiring all financial institutions to provide paper periodic statements against the benefit consumers who prefer these statements would obtain from such statements. Since financial institutions are not currently required to provide paper statements for payroll card accounts, such a requirement would impose

considerable one-time implementation costs on financial institutions that currently provide payroll card accounts, and possibly discourage other financial institutions from offering payroll card accounts. Accordingly, after also taking into consideration the alternative methods available to consumers for obtaining payroll card account information, the Board concludes that granting relief from the periodic statement requirement for payroll card accounts is appropriate.

Section 205.18 of the interim final rule adopts an approach for providing account information for payroll card accounts similar to that used for EBT products under § 205.15, with certain modifications to address issues relating to periodic statements and error resolution procedures and notices. This new section allows financial institutions to use alternative means to provide account information where an institution chooses not to provide periodic statements under § 205.9(b). Section 205.18 also addresses the requirements governing periodic statements, initial disclosures, error resolution and the annual error resolution notice, the issuance of access devices, and limitations on liability. Except as modified by this section, all other provisions of Regulation E apply to payroll card accounts.

18(a) Coverage

Section 205.18(a) describes the entities that must comply with Regulation E with respect to the provision of payroll card accounts. A person is a financial institution subject to the regulation if it directly or indirectly holds a payroll card account or issues an access device to a consumer for use in initiating an EFT from a payroll card account. The scope of coverage set forth in this paragraph differs from the scope under the definition of ''financial institution'' under § 205.2(i) because it does not require that a person issuing an access device for a payroll card account to also agree with a consumer to provide EFT services in order to be covered. As stated in the supplementary information in the proposal, the Board intends to cover employers to the extent they are involved in the transfer of funds to the payroll card account or in the issuance of the card. *See* 69 FR at 55,999. Thus, the Board believes that this clarification is necessary to extend coverage under the interim final rule to employers that issue payroll cards to their employees, but who may not otherwise provide EFT services to their employees using those cards. However, the mere fact that a consumer has elected to make direct deposits of salary to a checking or savings account that the consumer has separately established would not make an employer a financial institution for purposes of this rule.

Section 205.18(a) further states that, except as provided in § 205.18, the person must comply with all applicable requirements of the act and regulation with respect to payroll card accounts. Comment 18(a)–1 illustrates this provision in the context of issuing access devices under § 205.5, and states that a financial institution may issue an access device for a payroll card account consumer only in response to an oral or written request for the device or as a renewal or substitute of an accepted access device. The comment further clarifies that a consumer is deemed to request an access device when the consumer chooses to receive his or her salary through a payroll card account. Although some commenters stated that a consumer should be deemed to apply for a payroll card account when the consumer submits an application for employment, such a rule could be inconsistent with the compulsory use prohibition in § 205.10(e)(2).

To the extent more than one party is a ''financial institution'' under the rule with respect to a particular payroll card account, such parties may contract among themselves pursuant to the jointly provided services provision under § 205.4(e) to ensure compliance with the interim final rule. For example, if an employer, by agreement, issues a payroll card to a consumer and opens an account at a bank into which the employer deposits the consumer's wages and from which the consumer can access funds by using the card, then both the employer and the bank would qualify as a financial institution with respect to that consumer's payroll card account. Similarly, if an employer contracts with a third party processor or service provider to issue the access device for the payroll card account, the third party processor or service provider would also be a financial institution with respect to that payroll card account. Disclosure obligations satisfied by one party, such as a service provider, for a payroll card account would satisfy any disclosure obligations for any other financial institution with respect to that payroll card account. Although several commenters expressed concern that more than one entity may qualify as a ''financial institution,'' no significant reasons were offered to explain why § 205.4(e) is inadequate in the payroll card account context.

18(b) Alternative to Periodic Statement

Section 205.18(b) provides financial institutions flexibility in providing account information to consumers. Financial institutions may elect to provide periodic statements under § 205.9 as they would for other accounts. As an alternative to providing periodic statements, institutions may instead: (1) Make available to the consumer the account balance through a readily available telephone line; (2) make available to the consumer an electronic history (such as via an Internet Web site) of the consumer's account transactions that covers at least 60 days preceding the date the consumer electronically accesses the account; and (3) provide promptly upon the consumer's oral or written request, a written history of the consumer's account transactions that covers at least 60 days preceding the date of receipt of the consumer's request. As further explained below in the context of error resolution time frames, a consumer ''electronically accesses'' an account once the consumer enters a user identification code or a password or otherwise complies with a security procedure used by an institution to verify the consumer's identity.

Consistent with the EBT rule, and as for EFT systems generally, a readily available telephone line is a local or toll-free line available at least during standard business hours. Institutions may of course choose to provide recipients with a line available 24 hours. *See* 59 FR at 10,681. The readily available phone line may be automated, in which case institutions will likely provide 24-hour access to balance information. Model Form A–7(a), discussed below, sets forth a model clause that institutions may use to inform consumers about how to access their account information, including the telephone number that consumers may call to obtain balance information.

The requirement to provide a written history of account transactions promptly upon the consumer's oral or written request addresses the possibility that some consumers may have limited on-line access. The Board anticipates that, in general, written histories will be sent the same day or soon after the consumer makes an oral request, and within a few days after the consumer's request in writing is received by an institution (to account for any time lags that may arise in routing the consumer's written request to the appropriate person). Institutions may also provide a specific telephone number or address for consumers to request a written history of account transactions. Comment is

solicited as to whether the option to obtain a written history of account transactions is necessary or appropriate.

The Board recognizes that requiring financial institutions to provide 60 days' worth of account transaction information differs from the rule in § 205.9(b), which requires financial institutions to provide transaction information for EFTs that have occurred during a monthly cycle. The Board nevertheless believes that 60 days is appropriate for payroll card accounts because, unlike for accounts generally under Regulation E, institutions will not be required to send a statement of account transactions to consumers with payroll card accounts on a regular basis. Without a longer time period for account transactions, some payroll card account holders might waive their right to assert an error under § 205.11 if they do not access their transaction history on at least a monthly basis. The Board further notes that the requirement to provide a 60-day account history is also the time period used in the EBT rule.

To ensure that consumers are able to review their account transactions and to effectively exercise their error resolution rights, § 205.18(b)(2) of the interim final rule requires the same type of account transaction information to be provided to consumers that is set forth under § 205.9(b)(1)–(6), whether the history of account transactions is provided electronically or in writing. For example, consumers must be provided with information about fees incurred in connection with EFTs and payroll card accounts.

Comment is solicited as to whether additional transaction information should be provided to payroll card users, or whether certain information should be excluded from the history of account transactions. Comment is also solicited regarding the feasibility of providing consumers with a rolling history of 60 days' worth of transactions.

18(c) Modified Requirements

Initial Disclosures and Annual Error-Resolution Notice

For financial institutions that do not furnish periodic statements, § 205.18(c) sets forth provisions clarifying how to satisfy the requirements relating to disclosures, liability limits, and error resolution procedures under Regulation E. Section 205.18(c)(1) generally sets forth modified disclosures that a financial institution must provide in addition to or in lieu of required initial disclosures under § 205.7(b). Section 205.18(c)(1)(i) requires financial institutions to include in the initial disclosures for payroll card accounts the means by which a consumer can access information about his or her account, including the telephone number that the consumer may call to obtain his or her account balance, and information on how the consumer can electronically obtain a history of account transactions, such as the address of an Internet Web site. Institutions must also include in their initial disclosures, in place of the disclosure required by § 205.7(b)(6), a summary of the consumer's right to obtain a written history of account transactions upon request, including a telephone number to call to request a history. Section 205.18(c)(1)(ii) requires financial institutions to provide in initial disclosures a notice explaining the error resolution rights associated with payroll card accounts in place of the notice required by § 205.7(b)(10).

Section 205.18(c)(2) requires financial institutions to provide an annual notice describing error-resolution rights, in place of the notice required by § 205.8(b). The interim final rule provides Model Forms which financial institutions may use to facilitate compliance with the interim final rule in section A–7 in appendix A to part 205.

Limitations on Liability and Error Resolution

Sections 205.18(c)(3) and (4) of the interim final rule explain the application of the regulation's limitations on liability and error resolution procedures when a financial institution opts not to provide paper periodic statements. Section 205.18(c)(3) specifies two different triggers for beginning the 60-day period for limiting liability for unauthorized EFTs, depending on when and how the consumer has obtained a history of his or her account transactions. If the consumer obtains transaction information electronically under § 205.18(b)(1)(ii), the 60-day period begins on the date the account is electronically accessed by the consumer. If the consumer has requested a written history of his or her account transactions under § 205.18(b)(1)(iii), the 60-day period begins on the date the institution sends the written history. The interim final rule specifies that the applicable 60-day period for reporting an unauthorized EFT begins on the earlier of these two dates to clarify when the 60-day period begins to run where a consumer reviews his account transactions for errors both electronically as well as using a written history the consumer has requested. For example, assume that a consumer reviews his or her transactions on-line on June 1, and subsequently requests a written history on June 5, which is sent by the financial institution that day. In this case, the consumer's 60-day period for asserting an unauthorized EFT appearing both electronically and on the written history begins running on June 1 when the consumer first electronically accessed the account. As further explained below in the context of error resolution procedures, in order for the 60-day period to begin running, the unauthorized transfer must have been available for the consumer to review when the consumer electronically accessed his or her account, or when the consumer obtained a written history of account transactions.

Section 205.18(c)(4) establishes a similar rule for establishing when the 60-day period for reporting an error begins for purposes of the error resolution procedures set forth in § 205.11, depending upon how the consumer has obtained the history of his or her account transactions on which an error appears. Accordingly, a financial institution must comply with the error resolution requirements set forth in § 205.11 if it receives a consumer's oral or written notice of error no later than 60 days after the earlier of: (1) The date the consumer electronically accesses his or her account under § 205.18(c)(1)(ii); or (2) the date the institution sends a written history of the consumer's account transactions that has been requested under § 205.18(b)(1)(iii) in which the error is first reflected. The first trigger further requires that the financial institution has made available to the consumer information about the EFT for which the consumer asserts an error on the date that the consumer electronically accesses his or her account (*e.g.*, by posting the information about the transfer on an Internet Web site).

With respect to electronic access, the Board does not intend for the 60-day periods for liability limits and error resolution to begin running if the consumer merely, for example, visits an Internet Web site where his or her account information and other information can be retrieved. Rather, the 60-day period would begin once the consumer enters a user identification code or a password or otherwise complies with a security procedure used by an institution to verify the consumer's identity. However, the interim final rule does not require institutions to determine whether the consumer has in fact accessed information about specific transactions involving the consumer's payroll card account to trigger the beginning of the 60-day period for liability limits and

error resolution rights. The Board also notes that, in contrast to the EBT rule, the 60-day period is not triggered when a consumer obtains balance information via the telephone.

Comment is requested regarding the feasibility of determining when a consumer has electronically accessed his or her account. Comment is also requested regarding whether other means of triggering the 60-day time periods for establishing liability for unauthorized EFTs or for error resolution may be appropriate. In particular, comment is requested regarding the feasibility of determining when a consumer has accessed specific transaction information about his or her payroll card account where the consumer can also access other personal information connected to his or her employment (*e.g.*, health benefits or insurance) on the same Internet Web site.

Example

As discussed above, the history of account transactions provided under § 205.18(c)(1), whether provided electronically or in writing, must cover at least 60 days preceding the date of the institution's receipt of a request for the history by the consumer. Thus, assume, for example, that a consumer uses a password to electronically access his or her payroll card account, or is sent a written history the consumer has requested, on June 1. The history of account transactions provided electronically or sent to the consumer must cover a period of at least 60 days prior to June 1, and would include any EFTs occurring between April 2 and May 31. Assuming that the consumer did not previously access or receive account information reflecting the covered EFTs, the consumer would have 60 days, or until July 30, to assert any unauthorized EFTs or other errors occurring between April 2 and May 31 to preserve his or her rights under §§ 205.6 and 205.11 with respect to those transfers.

In the example, suppose the consumer electronically accesses his or her account on June 1 and discovers an error that occurred on May 10. In this case, the consumer must provide notice of that error to the institution by July 30 to trigger the institution's obligation to investigate the error. Thus, although the consumer has 60 days following the date he or she obtains the history of account transactions to assert any errors appearing on that history, it does not necessarily mean that the consumer has 60 days following the date of the error to provide notice of that error to the institution. Accordingly, if the consumer provides a notice of the May 10 error after July 30, the institution is not required to comply with the procedures and time limits in § 205.11 for investigating the error. *See* comment 11(b)–7. Nevertheless, if the error involves an unauthorized EFT, liability for the unauthorized transfer may not be imposed on the consumer unless the institution satisfies the requirements of § 205.6.

Additional Issues

In addition to scope and periodic statement issues, commenters raised a few additional issues with respect to the proposal. As part of the proposal, the Board sought public comment on ongoing rulemaking efforts by the Federal Deposit Insurance Corporation (FDIC) to amend, revise, or interpret the meaning of the terms ''deposit'' with respect to stored-value or prepaid products, and possibly payroll card products.[3] The overwhelming majority of commenters urged the Board not to link its treatment of payroll card accounts under Regulation E to the FDIC's regulatory proposals. Many commenters also raised concerns that the treatment of payroll card products as ''accounts'' under Regulation E might make the Board, or other regulators, more likely to deem such products ''accounts,'' ''deposits,'' or ''account relationships'' for purposes of other laws (*e.g.*, for customer identification procedures under the USA PATRIOT Act, for reserve requirements under the Board's Regulation D, for Truth in Savings Act purposes, and possibly for other issues under provisions of state law). The Board notes that the definition of ''account'' under the EFTA and Regulation E does not incorporate the definitions of ''account'' or ''deposit'' as described in other laws. Accordingly, the definition of ''payroll card account'' in this interim final rule is intended only to address coverage issues under Regulation E, and is not intended to address the definition of ''account'' for purposes of any other statute or regulation.

One large provider of payroll cards sought clarification as to whether a ''dual function'' payroll card account is covered under the rule. Under a dual function card account, part of the account holds employer-funded ''corporate expense funds,'' and the remaining segregated portion of the card holds employer-transmitted wages belonging to the employee. The Board believes the segregated corporate expense portion of the account accessible by the card is not a ''payroll card account'' because the funds are not primarily for personal, family, or household purposes. The remaining funds that consist of the consumer's wages would qualify as funds held in a ''payroll card account.''

Several industry commenters requested that the Board clarify whether, or to what extent, the ''compulsory use'' provisions of Regulation E apply to payroll card accounts. Section 205.10(e)(2) prohibits a financial institution from requiring a consumer to establish an account with a particular institution for receipt of EFTs as a condition of employment or receipt of a government benefit. As clarified by the existing commentary, an employer may not require its employees to receive their salary by direct deposit to any particular institution, although an employer may: (1) Require direct deposit of salary by electronic means if employees may choose the institution that will receive the direct deposit; or alternatively, (2) give the employee the choice of having his or her salary deposited at a particular institution designated by the employer, or receiving their salary by check or cash. The Board believes the compulsory use provisions apply to payroll card accounts because they are established as accounts for the receipt of EFTs of salary. However, provided that an employer does not require a consumer to obtain a payroll card account as the method of receiving pay, and permits, for example, a consumer to receive pay via direct deposit to a financial institution, the compulsory use prohibition should not be implicated.

Many providers of payroll card accounts urged the Board to provide a 12-month period in which to bring payroll card programs into compliance. Many consumer commenters believed that a six-month period is adequate. The effective date of the interim final rule is July 1, 2007. The Board anticipates that financial institutions will have at least one year following publication of a final rule on payroll card accounts to adjust their programs for compliance.

A–7—Model Clauses for Financial Institutions Offering Payroll Card Accounts

Model Form A–7 is added to provide model clauses consistent with the new § 205.18 alternate provisions for financial institutions who offer payroll card accounts and who do not provide the periodic statement required under § 205.9(b). These clauses, which are modeled after similar clauses provided

[3] *See generally* 70 FR 45571 (August 8, 2005); 69 FR 20558 (April 16, 2004) (FDIC proposals to clarify the insurance coverage of funds accessed through stored-value cards and other nontraditional access mechanisms).

under Appendix A–5 for EBT accounts, are intended to provide model language to assist payroll card issuers in providing disclosure information with respect to obtaining account balances and account histories, as well as error resolution procedures. Comment 2 for Appendix A has been revised to make clear that the use of such clauses in making these disclosures in connection with payroll card accounts will protect a financial institution from liability under sections 915 and 916 of the EFTA if the clauses accurately reflect the institution's EFT services. Additionally, a typographical error has also been corrected in the interim final rule. Currently the comment references ''205.15(d)(7),'' when in fact the correct reference is ''(d)(1).'' As no subsection ''(d)(7)'' exists, an appropriate technical correction has been incorporated.

V. Final Regulatory Flexibility Analysis

The Board prepared a regulatory flexibility analysis as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) in connection with the September 2004 proposal. The Board received no comments on its regulatory flexibility analysis.

Under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the interim final rule.* The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of the EFTA is the provision of individual consumer rights with regard to electronic fund transfers. 15 U.S.C. 1693. The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The EFTA expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, * * * as, in the judgment of the Board, are necessary or proper to effectuate the purposes of [the EFTA], to prevent circumvention or evasion [of the act], or to facilitate compliance [with the EFTA].'' 15 U.S.C. 1693b(c). The EFTA also states that ''[i]f electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by [the EFTA] are made applicable to such persons and services.'' 15 U.S.C. 1693b(d).

The Board is revising Regulation E to provide that payroll card accounts directly or indirectly established by an employer on behalf of a consumer to which EFTs of the consumer's wages, salary, or other employee compensation are made on a recurring basis are ''accounts'' subject to Regulation E. The Board believes that the revisions to Regulation E as discussed in the **SUPPLEMENTARY INFORMATION** are within Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. *Issues raised by comments in response to the initial regulatory flexibility analysis.* In accordance with section 3(a) of the RFA, the Board conducted an initial regulatory flexibility analysis in connection with the proposed rule. The Board did not receive any comments on its initial regulatory flexibility analysis with respect to the portions relating to payroll card accounts.

3. *Small entities affected by the final rule.* Employers, payroll card services providers and depository institutions are required to comply with the interim final rule under Regulation E to the extent that they are engaged in providing payroll card accounts to consumers. Based on available information, the interim final rule will apply to the following institutions (numbers approximate): Employers (5,000), payroll card services providers (40), and depository institutions (60), for a subtotal of approximately 5,100 institutions. The Board estimates that over 4,000 of these institutions could be considered small institutions with assets less than $150 million.

All small entities that are engaged in providing payroll card accounts are affected by the requirements established by this interim final rule, including initial disclosures, error resolution procedures, and the provision of account information.

4. *Recordkeeping, reporting, and compliance requirements.* Institutions must provide an initial disclosure to payroll card account holders regarding the means by which the holder may obtain account information and the means by which the holder may resolve errors. In order to comply with the amendments to Regulation E, institutions must review their account-opening disclosures to ensure compliance with the regulation; and some institutions may be required to revise their disclosures. (The rule provides model disclosures to facilitate the revision of the disclosures and to ensure compliance.) In addition, if the institution elects not to provide periodic statements, the institution must establish systems for delivering account information electronically and by telephone. Institutions also will be required to implement error resolution provisions under the interim final rule to the extent that they do not currently have such procedures.

After conducting focus group studies on the use of payroll cards and reviewing several of the payroll card products currently available, the Board understands that many small employers, payroll card services providers, and depository institutions that provide such products are currently providing account-opening disclosures for payroll card accounts, and generally have in place error resolution procedures. In addition, the Board understands that many, if not all, institutions providing payroll cards make information regarding those payroll card accounts available to the holders via telephone and electronic access. In light of the fact that the interim final rule codifies the current practices and procedures of many payroll card providers and provides an alternative to periodic statements, the Board concludes that the interim final rule will not have a substantial economic impact on small entities.

5. *Other Federal rules.* The Board believes no Federal rules duplicate, overlap, or conflict with the interim final revisions to Regulation E.

6. *Steps taken to minimize the economic impact on small entities.* The Board solicited comment about potential ways to reduce regulatory burden. Commenters urged the Board to eliminate the periodic statement requirement, asserting that other more cost-effective methods of providing transaction information could provide consumers with the information necessary to enable consumers to manage their payroll card accounts. In the interim final rule, financial institutions engaged in providing payroll card accounts may elect not to provide periodic statement in paper form if they make available balance information to consumers though a readily-available telephone line and make available account transaction information electronically, such as through an Internet Web site. These financial institutions will also be required to provide a written history of

account transactions upon the consumer's request.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320, Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The final rule contains requirements subject to the PRA. The collection of information that is required by this rule is found in 12 CFR 205.2(b)(2) and 205.18. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0200. This information is required to provide benefits to consumers and is mandatory (15 U.S.C. 1693 *et seq.*). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months.

All financial institutions involved in providing payroll card accounts to consumers (*i.e.*, employers, payroll card services providers, and depository institutions), of which there are approximately 5,100, potentially are affected by this collection of information because these institutions will be required to provide initial disclosures, account transaction histories, error resolution procedures, and other consumer protections, to consumers who receive their salaries through payroll card accounts as defined in § 205.2(b)(2).

The following estimates represent an average across all respondents and reflect variations among institutions based on their size, complexity, and practices. The other Federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimate methodology.

The interim final rule provides disclosure obligations when one or more parties is involved in offering payroll card accounts as defined in § 205.2(b)(2)—whether the financial institution is an employer, a depository institution, or other third party involved in holding payroll card accounts or in the issuance of payroll cards. Such entities are required to fully comply with Regulation E, as amended by this interim final rule, and provide disclosure of basic terms, costs, and rights relating to electronic fund transfer services in connection with the payroll card account. Parties that jointly offer such accounts may contract among themselves to comply with the regulation by providing one set of disclosures. Certain information must be disclosed to consumers, including: Initial and updated EFT terms, transaction information, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures.

The Federal Reserve estimates that of the 1,289 respondents regulated by the Federal Reserve that are required to comply with Regulation E, approximately 5 participate in payroll card programs. The Federal Reserve estimates that each respondent will take, on average, 8 hours (one business day) to reprogram and update their systems to provide initial disclosures to payroll card account holders. The Federal Reserve also estimates that each respondent will take, on average, 7 hours to reprogram and update systems to provide periodic statements, or to provide account information by other means. Finally, the Federal Reserve estimates that each respondent will take, on average, 8 hours (one business day) to develop error resolution procedures. The total annual burden for respondents regulated by the Federal Reserve for all of these disclosures is estimated to be 115 hours. Using the Federal Reserve's methodology, the total annual burden for all other institutions offering payroll card services is approximately 117,185 hours. The disclosures are standardized and machine-generated and do not substantively change from one individual account to another; thus, the average time for providing the disclosure to all consumers should be small.

The Federal Reserve's current annual burden for Regulation E disclosures is estimated to be 63,047 hours. The interim final rule would increase the total burden under Regulation E for all respondents regulated by the Federal Reserve by 115 hours, from 63,047 to 63,162 hours. (This burden estimate does not include the burden associated with the new disclosure requirements addressing electronic check conversion services and ATM disclosures as announced in a separate final rulemaking (Dockets No. R–1210 and R–1234).) Using the methodology explained above, the interim final rule would increase total burden under Regulation E for all other potentially affected entities by approximately 117,185 hours.

Because the records would be maintained by the institution and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Text of Interim Final Revisions

Comments are numbered to comply with **Federal Register** publication rules.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 205 and the Official Staff Commentary, as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693b.

■ 2. Section 205.2 is amended by redesignating paragraph (b)(2) as paragraph (b)(3) and adding a new paragraph (b)(2) as follows:

§ 205.2 Definitions

* * * * *

(b)(1) *Account* means * * *

(2) The term includes a ''payroll card account'' directly or indirectly established by an employer on behalf of a consumer to which electronic fund transfers of the consumer's wages, salary, or other employee compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person. For rules governing payroll card accounts, see § 205.18.

* * * * *

■ 3. In part 205 new § 205.18 is added as follows:

§ 205.18 Requirements for Financial Institutions Offering Payroll Card Accounts

(a) *Coverage.* A person is a financial institution for purposes of the act and this part if it directly or indirectly holds a payroll card account as described in § 205.2(b)(2) or directly or indirectly issues an access device to a consumer for use in initiating an EFT from a payroll card account. The person shall comply with all applicable requirements of the act and this part with respect to payroll card accounts except as provided in this section.

(b) *Alternative to periodic statement.* (1) A financial institution need not furnish a periodic statement required by section 205.9(b) if the institution makes available to the consumer:

(i) The consumer's account balance, through a readily available telephone line;

(ii) An electronic history, such as through an Internet Web site, of the consumer's account transactions that covers at least 60 days preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of receipt of a request by the consumer.

(2) The history of account transactions provided under paragraphs (b)(1)(ii) and (iii) of this section must include the information set forth in section 205.9(b).

(c) *Modified requirements.* A financial institution that provides information under paragraph (b) of this section, shall comply with the following:

(1) *Initial disclosures.* The financial institution shall modify the disclosures under section 205.7(b) by disclosing:

(i) *Account information.* A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of an Internet Web site, and a summary of the consumer's right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by section 205.7(b)(6)), including a telephone number to call to request a history. The disclosure required by this paragraph (c)(1)(i) may be made by providing a notice substantially similar to the notice contained in section A–7 in appendix A of this part.

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in section A–7 in appendix A of this part, in place of the notice required by section 205.7(b)(10).

(2) *Annual error resolution notice.* The financial institution shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in section A–7 in appendix A of this part, in place of the notice required by section 205.8(b).

(3) *Limitations on liability.* For purposes of section 205.6(b)(3), the 60-day period for reporting any unauthorized transfer that appears on a periodic statement shall begin on the earlier of:

(i) The date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that the information about the transfer was made available to the consumer at that time; or

(ii) The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(4) *Error resolution.* The financial institution shall comply with the requirements of section 205.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the earlier of:

(i) The date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that information about the transfer that gives rise to the alleged error was made available to the consumer at that time; or

(ii) The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the error is first reflected.

■ 4. In Appendix A to Part 205, new section *A–7—Model Clauses For Financial Institutions Offering Payroll Card Accounts* § 205.18(c)) is added, as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

* * * * *

A–7—Model Clauses for Financial Institutions Offering Payroll Card Accounts (§ 205.18(c))

(a) *Disclosure by financial institutions of information about obtaining account information for payroll card accounts. § 205.18(c)(1).*

You may obtain information about the amount of money you have remaining in your payroll card account by calling [telephone number]. This information, along with a 60-day history of account transactions, is also available on-line at [Internet address].

You also have the right to obtain a 60-day written history of account transactions by calling [telephone number], or by writing us at [address].

(b) *Disclosure of error-resolution procedures for financial institutions that provide alternative means of obtaining payroll card account information (§ 205.18(c)(1)(ii) and (c)(2)).*

In Case of Errors or Questions About Your Payroll Card Account Telephone us at [telephone number] or Write us at [address] [or E-mail us at [electronic mail address]] as soon as you can, if you think an error has occurred in your payroll card account. We must hear from you no later than 60 days after the earlier of the date you electronically access your account or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by [calling us at [telephone number] [writing us at [address]]]. You will need to tell us:

Your name and [payroll card account] number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number] [the telephone number shown above] [[or visit [Internet address]]].

■ 5. In Supplement I to Part 205, the following amendments are made:

■ a. Under *Section 205.2—Definitions*, under *2(b) Account*, paragraph 2 is redesignated as paragraph 3 and a new paragraph 2 is added;

■ b. A new Section 205.18 *Requirements for Financial Institutions Offering Payroll Card Accounts* is added;

■ c. Under *Appendix A—Model Disclosure Clauses and Forms*, paragraph 2 is revised.

* * * * *

Supplement I to Part 205—Official Staff Interpretations

Section 205.2 Definitions

2(a) * * *

2(b) Account.

1. * * *

2. *One-time EFT of salary-related payments.* The term ''payroll card account'' does not include a card used for a one-time EFT of a salary-related payment, such as a bonus, or a card used solely to disburse non-salary-related payments, such as a petty cash or a travel per diem card. To the extent that one-time EFTs of salary-related payments and any other EFTs are transferred to or from a payroll card account, these transfers are EFTs covered by the act and regulation, even if the particular transfer itself does not represent wages, salary, or other employee compensation.

* * * * *

Section 205.18 Requirements for Institutions Offering Payroll Card Accounts

18(a) Coverage.

1. *Issuance of access device.* Consistent with section 205.5(a), a financial institution may issue an access device only in response to an oral or written request for the device, or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive his or her salary through a payroll card account.

Appendix A—Model Disclosure Clauses and Forms

1. * * *

2. *Use of forms.* The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of sections 205.5(b)(2) and (b)(3), 205.6(a), 205.7, 205.8(b), 205.14(b)(1)(ii), 205.15(d)(1) and (d)(2), and 205.18(c)(1) and (c)(2). The use of appropriate clauses in making disclosures will protect a financial institution from liability under sections 915 and 916 of the act provided the clauses accurately reflect the institution's EFT services.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 30, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–8317 Filed 1–9–06; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 11

[Docket No. FAA–2005–22982; Amendment No. 11–51]

RIN 2120–AI69

Federal Register Dispositions of Petitions for Exemption

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations dealing with how the FAA notifies petitioners of its decisions on petitions for exemption. This rule change eliminates the requirement for the FAA to publish dispositions of petitions for exemption in the **Federal Register**. This change is intended to streamline our process and will save the agency the cost of publication. Publishing dispositions in the **Federal Register** is unnecessary because petitioners are notified in writing of FAA's decision and the decision is placed in the public docket, which is internet accessible and searchable.

DATES: This amendment becomes effective February 9, 2006.

FOR FURTHER INFORMATION CONTACT: Ida Klepper, Airmen and Airspace Rules Division, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–9677.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/rulemaking/;* or

(3) Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act.*

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Section 44701. Under that section, the FAA is charged with prescribing regulations to promote the safe flight of civil aircraft. The authority to grant exemption from those regulations is inherent in the authority to create them, as is the agency's determination of the most effective means of notifying affected persons of its decisions.

Discussion of Proposed Amendment

Section 11.91 explains how the FAA notifies petitioners of its decisions on petitions for exemption. Currently, we notify the petitioner in writing by sending a letter containing FAA's decision. The FAA also publishes a disposition of the petition in the **Federal Register** summarizing the decision document. The disposition includes the docket number, petitioner's name, regulatory citation, description of the relief sought, FAA's decision, date of decision, and an exemption number. The FAA places a copy of the decision document in the Docket Management System (DMS), which is the agency's public docket. The DMS is both internet accessible and searchable.

The DMS offers different ways to get the information you need. Users may perform a simple search at *http://dms.dot.gov/search/searchFormSimple.cfm* by docket number or keyword, or an advanced search at *http://dms.dot.gov/search/searchFormAdvanced.cfm,* which allows for expanded search capability.

Users may view different types of reports at *http://dms.dot.gov/reports/,* such as the Docket Daily Filings at *http://dms.dot.gov/reports/frmDailyFiling.cfm,* which allows you to view the items in the docket for a particular day. Users may also subscribe to the DMS List Serve at *http://dms.dot.gov/emailNotification/index.cfm,* which allows users to be notified automatically when items of interest are added to DMS.

The DMS can be reached on 1–800–647–5527 and also offers website support, *http://dms.dot.gov/Support/Index.cfm?site=dms,* and help, *http://dms.dot.gov/help/,* to users.

Because of technological advancements, such as DMS, the FAA believes that it is unnecessary to continue to publish exemption dispositions in the **Federal Register**. The FAA has concluded that availability on the internet makes the decisions more accessible than publication in a document that reaches only those who routinely read the **Federal Register**. This rule change eliminates the requirement to publish exemption dispositions in the **Federal Register**. Each petitioner will continue to receive FAA's decision in writing.

This change is procedural and streamlines our process to better serve our customers. Therefore, the FAA is revising § 11.91 to state that a copy of the FAA's decision is placed in the public docket, which is internet accessible.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

Regulatory Evaluation, Regulatory Flexibility Analysis, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review, directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, to be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation). This portion of the preamble summarizes the FAA's analysis of the economic impact of this final rule.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposal does not warrant a full evaluation, this order permits a statement to that effect. The basis for the minimal impact must be included in the preamble, if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this rule. The reasoning for that determination follows.

This final rule eliminates the requirement for the FAA to publish dispositions of petitions for exemption in the **Federal Register**. Publishing dispositions in the **Federal Register** is unnecessary because petitioners are notified in writing of FAA's decision and the decision is placed in the public docket, which is available via the Internet.

FAA has, therefore, determined this rulemaking action is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures. In addition, the FAA has determined that this rulemaking action: (1) Will not have a significant economic impact on a substantial number of small entities; (2) will not affect international trade; and (3) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organization, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies consider flexible regulatory proposals, to explain the rationale for their actions, and to solicit comments. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify, and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule eliminates the requirement to publish dispositions of petitions for exemption in the **Federal Register**. Publishing dispositions in the **Federal Register** is unnecessary because petitioners are notified in writing of FAA's decision and the decision is placed in the public docket, which is available via the internet.

Consequently, as the FAA Administrator, I certify the rulemaking action will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that these international standards be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking action and has determined that it will have only a domestic impact and

therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

The Amendment

■ For the reasons set forth above, the Federal Aviation Administration is amending 14 CFR Part 11 as follows:

PART 11—GENERAL RULEMAKING PROCEDURES

■ 1. The authority citation for Part 11 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

■ 2. Revise § 11.91 to read as follows:

§ 11.91 How does FAA inform me of its decision on my petition for exemption?

The FAA will notify you in writing about its decision on your petition. A copy of this decision is also placed in the public docket. We will include the docket number associated with your petition in our letter to you.

Issued in Washington, DC, on December 28, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 06–203 Filed 1–9–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM323; Special Conditions No. 25–311–SC]

Special Conditions: Boeing Model 747–400 Airplane; Large Non-Structural Glass in the Passenger Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for a Boeing Model 747–400 airplane modified by Lufthansa Technik AG. This airplane will have a novel or unusual design feature associated with the installation of large non-structural glass items in the cabin area of an executive interior occupied by passengers and crew. The installation of these items in a passenger compartment, which can be occupied during taxi, takeoff, and landing, is a novel or unusual design feature with respect to the material used. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Effective Date: January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1232, e-mail address *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2003, Lufthansa Technik AG, Weg beim Jäger 193, D–22335, Hamburg, Germany, applied for a supplemental type certificate (STC) for large non-structural glass items in the cabin area of the executive interior occupied by passengers and crew in a Boeing Model 747–400 airplane. The Boeing Model 747–400 airplane is approved under Type Certificate No. A20WE, and is a large transport category airplane with upper and main passenger decks. The airplane is limited to 660 passengers or less, depending on the interior configuration. This specific Model 747–400 configuration includes seating provisions for 105 passengers.

Type Certification Basis

Under the provisions of § 21.101, Lufthansa Technik must show that the Boeing Model 747–400 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A20WE are as follows: Amendments 25–1 through 25–59 with exceptions for the Boeing Model 747–400. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions. The U.S. type certification basis for the Model 747–400 is established in accordance with §§ 21.17 and 21.29 and the type certification application date.

If the Administrator finds that the applicable airworthiness regulations

(i.e., 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 747–400 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747–400 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Lufthansa Technik apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Boeing Model 747–400 will incorporate the following novel or unusual design feature, the installation of large non-structural glass items, typically in the form of glass sheets in the cabin area of an executive interior occupied by passengers and crew.

These installations would be for aesthetic purposes, not for safety, in components other than windshields or windows. For these special conditions, a large glass item is 4 kg (approximately 10 pounds) and greater in mass. This limit was established as the mass at which a glass component could be expected to potentially cause widespread injury if it were to shatter or break free from its retention system.

These special conditions address the novel and unusual design features for the use of large non-structural glass in the passenger cabin. These large glass items would be installed in occupied rooms or areas during taxi, take off, and landing, or rooms or areas that occupants do have to enter or pass through to get to any emergency exit. The installations of large non-structural glass items may include, but are not limited to, the following items:

- Glass partitions.
- Glass attached to the ceiling.
- Wall/door mounted mirrors/glass panels.

Discussion

The existing part 25 regulations only address the use of glass in windshields, instrument or display transparencies, or window applications. The regulations treat glass as unique for special applications where no other material will serve and address the adverse properties of glass.

Section 25.775, ''Window and windshields,'' provides for the use of glass in airplanes, but limits glass to windshields and instrument or display transparencies. Furthermore, except for bolted-in windshields, there is limited experience with either adhesive or mechanical retention methods for large glass objects installed in an airplane subject to high loads supported by flexible restraints.

The regulations provide for the following use of glass in the passenger cabin:

1. Glass items installed in rooms or areas in the cabin that are not occupied during taxi, take off, and landing, and occupants do not have to enter or pass through the room or area to get to any emergency exit.

2. Glass items integrated into a functional device whose operation is dependent upon the characteristics of glass, such as instrument or indicator protective transparencies, or monitor screens such as liquid crystal display (LCD) or plasma displays. These glass items may be installed in any area in the cabin regardless of occupancy during taxi, take-off, and landing. Acceptable means for these items may depend on the size and specific location of the device.

3. Small glass items installed in occupied rooms or areas during taxi, take off, and landing, or rooms or areas that occupants do have to enter or pass through to get to any emergency exit. For the purposes of these special conditions, a small glass item is less than 4 kg in mass, or a group of glass items weighing less than 4 kg in mass.

The glass items in numbers one, two, and three (above) have been restricted to applications where the potential for injury is either highly localized (such as instrument faces) or the location is such that injury due to failure of the glass is unlikely (e.g., mirrors in lavatories). These glass items are subject to the inertia loads contained in § 25.561 and maximum positive differential pressure for items like monitors, but are not subject to these special conditions. They have been found acceptable through project specific means of compliance requiring testing to meet the requirement § 25.785(d), and by adding a protective polycarbonate layer that covers the glass exposed to the cabin.

The use of glass in airplanes utilizes the one unique characteristic of glass, its capability for undistorted or controlled light transmittance, or transparency. Glass, in its basic form as annealed, untreated sheet, plate, or float glass, when compared to metals, is extremely notch-sensitive, has a low fracture resistance, has a low modulus of elasticity, and can be highly variable in its properties. While reasonably strong, it is not a desirable material for traditional aircraft applications because, as a solo component, it is heavy (about the same density as aluminum). In addition, when glass fails, it can break into extremely sharp fragments that have the potential for injury above and beyond simple impact, and have been known to be lethal.

These special conditions address installing glass in much larger sizes than previously accepted and in a multitude of locations and applications, instead of using more traditional aircraft materials. In most, if not all cases, the glass will not be covered with a polycarbonate layer. Additionally, the retention of glass of this size and weight is not amenable to conventional techniques currently utilized in airplane cabins.

These special conditions consider the unusual material properties of glass as an interior material that have limited or prevented its use in the past, and address the performance standards needed to ensure that those properties do not reduce the level of safety intended by the regulations. They address the use of large glass items installed in occupied rooms or areas during taxi, take off, and landing, or rooms or areas that occupants do have to enter or pass through to get to any emergency exit.

These special conditions define a large glass component threshold of 4 kg, which is based on an assessment of the mass dislodged during a high ''g'' level (as defined in § 25.562) event. Groupings of glass components that total more than 4 kg would also need to be included. The applicable performance standards in the regulations for the installation of these components also apply and should not adversely affect the standards provided below. For example, heat release and smoke density testing should not result in fragmentation of the component.

For large glass components mounted in a cabin occupied by passengers or crew that are not otherwise protected from the injurious effects of failure of the glass component, the following apply:

Material. The glass used must be tempered or otherwise treated to ensure that when fractured, it breaks into small pieces with relatively dull edges. This must be demonstrated by testing to failure. Tests similar to ANSI/SAE Z26.1 section 5.7, Test 7 would be acceptable.

Fragmentation. The glass component construction must control the fragmentation of the glass to minimize the danger from flying glass shards or pieces. Impact and puncture testing to failure must demonstrate this. Tests similar to ANSI/SAE Z26.1 section 5.9, Test 9 adjusted to ensure cracking the glass would be acceptable.

Strength. The glass component, as installed in the airplane, must be strong enough to meet the load requirements for all flight and landing loads and all of the emergency landing conditions in subparts C and D of part 25. In addition, glass components that are located such that they are not protected from contact with cabin occupants must be designed for abusive loading without failure, such as impact from service carts, or occupants stumbling into, leaning against, sitting on, or performing other intentional or unintentional forceful contact. This must be demonstrated by static structural testing to ultimate load except that the critical loading condition must be tested to failure. The tested glass component must have all features that affect component strength, such as etched surfaces, cut or engraved designs, holes, and so forth.

Retention. The glass component, as installed in the airplane, must not come free of its restraint or mounting system in the event of an emergency landing. Based on the characteristics of a large glass component, dynamic tests should be performed to demonstrate that the occupants would be protected up to the load levels required by the certification basis of the airplane. A single test for the most critical loading for the installed component would be sufficient. This may be accomplished by using already accepted methods for dynamic testing.

Analysis may be used in lieu of testing if the applicant has validated the strength models and dynamic simulation models used, against static tests to failure and dynamic testing to the above requirements, and can predict structural failure and dynamic response and inertial load. The glass material properties must meet § 25.613, ''Material strength properties and material design values.'' The effect of design details such as geometric discontinuities or surface finish must be accounted for in the test/analysis.

Discussion of Comments

Notice of proposed special conditions No. 25–05–08–SC for the Boeing Model 747–400 series airplanes was published in the **Federal Register** on August 11, 2005 (70 FR 46785). One commenter responded to the notice.

Comment: The commenter expresses concern that the special conditions neglect to address injuries, especially head injuries to passengers because of physical movements of the airplane caused by unexpected disturbances, sudden loss of altitude, disorientation, etc.

FAA Reply: The special conditions do not specifically call out for the protection of the passenger while moving about the cabin because the existing regulation, § 25.785(d)(e), already addresses this requirement. These special conditions are additional requirements to the existing certification basis of the Boeing Model 747–400.

Comment: The commenter expresses concern that the special conditions neglect to address injuries caused to passengers by glass breaking into a large number of small fragments. These small fragments may have dull edges and fall to the ground causing passengers to slip, fall, and harm themselves.

FAA Reply: Special conditions #1 and #2 address this concern by requiring the glass to be tested to failure to demonstrate that glass pieces must be shown to be non-hazardous.

Comment: The commenter expresses concern that the special conditions neglect to address disorientation of passengers because of reflections in mirrored glass panels, or because of intense sunlight through the windows on clear or mirrored glass panels.

FAA Reply: In this case, glass does not present any additional hazards over the materials currently used in airplane interiors, such as polished metals or mirrored acrylics. The FAA is currently unaware of any instances of these materials causing such disorientation among the passengers.

Comment: The commenter expresses concern that the special conditions neglect to address or omit the possible liability incurred by the carrier, operator, and potential third parties–not excluding the FAA, which is granting these special conditions. The commenter expresses concern that the liability incurred could be beyond the carrier's insurance coverage.

FAA Reply: These special conditions are intended to establish a level of safety for the use of glass equal to those of the existing regulations. As such, the liability incurred would be no different than currently exists in the industry. The aircraft industry requested these special conditions, and they are required only if the applicant chooses to install structural glass.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747–400 airplane. Should Lufthansa Technik apply at a later date for a change to the supplemental type certificate to include another model on the same type certificate incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 747–400 modified by Lufthansa Technik AG. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

In an effort to address the commenters concerns, and based on the nature of the intended operation of the affected airplane, the FAA limits the application of these special conditions to airplanes operated for private use only. Therefore, the appropriate limitation has been added to the special conditions.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 747–400 airplane, modified by Lufthansa Technik AG. For these special conditions, a large glass component is 4 kg (approximately 10 pounds) and greater in mass, or a grouping of glass components that total more than 4 kg.

1. The airplane is not operated for hire or offered for common carriage. This provision does not preclude the operator from receiving remuneration to the extent consistent with 14 CFR parts 125 and 91, subpart F, as applicable.

2. *Material Fragmentation.* The glass used to fabricate the component must be tempered or treated to ensure that when fractured, it breaks into small pieces with relatively dull edges. In addition, it must be shown that fragmentation of the glass is controlled to reduce the danger from flying glass shards or

pieces. This must be demonstrated by testing to failure.

3. *Component Strength.* The glass component must be strong enough to meet the load requirements for all flight and landing loads including any of the applicable emergency landing conditions in subparts C & D of part 25. Abuse loading without failure, such as impact from occupants stumbling into, leaning against, sitting on, or performing other intentional or unintentional forceful contact must also be demonstrated. This must be demonstrated by static structural testing to ultimate load, except that the critical loading condition must be tested to failure in the as-installed condition. The tested glass must have all features that effect component strength, such as etched surfaces, cut or engraved designs, holes, and so forth. Glass pieces must be non-hazardous.

4. *Component Retention.* The glass component, as installed in the airplane, must not come free of its restraint or mounting system in the event of an emergency landing. A test must be performed to demonstrate that the occupants would be protected from the effects of the component failing or becoming free of restraint under dynamic loading. The dynamic loading of § 25.562(b)(2) is considered an acceptable dynamic event. The applicant may propose an alternate pulse, however, the impulse and peak load may not be less than that of § 25.562(b)(2). As an alternative to a dynamic test, static testing may be used if the loading is assessed as equivalent or more critical than a dynamic test, based upon validated dynamic analysis. Both the primary directional loading and rebound conditions need to be assessed.

5. *Instruction for Continued Airworthiness.* The instruction for continued airworthiness will reflect the fastening method used and will ensure the reliability of the methods used (*e.g.*, life limit of adhesives, or clamp connection). Inspection methods and intervals will be defined based upon adhesion data from the manufacturer of the adhesive or actual adhesion test data, if necessary.

Issued in Renton, Washington, on January 3, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 06–200 Filed 1–9–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 803

Medical Device Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its medical device reporting regulations to reflect a change in address for agency contacts for reporting a public health emergency. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

DATES: This rule is effective January 10, 2006.

FOR FURTHER INFORMATION CONTACT: Howard A. Press, Center for Devices and Radiological Health, Office of Surveillance and Biometrics (HFZ–530), 1350 Piccard Dr., Rockville, MD 20850, 301–827–2983.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in 21 CFR part 803.12(c) to reflect a reorganization affecting the agency contacts for reporting public health emergencies. The current address for reporting a public health emergency to FDA is the FDA Emergency Operations Branch (HFC–162), Office of Regional Operations, at 301–443–1240, followed by the submission of a fax to 301–443–3757. The new contact is the FDA Office of Emergency Operations (HFA–615), Office of Crisis Management, Office of the Commissioner, at 301–443–1240. This report can be followed by an e-mail to *emergency.operations@fda.hhs.gov* or a fax report sent to 301–827–3333. This document is published as a final rule with the effective date given previously. Because the final rule is an administrative action, FDA has determined that it has no substantive impact on the public. It imposes no costs, and merely updates contact information included in the Code of Federal Regulations (CFR) for the convenience of the public. FDA, therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary and that this rule may take effect upon publication.

List of Subjects in 21 CFR Part 803

Imports, Medical devices, Medical device reporting, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and underauthority delegated to the Commissioner of Food and Drugs, 21 CFR part 803 is amended as follows:

PART 803—MEDICAL DEVICE REPORTING

■ 1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

■ 2. Section 803.12 is amended by revising paragraph (c) to read as follows:

§ 803.12 Where and how do I submit reports and additional information?

* * * * *

(c) If an entity is confronted with a public health emergency, this can be brought to FDA's attention by contacting the FDA Office of Emergency Operations (HFA–615), Office of Crisis Management, Office of the Commissioner, at 301–443–1240, followed by the submission of an e-mail to *emergency.operations@fda.hhs.gov* or a fax report to 301–827–3333.

* * * * *

Dated: January 3. 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–172 Filed 1–9–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–122–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment revises the Virginia Coal Surface Mining Reclamation Regulations. The amendment reflects changes in the renumbering of Virginia Code section references to the Virginia Administrative Process Act; clarification regarding the filing of requests for formal hearing and judicial review; revisions of the Virginia rules to be consistent with amendments to the

Federal rules; regulation changes to implement requirements of Virginia House Bill (HB) 2573 (enacted as emergency legislation); and corrections of typographical errors.

DATES: *Effective Date:* January 10, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (276) 523–4303. Internet: *rpenn@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Submission of the Amendment

By letter dated May 9, 2005 (Administrative Record Number VA–1048), the Virginia Department of Mines, Minerals and Energy (DMME) submitted an amendment to the Virginia program. In its letter, the DMME stated that the program amendment revises Virginia Coal Surface Mining Reclamation Regulations to reflect the changes in renumbering of the Virginia Code section references to the Virginia Administrative Process Act; clarification regarding the filing of requests for formal hearing and judicial review; revisions of the Virginia rules to be consistent with amendments to the Federal rules; revisions to allow approval of natural stream restoration channel design; regulation changes to implement requirements of Virginia HB 2573 (enacted as emergency legislation in Chapter 3 of the 2005 Virginia Acts of Assembly); and correct typographical errors.

We announced receipt of the proposed amendment in the June 17, 2005, **Federal Register** (70 FR 35199). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 18, 2005. We received comments from three Federal agencies.

By letter dated Nov. 14, 2005 (Administrative Record Number VA–1055), Virginia withdrew its proposed amendments regarding revisions to allow approval of natural stream restoration channel design. Specifically, Virginia withdrew new Sections 4 VAC 25–130–816.43(d) and 4 VAC 25–130–817.43(d), concerning diversions. In its letter, Virginia stated that it is currently discussing these amendments with the U.S. Army Corps of Engineers and that some changes may be necessary.

By electronic mail dated December 1, 2005 (Administrative Record Number VA–1056), Virginia corrected a reference error in its amendment to 4 VAC 25–130–784.20(a)(3). Specifically, Virginia deleted an incorrect reference to 4 VAC 25–130–817.121(c)(4) and added in its place a reference to section 45.1–258(D) of the Code of Virginia.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

1. The amendment revises several subsections of the Virginia Coal Surface Mining Reclamation Regulations (VAC) by changing existing citations of Virginia Code sections to reflect the changes in the renumbering of the Virginia Code section references to the Virginia Administrative Process Act. We are approving the citation changes in the provisions listed below because those amendments reflect codification changes and do not render the program inconsistent with SMCRA or the Federal regulations:

4 VAC 25–130–700.12(e) Petitions to initiate rule making.

4 VAC 25–130–773.21(c) Improvidently issued permits; Rescission procedures.

4 VAC 25–130–775.11(b)(1) Administrative Review.

4 VAC 25–130–800.51(c)(1) Administrative review of performance bond forfeiture.

4 VAC 25–130–842.15(d) Review of decision not to inspect or enforce.

4 VAC 25–130–843.12(j) Notices of violation.

4 VAC 25–130–843.13(b) Suspension or revocation of permits; pattern of violations.

4 VAC 25–130–843.15(c) Informal public hearing.

4 VAC 25–130–845.18(b)(1) Procedures for assessment conference.

4 VAC 25–130–845.19(c) Request for hearing.

2. 4 VAC 25–130–775.11 Administrative Review.

New subsection (d) is added to provide as follows:

> (d) All requests for hearing or appeals for review and reconsideration made under this section shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

While this provision has no Federal counterpart, its addition does not render the Virginia program inconsistent with SMCRA or the Federal regulations. Therefore, it is approved.

3. 4 VAC 25–130–775.13 Judicial Review.

New subsection (c) is added to provide as follows:

> (c) All notices of appeal for judicial review of a Hearing Officer's final decision, or the final decision on review and reconsideration, shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

While this provision has no Federal counterpart, its addition does not render the Virginia program inconsistent with SMCRA or the Federal regulations. Therefore, it is approved.

4. 4 VAC 25–130–784.20 Subsidence Control Plan.

Subsection (a)(3) is amended by deleting language concerning pre-subsidence survey requirements. The DMME stated that the provision was amended to delete those requirements that are counterpart to Federal regulations that were suspended effective December 22, 1999 (64 FR 71652). The following language is being deleted: ''Condition of all noncommercial buildings or occupied residential dwellings and structures related thereto, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw; as well as a survey of the.'' In addition, the following language is being deleted: ''Premining condition or

value of such noncommercial buildings or occupied residential dwellings and structures related thereto and the.'' As revised, subsection (a)(3) provides as follows:

(3) A survey of the quantity and quality of all drinking, domestic and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner in writing of the effect that denial of access will have as described in 4 VAC25–130–817.121(c)(4). The applicant must pay for any technical assessment or engineering evaluation used to determine the quantity and quality of drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the division.

On December 22, 1999, OSM suspended a portion of the Federal regulations at 30 CFR 784.20(a)(3). In the December 22, 1999, **Federal Register** (64 FR 71652) notice that suspended those provisions, OSM explained why the regulations were suspended. On April 27, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision vacating certain portions of the regulatory provisions of the Federal subsidence regulations including language at 30 CFR 784.20(a)(3). *National Mining Association* v. *Babbitt,* 173 F.3d 906 (DC Cir. 1999). In compliance with the Court of Appeals' decision, OSM suspended that portion of 30 CFR 784.20(a)(3) which required a specific structural condition survey of all Energy Policy Act (EPAct; enacted October 24, 1992, Public Law 102–486 Stat. 2776 (1992)) protected structures.

While a portion of 30 CFR 784.20(a)(3) was suspended, the remainder of that provision continues in force to the extent that it applies to the EPAct protected water supplies survey and any technical assessments or engineering evaluations necessarily related thereto. With one exception, we find that as amended, 4 VAC 25–130–784.20(a)(3) is consistent with and no less effective than the Federal regulations at 30 CFR 784.20(a)(3) as affected by the suspension of December 22, 1999, and can be approved. The one exception can also be approved, but for a different reason. One sentence of this subsection was amended in a subsequent submission dated December 1, 2005. Prior to the latter submission, the sentence stated as follows:

If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner in writing of the effect that denial of access will have, as described in 4 VAC 25–130–817.121(c)(4).

As amended, this sentence now states that:

If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner in writing of the effect that denial of access will have pursuant to section 45.1–258(D) of the Code of Virginia, as amended.

The sentence was changed to correct the erroneous reference to 4 VAC 25–130–817.121(c)(4), which pertains to subsidence damage to structures, rather than water supplies, and which is proposed for deletion, in relevant part, in this amendment package. The Code of Virginia subsection now referenced pertains to water replacement, and states as follows:

D. If the Director has ordered replacement under subsection B of this section and the operator subject to the order has failed to provide the map or maps in accordance with subsection C of this section, then the Director's order shall not be overturned absent clear and convincing evidence to the contrary. Upon conclusion of an investigation, if the Director does not order replacement under the provisions of subsection B of this section and reasonable access for a pre-mining survey was denied, the Director's determination shall not be overturned absent clear and convincing evidence to the contrary.

When OSM approved this statutory provision on September 24, 1993, it noted that the provision has no Federal counterpart, but ''will not render Virginia's program inconsistent with any requirements of SMCRA or the Federal regulations.'' 58 FR 49928–9. Likewise, the newly revised sentence in 4 VAC 25–130–784.20(a)(3), requiring that landowners be notified of the effect of denial of access to conduct a premining water survey, has no Federal counterpart, but also will not render Virginia's program inconsistent with any requirements of SMCRA or the Federal regulations.

5. 4 VAC 25–130–800.51 Administrative review of performance bond forfeiture. Subsection (e) is amended by clarifying that the ''Division of Mined Land Reclamation'' is now the ''Department of Mines, Minerals and Energy.'' As amended, subsection (e) provides as follows:

(e) All requests for hearing, or appeals for review and reconsideration made under this section; and all notices of appeal for judicial review of a Hearing Officer's final decision, or the final decision on review and reconsideration shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

We find that the revision of subsection (e) is a nonsubstantive change and can be approved.

6. 4 VAC 25–130–816.11 Signs and markers.

New subsection (a)(4) is added and existing (a)(4) is re-designated as (a)(5). As amended, subsection (a) provides as follows:

(a) Specifications. Signs and markers required under this Part shall:

(1) Be posted, maintained, and removed by the person who conducts the surface mining activities;

(2) Be of a uniform design throughout the operation that can be easily seen and read;

(3) Be made of durable material;

(4) For permit boundary markers on areas that are located on steep slopes above private dwellings or other occupied buildings, be made of or marked with fluorescent or reflective paint or material; and

(5) Conform to local ordinances and codes.

This provision is apparently intended to accommodate the steep slope conditions found in some areas of Virginia. While there is no direct Federal counterpart to the provision, we find that the amendment is not inconsistent with the Federal regulations concerning signs and markers at 30 CFR 816.11(a) and can be approved.

7. 4 VAC 25–130–816.64 Use of explosives; blasting schedule.

New subsection (a)(4) concerning seismic monitoring is added and provides as follows:

(4) Seismic monitoring shall be conducted when blasting operations on coal surface mining operations are conducted within 1,000 feet of a private dwelling or other occupied building.

The Federal blasting regulations at 30 CFR 816.67(d)(6) concern seismic monitoring of blasting operations. The Federal provision provides that the regulatory authority may require an operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement. We find that the new seismic monitoring requirement is consistent with the Federal seismic monitoring requirements at 30 CFR 816.67(d)(6) and can be approved.

8. 4 VAC 25–130–816.105 Backfilling and grading; thick overburden. This change is intended to revise Virginia's rule to be consistent with the counterpart Federal regulations at 30 CFR 816.105 concerning backfilling and grading, thick overburden. The Federal regulations concerning thin overburden are located at 30 CFR 816.104. In the Virginia provisions, thin overburden is addressed at 4 VAC 25–130–816.104.

Virginia's 4 VAC 25–130–816.105 is amended as follows: The term ''Thin'' is deleted and replaced by the term ''Thick'' in subsection (a); the term ''insufficient'' is deleted and replaced by ''more than sufficient'' in subsection (a); the term ''less'' is deleted and replaced by the term ''more'' in subsection (a); and the term ''thin'' is deleted and replaced by the term ''thick'' in subsection (b). As amended this provision provides as follows:

(a) Thick overburden exists when spoil and other waste materials available from the entire permit area is more than sufficient to restore the disturbed area to its approximate original contour. More than sufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is more than the combined thickness of the overburden and coal bed prior to removing the coal, so that after backfill and grading the surface configuration of the reclaimed area would not:

(1) Closely resemble the surface configuration of the land prior to mining; or

(2) Blend into and complement the drainage pattern of the surrounding terrain.

(b) Where thick overburden occurs within the permit area, the permittee at a minimum shall:

(1) Restore the approximate original contour and then use the remaining spoil and other waste materials to attain the lowest practicable grade, but not more than the angle of repose;

(2) Meet the requirements of 4 VAC25–130–816.102(a)(2) through (j); and

(3) Dispose of any excess spoil in accordance with 4 VAC25–130–816.71 through 4 VAC25–130–816.75.

We find that that as amended, VAC 25–130–816.105 is substantively identical to and no less effective than the Federal regulations concerning thick overburden at 30 CFR 816.105 and can be approved.

9. 4 VAC 25–130–817.11 Signs and markers.

New subsection (a)(4) is added and existing subsection (a)(4) is re-designated as (a)(5). New subsection (a)(4) provides as follows:

(4) For permit boundary markers on areas that are located on steep slopes above private dwellings or other occupied dwellings, be made of or marked with fluorescent or reflective paint or material; and

This provision is apparently intended to accommodate the steep slope conditions found in some areas of Virginia. While there is no direct Federal counterpart to the provision, we find that the amendment is not inconsistent with the Federal regulations concerning signs and markers at 30 CFR 817.11(a) and can be approved.

10. 4 VAC 25–130–817.64 Use of explosives; general performance standards.

New subsection (d) is added and provides as follows:

(d) Seismic monitoring shall be conducted when blasting operations on coal surface mining operations are conducted within 1,000 feet of a private dwelling or other occupied building.

The Federal blasting regulations at 30 CFR 817.67(d)(6) concern seismic monitoring of blasting operations. The Federal provision provides that the regulatory authority may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement. We find that the new seismic monitoring requirement at 4 VAC 25–130–817.64(d) is consistent with the Federal seismic monitoring requirements at 30 CFR 817.67(d)(6) and can be approved.

11. 4 VAC 25–130–817.121 Subsidence control.

This provision is amended by deleting subsections (c)(4)(i)–(iv) and re-designating subsection (c)(4)(v) as subsection (c)(4). The DMME stated that this provision was amended to delete those requirements that are counterpart to Federal regulations that were suspended effective as of December 22, 1999 (64 FR 71652). The deleted provision had created a rebuttable presumption that underground mining caused subsidence where the subsidence damage occurred within the angle of draw. As amended, subsection (c)(4) provides as follows:

(4) Information to be considered in determination of causation. In a determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the division.

On December 22, 1999, OSM suspended the Federal regulations at 30 CFR 817.121(c)(4)(i)–(iv). In the December 22, 1999, **Federal Register** notice (64 FR 71652–3) that suspended those provisions, OSM explained why the regulations were suspended. On April 27, 1999, the United States Court of Appeals for the District of Columbia Circuit issued a decision vacating certain portions of the regulatory provisions of the Federal subsidence regulations including those at 30 CFR 817.121(c)(4)(i)–(iv). *National Mining Association* v. *Babbitt*, *supra*. OSM subsequently suspended those provisions. Paragraph (v) within 30 CFR 817.121(c)(4) applies generally to the types of information that must be considered in determining the cause of damage to an EPAct protected structure and is not limited to or expanded by the area defined by the angle of draw. Therefore, paragraph (v) was not suspended and remains in force. We find that as amended, 4 VAC 25–130–817.121(c)(4) is no less effective than the Federal regulations at 30 CFR 817.121(c)(4) as affected by the suspension of December 22, 1999, and can be approved.

12. 4 VAC 25–130–843.13 Suspension or revocation of permits; pattern of violations.

Subsection (e) is amended by clarifying that the ''Division of Mined Land Reclamation'' is now the ''Department of Mines, Minerals, and Energy.'' As amended, subsection (e) provides as follows:

(e) All requests for hearing, or appeals for review and reconsideration made under this section; and all notices of appeal for judicial review of a Hearing Officer's final decision, or the final decision on review and reconsideration shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

We find that the revision of subsection (e) is a nonsubstantive change and can be approved.

13. 4 VAC 25–130–843.16 Formal review of citations.

Subsection (e) is amended by clarifying that the ''Division of Mined Land Reclamation'' is now the ''Department of Mines, Minerals, and Energy.'' As amended, subsection (e) provides as follows:

(e) All requests for hearing before a Hearing Officer, or appeals for review and reconsideration, made under this section, and all notices of appeal for judicial review of a Hearing Officer's final decision or a final decision on review and reconsideration, shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

We find that the revision of subsection (e) is a nonsubstantive change and can be approved.

14. 4 VAC 25–130–845.13 Point System.

Subsections (c)(1) and (d) are amended to correct typographical errors. At subsection (c)(1), the phrase ''(a) and'' is added immediately before ''(b),'' and the phrase ''and (c)'' is deleted. As amended, subsection (c)(1) provides as follows:

(c) Credit for good faith in attempting to achieve compliance.

(1) The division shall deduct from the total points assigned under subsections (a) and (b) points based on the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of the

violation. Points shall be deducted as follows.

In the Virginia program, point assignments are located at 4 VAC 25–130–845.13(a) and (b). We find that the revisions to subsections (c)(1) appropriately correct the inadvertent reference to subsection (c). Therefore, we are approving these revisions.

Subsection (d) is amended by adding ''(a),'' immediately before ''(b);'' adding ''and'' immediately following ''(b),'' and deleting ''and (d)'' immediately following (c). As amended, the language of subsection (d) provides as follows:

(d) Determination of base penalty.

The division shall determine the base amount of any civil penalty by converting the total number of points calculated under subsections (a), (b), and (c), of this section to a dollar amount, according to the following schedule.

In the Virginia program, point calculations are determined under 4 VAC 25–130–845.13(a), (b), and (c). We find that the revisions to subsection (d) appropriately correct the inadvertent reference to subsection (d) and can be approved.

Subsection (e), concerning credit and additional penalties for previous history is amended at (e)(1) by adding the words ''[e]xcept for a violation that resulted in personal injury or fatality to any person.'' As amended, subsection (e)(1) provides as follows:

(1) Except for a violation that resulted in personal injury or fatality to any person, the division shall reduce the base penalty determined under subsection (d) by 10% if the permittee has had no violations cited by the division within the preceding 12-month period.

The State has amended this existing provision concerning reduction of the base penalty if the permittee has no violations cited within the preceding 12-month period by adding an exception to the penalty reduction. While there is no direct counterpart to the language, we find that the amendment does not render 4 VAC 25–130–845.13(e) inconsistent with the Federal regulations pertaining to civil penalties at 30 CFR part 845 and can be approved.

Subsection (f), concerning maximum penalty which the division may assess, is amended by adding the words ''except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty determined under subsection (d) shall be multiplied by a factor of twenty (20), not to exceed $70,000.'' As amended, subsection (f) provides as follows:

(f) The maximum penalty which the division may assess under this section for each cessation order or notice of violation shall be $5,000, except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty determined under subsection (d) shall be multiplied by a factor of twenty (20), not to exceed $70,000. As provided in 4 VAC25–130–845.15, each day of continuing violation may be deemed a separate violation for the purpose of assessing penalties.

The State has amended the existing provision concerning the maximum civil penalty that may be assessed, by adding an exception to the maximum penalty limit based on whether the violation resulted in a personal injury or fatality to any person. This provision is more stringent than the Federal regulations. However, SMCRA section 505(b) provides that any provision of State law or regulation which provides for more stringent land use and environmental controls and regulations than do SMCRA or the implementing regulations shall not be construed as inconsistent with SMCRA. Therefore, we are approving this revision.

15. 4 VAC 25–130–845.15 Assessment of separate violations for each day.

Subsection (a) is amended in the last sentence by adding the words ''or more'' immediately following the words ''a penalty of $5,000.'' As amended, subsection (a) provides as follows:

(a) The division may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the division shall consider the factors listed in 4 VAC 25–130–845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which has been assigned a penalty of $5,000 or more under 4 VAC25–130–845.13, the division shall assess a penalty for a minimum of two separate days.

We find that as amended, 4 VAC 25–130–845.15(a) does not render the Virginia program inconsistent with the Federal regulations at 30 CFR 845.15(a) concerning the assessment of separate violations for each day and can be approved.

16. 4 VAC 25–130–845.19 Request for hearing.

New subsection (d) is added to provide as follows:

All requests for hearing or appeals for review and reconsideration made under this section shall be filed with the Director, Department of Mines, Minerals and Energy, Post Office Drawer 900, Big Stone Gap, Virginia 24219.

We find that the amendment is consistent with the counterpart Federal regulations at 30 CFR 845.19 concerning request for a hearing and can be approved.

17. 4 VAC 25–130–846.14 Amount of the individual civil penalty.

Subsection (b) is amended in the first sentence by adding new language concerning an exception to the maximum penalty. As amended, subsection (b) provides as follows:

(b) The penalty shall not exceed $5,000 for each violation, except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty determined under 4 VAC25–130–845.13(d) shall be multiplied by a factor of twenty (20), not to exceed $70,000. Each day of a continuing violation may be deemed a separate violation and the division may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the Director, until abatement or compliance is achieved.

This provision is more stringent than the Federal regulations. However, SMCRA section 505(b) provides that any provision of State law or regulation which provides for more stringent land use and environmental controls and regulations than do SMCRA or the implementing regulations shall not be construed as inconsistent with SMCRA. Therefore, we are approving this revision.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Number VA–1053), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on May 12, 2005, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the Virginia program (Administrative Record Number VA–1049). By letter dated May 27, 2005, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that it found no conflict with MSHA rules and regulations (Administrative Record Number VA–1050). By letter dated June 6, 2005, the United States Department of the Interior, Bureau of Land Management responded and stated that the amendment meets their requirements under 43 CFR 3400 and SMCRA Sec. 522 (Administrative Record Number VA–1051).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Virginia proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Number WV–1049). The EPA responded by letter dated June 20, 2005 (Administrative Record Number VA–1052), and stated that there are no apparent inconsistencies with the Clean Water Act or other statutes or regulations under EPA's jurisdiction. EPA offered no other comments.

V. OSM's Decision

Based on the above findings, we are approving the amendment sent to us by Virginia on May 9, 2005, and as amended on November 14, 2005, and December 1, 2005. To implement this decision, we are amending the Federal regulations at 30 CFR part 946, which codify decisions concerning the Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

The provisions in the rule based on counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations. The revisions made at the initiative of the State that do not have Federal counterparts have also been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, Or Use Of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that a portion of the provisions in this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because they are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations. The Department of the Interior also certifies that the provisions in this rule that are not based upon counterpart Federal regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601

et seq.). This determination is based on the fact that the provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that a portion of the State provisions are based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that a portion of the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate. For the portion of the State provisions that is not based upon counterpart Federal regulations, this determination is based upon the fact that the State provisions are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 19, 2005.

Brent Wahlquist,

Regional Director, Appalachian Region.

■ For the reasons set out in the preamble, 30 CFR part 946 is amended as set forth below:

PART 946—VIRGINIA

■ 1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 946.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
May 9, 2005, and as amended on November 14, 2005, and December 1, 2005.	January 10, 2006	4 VAC 25–130–700.12(e); 773.21(c); 775.11(b)(1) and (d); 775.13(c); 784.20(a)(3); 800.51(c)(1); 800.51(e); 816.11(a)(4) and (a)(5); 816.64(a)(4); 816.105(a) and (b); 817.11(a)(4); 817.64(d); 817.121(c)(4); 842.15(d); 843.12(j); 843.13(b); 843.13(e); 843.15(c); 843.16(e); 845.13(c)(1), (d), (e)(1), and (f); 845.15(a); 845.18(b)(1); 845.19(c); 845.19(d); and 846.14(b).

[FR Doc. 06–192 Filed 1–9–06; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–102]

RIN 1625–AA09

Drawbridge Operation Regulations: Housatonic River, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has temporarily changed the drawbridge operation regulations that govern the U.S. 1 Bridge, mile 3.5, across the Housatonic River, at Stratford, Connecticut. This temporary final rule allows the bridge owner to open only one of the two moveable spans for bridge openings at various times from January 9, 2006 through September 1, 2006, to facilitate bridge rehabilitation construction. Full bridge openings will be available at various times during the above time period after a seven-day notice is given by calling the number posted at the bridge.

DATES: This rule is effective from January 9, 2006 through September 1, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–05–102) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 8, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations''; Housatonic River, Connecticut, in the **Federal Register** (70 FR 72967). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The bridge repairs scheduled to begin on January 9, 2006, are vital necessary repairs that must be performed with all due speed to assure the safe operation of the bridge. Any delay in making this rule effective would not be in the best interest of public safety and the marine interests that use the Housatonic River because failure to start the rehabilitation

repairs on time could result in an unscheduled bridge operation failure.

There is only one commercial facility operator that normally requires the bridge to open. That facility will not be in service during the time period this rule will be in effect. The recreational vessels that normally use this waterway are small enough in size that they can either pass under the spans without a bridge opening or safely pass through the bridge with a single span opening.

Background and Purpose

The U.S. 1 Bridge, at mile 3.5, across the Housatonic River has a vertical clearance of 32 feet at mean high water and 37 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.207(a).

The owner of the bridge, Connecticut Department of Transportation, requested a temporary change to the drawbridge operation regulations for the U.S. 1 Bridge to allow single span openings while major bridge repairs were being made.

This temporary change allows the U.S. 1 bridge to open only one of the two moveable spans for bridge openings.

The Coast Guard believes this rule is reasonable because the single span bridge openings should not preclude any vessel traffic from passing through the bridge.

Only one commercial facility operator is located upstream from the U.S. 1 Bridge. That facility will not be operating during the time period this temporary rule will be in effect.

The recreational vessels that normally transit through the U.S. 1 Bridge are small enough in size that they can either pass under the spans without a bridge opening or transit safely with a single span opening.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking. The effective date was changed from January 2, 2006 to January 9, 2006, due to administrative delays.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This conclusion is based on the fact that the bridge will continue to open for vessel traffic with a single moveable span which is sufficient for the present and anticipated needs of navigation during the effective period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge will continue to open for vessel traffic with a single moveable span which is sufficient for the present and anticipated needs of navigation during the effective period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

No small entities requested Coast Guard assistance and none was given.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because

it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation considering that it relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2–1, paragraph (34)(e), of the instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From January 9, 2006 through September 1, 2006, § 117.207 is amended by suspending paragraph (a) and adding a temporary paragraph (c), to read as follows:

§ 117.207 Housatonic River.

* * * * *

(c) The draw of the U.S. 1 Bridge, mile 3.5, at Stratford, shall operate as follows:

(1) The draw shall open on signal, except that, from 7 a.m. to 9 a.m., Monday through Friday, and 4 p.m. through 5:45 p.m., daily, the draw need not open for the passage of vessel traffic.

(2) From January 9, 2006 through March 31, 2006, from 8 p.m. to 4 a.m., the draw shall open on signal if at least a six-hour notice is given by calling the number posted at the bridge.

(3) From January 9, 2006 through February 9, 2006, May 30, 2006 through June 30, 2006, and July 5, 2006 through September 1, 2006, only one of the two moveable spans need open for the passage of vessel traffic. Two span bridge openings shall be provided if at least a seven-day notice is given by calling the number posted at the bridge, except as provided in (c)(1) and (c)(2) of this section.

(4) From February 10, 2006 through April 1, 2006, and April 17, 2006 through May 26, 2006, only one of the two moveable spans need open for the passage of vessel traffic, except as provided in (c)(1) and (c)(2) of this section. No two span openings need be provided.

(5) From April 2, 2006 through April 16, 2006, May 27, 2006 through May 29, 2006, and July 1, 2006 through July 4, 2006, both moveable spans shall open for the passage of vessel traffic, except as provided in (c)(1) and (c)(2) of this section.

* * * * *

Dated: December 29, 2005.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 06–204 Filed 1–9–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AL69

Reservists' Education: Revision of Eligibility Requirements for the Montgomery GI Bill—Selected Reserve

AGENCIES: Department of Defense, Department of Homeland Security (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing the administration of the Montgomery GI Bill—Selected Reserve (MGIB–SR) program. The amendments implement provisions in the Veterans Benefits and Health Care Improvement Act of 2000 and the Bob Stump National Defense Authorization Act for Fiscal Year 2003. The Veterans Benefits and Health Care Improvement Act of 2000 contained a provision that changed an eligibility criterion concerning the time for obtaining a high school diploma. The Bob Stump National Defense Authorization Act for Fiscal Year 2003 expanded the MGIB–SR eligibility period from 10 years to 14 years for reservists who first become eligible after September 30, 1992.

DATES: *Effective Date:* This final rule is effective January 10, 2006.

Applicability Dates: The changes are applied to conform to the respective statutory requirements. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lynn M. Nelson, Education Advisor, Department of Veterans Affairs (225C), 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7187.

SUPPLEMENTARY INFORMATION: This document amends the regulations in 38 CFR part 21 governing the administration of the Montgomery GI Bill—Selected Reserve (MGIB–SR) program in order to implement provisions in the Veterans Benefits and Health Care Improvement Act of 2000 (Pub. L. 106–419) and the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314).

One of the criteria a reservist must meet in order to establish eligibility for

MGIB–SR benefits is receiving a high school diploma or its equivalent. Before the enactment of Public Law 106–419 on November 1, 2000, the reservist had to earn that diploma or its equivalent before completing Initial Active Duty for Training (IADT) in the case of an original enlistment, or before the date of the qualifying extension of enlistment or reenlistment in all other cases. Public Law 106–419 provided instead for all reservists the requirement that they must earn a high school diploma or its equivalent before applying to the Department of Veterans Affairs (VA) for educational assistance benefits. We are amending various paragraphs to make them conform to these statutory provisions. Our amendments reflect our interpretation that under the statute a reservist who unsuccessfully applies for educational assistance before meeting this requirement would still be able to meet this requirement by applying again after obtaining a high school diploma or its equivalent.

Generally once MGIB–SR eligibility is established, a reservist remains eligible for 10 years. A provision in Public Law 107–314, expands the 10 year eligibility period to 14 years for certain reservists. The 14 year eligibility period applies to reservists who first become eligible for the MGIB–SR program after September 30, 1992. This provision of Public Law 107–314 became effective October 1, 2002. We are amending the paragraphs that address the MGIB–SR eligibility period to reflect this change.

In addition, we are amending § 21.1032 of subpart B to include time limits for filing a claim for an extended period of eligibility under 10 U.S.C. chapter 1606. The time limits for chapter 1606, Montgomery GI Bill—Selected Reserve program, were previously stated in § 21.7532. In 1999, when we removed § 21.7532 and consolidated the time limit rules for all education assistance programs we administer into § 21.1032, we inadvertently did not show chapter 1606 in § 21.1032(c). The final rule was published May 4, 1999 in the **Federal Register** (64 FR 23769–23773). The **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections in that final rule clearly show we established uniform rules for all educational assistance programs the Department of Veterans Affairs administers. Prior to the final rule, a proposed rule proposing to take the action was published in the **Federal Register** (63 FR 23408) on April 29, 1998.

Administrative Procedure Act

Substantive changes made by this final rule merely reflect statutory requirements. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will directly affect only individuals and will not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Program Numbers

The changes made by this final rule affect the Montgomery GI Bill—Selected Reserve. There is no Catalog of Federal Domestic Assistance number for the Montgomery GI—Bill Selected Reserve.

List of Subjects in 38 CFR Part 21

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

Approved: September 16, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

Approved: October 24, 2005.

Kenneth T. Venuto,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

Approved: December 21, 2005.

T.F. Hall,

Assistant Secretary of Defense for Reserve Affairs.

■ For the reasons set out above, 38 CFR part 21 (subparts B and L) is amended as set forth below.

PART 21—[AMENDED]

Subpart B—Claims and Applications for Educational Assistance

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

Authority: 38 U.S.C. 501(a), ch. 51, unless otherwise noted.

■ 2. Section 21.1032 is amended by:
■ a. In paragraph (c) introductory text, removing ''under 38 U.S.C. chapter 30, 32, or 35.'', and adding, in its place, ''under 38 U.S.C. chapter 30, 32, or 35, and 10 U.S.C. chapter 1606.'' and by removing ''§ 21.5042, or § 21.7051'', and adding, in its place, ''§ 21.5042, § 21.7051, or § 21.7551'';
■ b. In paragraph (c)(1), removing ''or veteran's'', and adding, in its place, ''veteran's, or reservist's'';
■ c. In paragraph (c)(2), removing ''or veteran's'', and adding, in its place, ''veteran's, or reservist's''; and
■ d. Revising the authority citation for paragraph (c).

The revision reads as follows:

§ 21.1032 Time Limits.

* * * * *

(c) * * *

(Authority: 10 U.S.C. 16133(b); 38 U.S.C. 3031(d), 3232(a), 3512).

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

■ 3. The authority citation for subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

■ 4. Section 21.7540 is amended by:
■ a. Revising paragraph (a) introductory text.
■ b. In paragraph (a)(3), removing ''Reserve; and'' and adding, in its place, ''Reserve;''.
■ c. In paragraph (a)(4), removing ''30.'' and adding, in its place, ''30; and''.
■ d. Adding paragraph (a)(5).
■ e. Revising the authority citation at the end of paragraph (a).

The revisions and addition read as follows:

§ 21.7540 Eligibility for educational assistance.

(a) *Basic eligibility requirements.* A reservist must meet the requirements for a secondary school diploma (or an equivalency certificate) before applying for educational assistance. VA will decide whether a reservist met those requirements before applying for educational assistance. If the reservist applies before completing the requirements, VA will disallow the application. A reservist's premature application will not prevent the reservist from establishing eligibility at a later time by applying for educational assistance again after having completed the academic requirements. The Armed Forces will decide whether a reservist has met all the other eligibility criteria needed in order to receive educational assistance pursuant to 10 U.S.C. chapter 1606. To be eligible a reservist:

* * * * *

(5) Must have met the requirements for a secondary school diploma (or an equivalency certificate) before applying for educational assistance.

(Authority: 10 U.S.C. 16132; 38 U.S.C. 3033(c)).

* * * * *

■ 5. Section 21.7550 is amended by:
■ a. Redesignating paragraphs (b) through (d) as (c) through (e).
■ b. Adding a new paragraph (b).
■ c. Revising paragraph (a).
■ d. Revising redesignated paragraph (d) and its authority citation.
■ e. Revising redesignated paragraph (e).

The revisions read as follows:

§ 21.7550 Ending dates of eligibility.

(a) *Time limit on eligibility.* (1) *Reservists who become eligible before October 1, 1992.* Except as provided in § 21.7551 and paragraphs (b), (c), (d), and (e) of this section, if the reservist becomes eligible for educational assistance before October 1, 1992, the period of eligibility expires effective the earlier of the following dates:

(i) The last day of the 10-year period beginning on the date the reservist becomes eligible for educational assistance; or

(ii) The date the reservist is separated from the Selected Reserve.

(2) *Reservists who become eligible after September 30, 1992.* Except as provided in § 21.7551 and paragraphs (b), (c), (d), and (e) of this section, if a reservist becomes eligible for educational assistance after September 30, 1992, the period of eligibility expires effective the earlier of the following dates:

(i) The last day of the 14-year period beginning on the date the reservist becomes eligible for educational assistance; or

(ii) The date the reservist is separated from the Selected Reserve.

(Authority: 10 U.S.C. 16133)

(b) *Extension due to active duty orders.* If the reservist serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of title 10, U.S. Code, the period of this active duty plus four months shall not be considered in determining the time limit on eligibility found in paragraph (a) of this section.

(Authority: 10 U.S.C. 16133)

* * * * *

(d) *Discharge for disability.* In the case of a reservist separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct and which was incurred on or after the date on which the reservist became entitled to education assistance, the reservist's period of eligibility expires effective the last day of the—

(1) 10-year period beginning on the date the reservist becomes eligible for educational assistance if the reservist became eligible before October 1, 1992; or

(2) 14-year period beginning on the date the reservist becomes eligible for educational assistance if the reservist becomes eligible after September 30, 1992.

(Authority: 10 U.S.C. 16133)

(e) *Unit deactivated.* (1) Except as provided in paragraph (e)(3) or (e)(4) of this section, the period of eligibility of a reservist, eligible for educational assistance under this subpart, who ceases to become a member of the Selected Reserve during the period beginning October 1, 1991, and ending December 31, 2001, under either of the conditions described in paragraph (e)(2) of this section will expire on the date—

(i) 10 years after the date the reservist becomes eligible for educational assistance if the reservist became eligible before October 1, 1992; or

(ii) 14 years after the date the reservist becomes eligible for educational assistance if the reservist becomes eligible after September 30, 1992.

* * * * *

§ 21.7551 [Amended]

■ 6. Section 21.7551 is amended by:
■ a. In paragraph (a) introductory text, removing ''§ 21.7550(a)(1)'', and adding, in its place, ''§ 21.7550(a)'';
■ b. In paragraph (a)(1), removing ''§ 21.7532(e) of this part.'', and adding, in its place, ''§ 21.1033(c) of subpart B.''
■ c. In paragraph (b)(1), removing ''§ 21.7550(a)(1)'', and adding, in its place, ''§ 21.7550(a)''; and
■ d. In paragraph (c)(1)(ii), removing ''§ 21.7550(a)(1)'', and adding, in its place, ''§ 21.7550(a)''.

[FR Doc. 06–175 Filed 1–9–06; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 9]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2006

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2004 rail industry random testing positive rate was 0.94 percent for drugs and 0.18 percent for alcohol. Since the industry-wide random drug testing positive rate has remained below 1.0 percent for the last two years, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2006, through December 31, 2006, will remain at 25 percent of covered railroad employees. Since the random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2006, through December 31, 2006.

DATES: This document is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20005, (202) 493–6313; or Kathy Schnakenberg, FRA Alcohol/Drug Program Specialist, (816) 561–2714.

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2006 Minimum Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR 219.602, 219.608).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at a 50 percent minimum rate. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

For random alcohol testing, if the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the minimum random alcohol testing rate will be 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate.

In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2006, through December 31, 2006, because the industry random drug testing positive rate was below 1.0 percent for the last two years (.094 in 2004 and .093 in 2003). The minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2006, through December 31, 2006, because the industry-wide violation rate for alcohol has remained below 0.5 percent for the last two years (.018 in 2003 and 2004). Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC on December 30, 2005.

Joseph H. Boardman,

Administrator.

[FR Doc. E6–125 Filed 1–9–06; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 71, No. 6
Tuesday, January 10, 2006

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 THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 55]

RIN 1513–AB15

Proposed Establishment of the Saddle Rock-Malibu Viticultural Area (2003R–110P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the ''Saddle Rock-Malibu'' viticultural area in Los Angeles County, California. The proposed area consists of approximately 2,090 acres, approximately 5 miles inland from the Pacific Ocean and 32 miles west of downtown Los Angeles. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before March 13, 2006.

ADDRESSES: You may send comments to any of the following addresses:

- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 55, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/alcohol/rules/index.htm.* An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov* (Federal e-rulemaking portal; follow instructions for submitting comments).

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive about this notice by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of the notice and comments online at *http://www.ttb.gov/alcohol/rules/index.htm.*

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, California 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide consumers with adequate information regarding product identity and prohibits the use of misleading information on those labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, elevation, physical features, and soils that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Saddle Rock-Malibu Petition

Lisa A. Semler and Derek Baugh of Semler Malibu Estate Vineyards in Malibu, California, submitted a petition for the establishment of the Saddle Rock-Malibu viticultural area. Located in western Los Angeles County, California, the proposed viticultural area covers approximately 2,090 acres in the Santa Monica Mountains, approximately 32 miles west of downtown Los Angeles and 5 miles inland from the Pacific Ocean. The proposed area lies between 1,700 and 2,236 feet in elevation and has 70 acres of vineyards located between 1,800 and 2,000 feet in elevation.

The primary distinguishing viticultural features of the proposed Saddle Rock-Malibu viticultural area include its high elevation and its location and orientation within the Santa Monica Mountains, which limit its exposure to the cooling Pacific marine inversion layer, according to the petition. As a result, the proposed area receives more solar radiation and is warmer than neighboring areas with

more marine influence during the growing season.

The information submitted in support of the petition is summarized below.

Name Evidence

The name of the proposed Saddle Rock-Malibu viticultural area combines the name of a high, prominent rock formation within the proposed area, Saddle Rock, with the name of the surrounding region of western Los Angeles County, Malibu. According to the petition, the ''Saddle Rock-Malibu'' name provides an accurate geographical description of the proposed viticultural area.

Located in the Santa Monica Mountains near the center of the proposed area, Saddle Rock is a prominent saddle-shaped rock formation that rises 2,000 feet above sea level. Saddle Rock is identified on the USGS Point Dume, California, quadrangle map in section 12, T1S/R19W. Saddle Rock Ranch is located within the proposed viticultural area, and the Saddle Rock Pictograph Site, located on the ranch between Saddle Rock and Mitten Rock, is a National Historic Landmark. The pictographs found at the Saddle Rock site are characteristic of the Chumash Indian art style, according to the National Park Service's National Historic Landmark Web site, which also notes that Saddle and Mitten Rocks served as landmarks for prehistoric and early historic travelers (see *http://www.cr.nps.gov/nhl/DOE_dedesignations/saddlerock.htm*).

The Malibu region, which the petition describes as encompassing western Los Angeles County from the ridge line of the Santa Monica Mountains in the north to the Pacific Ocean in the south and from Topanga Canyon in the east to the Ventura County line in the west, surrounds the Saddle Rock area. The Malibu region is shown on the July 2001 American Automobile Association map titled, ''Coast & Valley Bay Area to Southern California,'' in section G–12. The USGS Geographic Names Information System (GNIS) lists 30 Malibu name uses within Los Angeles County, including streams, beaches, lakes, a reservoir, parks, towns, buildings, and an airport.

TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), established the Malibu-Newton Canyon viticultural area (27 CFR 9.152) in T.D. ATF–375, published in the **Federal Register** (61 FR 29952) on June 13, 1996. T.D. ATF–375 explained that the ''Malibu'' name originated with the Chumash Indians as ''Mala I Boo.'' The 1805 Topanga Malibu Sequit land grant of 13,315 acres, also referred to as Rancho Malibu, includes the modern day ''Malibu'' spelling. In the 1930s, with the construction of the Pacific Coast Highway, the petition states that the Malibu region developed into the nationally known community it is today.

Boundary Evidence

The modern history of the proposed Saddle Rock-Malibu viticultural area dates to the era of Spanish colonial land grants, and the proposed area lies between the historic Topanga Malibu Sequit land grant to the south and the El Conejo land grant to the north. Originally know as ''El Malibu,'' the petition states that the ranch surrounding the Saddle Rock formation was, by the 1930s, known as Saddle Rock Ranch. Wine grape production within the proposed Saddle Rock-Malibu viticultural area began in 1997, according to the petition, and as of February 2005 the area had 70 vineyard acres in commercial production.

Roughly centered on the Saddle Rock formation, the proposed Saddle Rock-Malibu viticultural area encompasses a suspended valley within the higher elevations of the Santa Monica Mountains. Beginning at Decker Road, the northern boundary of the proposed area follows a portion of the southern boundary of the El Conejo land grant, and then follows the 1,700-foot contour line southeasterly to Mulholland Highway. Steep mountain terrain lies to the east and south of the proposed Saddle Rock-Malibu area, while the Malibu Country Club lies to its west. The petition uses trails, unimproved roads, and secondary roads to delineate the eastern, southern, and western portions of the proposed boundary, according to the written boundary description and USGS Point Dume map provided with the petition.

Distinguishing Features

The proposed Saddle Rock-Malibu viticultural area's high elevations, north-facing slope orientation, and geographical location in the Santa Monica Mountains all combine to create a microclimate with limited marine influence, according to the petition. As compared to surrounding areas with more marine influence, the proposed area receives more growing season sunshine and has warmer temperatures. The proposed area's microclimate, the petition continues, creates a distinctive and unique mountainous grape-growing region.

Topography

The proposed Saddle Rock-Malibu viticultural area, according to the petition, is a geographically suspended valley located largely on the leeward side of the crest of the Santa Monica Mountains. From the mountains' crest, elevations drop about 2,000 feet to the Pacific Ocean in the south and, in the north, about 1,000 feet to the Conejo Valley floor. Within the proposed viticultural area, elevations range from a low of 1,700 feet along much of the boundary line to a 2,236-foot peak along its northeast border, as shown on the Point Dume map. Intermittent streams flow from the higher elevations downward towards the Pacific Ocean or towards larger streams in the Conejo Valley to the north. Several secondary highways, light-duty roads, and a number of unimproved roads and jeep trails criss-cross the proposed Saddle Rock area, as shown on the Point Dume USGS map.

Climate

The unique microclimate of the proposed Saddle Rock-Malibu viticultural area is its most distinguishing viticultural feature, according to the petition, which included a climate report prepared by Fox Weather of Fortuna, California. While the larger Malibu regional climate is typical of southern California with mild, rainy winters and warm, dry summers, the petition states that the proposed Saddle Rock-Malibu viticultural area is climatically affected by its geographical location in the Santa Monica Mountains.

The Pacific Ocean, about 5 miles south of the proposed viticultural area, provides an intrusive marine influence that permeates the Santa Monica Mountains area incrementally, based on elevation, time of year, and other factors, according to Fox Weather. In this region of Los Angeles County, this cool, moist, marine influence funnels northward from the ocean, through the low gaps in the mountain range, reaching various elevations at different times in the growing season. The proposed Saddle Rock-Malibu viticultural area's high elevations, its location on the leeward side of the mountain crest, and its north-facing mountain slopes are significant factors in limiting the extent of the cooling marine influence received within the proposed area, according to the submitted Fox Weather data.

Summers in the Malibu region are hot and dry at the higher elevations above the marine influence and are cooler and less sunny in the lower coastal areas

and beaches, according to Fox Weather. A comparison of growing season heat accumulation as measured by degree days shows that the proposed Saddle Rock-Malibu viticultural area, at 4,200 degree days, is somewhat warmer than the near-by Malibu-Newton Canyon viticultural area, which accumulates 4,000 to 4,100 degree days of heat during the growing season. Further inland, toward the San Fernando Valley, temperatures are warmer during the day and cooler at night than along the crest of the Santa Monica Mountains. (A measurement of heat accumulation during the growing season, one degree day accumulates for each degree Fahrenheit that a day's average temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. See ''General Viticulture,'' by Albert J. Winkler, University of California Press, 1974.)

The temperature and growing condition differences between the proposed Saddle Rock-Malibu area and the established Malibu-Newton Canyon area result from the prevailing wind flows of summer (south through west-northwest directions), according to the submitted Fox Weather data. Located on the leeward side of the Santa Monica Mountains crest, the proposed Saddle Rock-Malibu area receives more sunshine and has higher daytime temperatures than the Malibu-Newton Canyon area, which is located just southeast of the Saddle Rock area on the windward side of the mountain crest and is, therefore, more strongly influenced by the cooling Pacific marine air. Also, the warm, down slope wind that affects the Saddle Rock-Malibu area is less evident in the Malibu-Newton Canyon area.

Soils

Predominant soils of the proposed Saddle Rock-Malibu area include Cropley clay, Gilroy clay loam and rocky clay loam, and Hambright loam, clay loam and rocky clay loam, according to Robert Roche of Roche Vineyard Consulting in his June 5, 2004, letter to the petitioners.

The U.S. Department of Agriculture's Soil Conservation Service (now the Natural Resources Conservation Service) publication, ''Soils of the Malibu Area California'' (October 1967), states at pages 65 and 66 that Cropley clay is well drained with slow permeability. Cropley clay occupies nearly level to moderately sloping alluvial fans, and bedrock is found more than 5 feet below the surface. According to the 1967 ''Soils of the Malibu Area California'' publication, Gilroy clays are well drained with slow permeability. They occupy gently rolling to steep upland areas, and bedrock is generally found between 2 feet and 3⅓ feet below the surface. Hambright clay loams, described on pages 72 and 73 of the 1967 Malibu area soil publication, are well drained with moderate permeability. They occupy moderately steep to very steep upland areas, and bedrock is found from ⅔ foot to 1½ feet below the surface.

A comparison of the soils of the proposed Saddle Rock-Malibu viticultural area to those in the existing Malibu-Newton Canyon viticultural area shows distinct soil differences.

Proposed Saddle Rock-Malibu viticultural area soils	Established Malibu-Newton Canyon viticultural area soils
Gilroy rocky clay loam and clay loams	Gilroy clay loam.
Hambright loam, clay loam, and rocky clay loam	Hambright rocky clay loam.
Cropley clay	Castaic silty clay loam.
	Malibu loam.
	Malcolm loam.
	Rincon silty clay loam.

The Hambright rocky clay loam and Gilroy clay loam series dominate the proposed Saddle Rock-Malibu area's northeast region, according to Robert Roche of Roche Vineyard Consulting. He explains that although these two series are found throughout California, they contrast to the igneous rock found in the eastern area immediately beyond the proposed Saddle Rock-Malibu viticultural area boundary line. Mr. Roche compares the Malibu-Newton Canyon viticultural area to the proposed Saddle Rock-Malibu viticultural area by describing the Saddle Rock-Malibu area's soils as ''deeper with more clay content overall, leading to more water holding capacity.'' He explains that the ''soil series and descriptions are different enough'' between the two areas to conclude that ''wine characteristics would be significantly different.'' The northeast corner of the proposed Saddle Rock-Malibu area, the petition states, has the most evident differences in soil as compared to the region immediately beyond the boundary line.

The petition, however, emphasizes that soil differences of the proposed Saddle Rock-Malibu area play a lesser role than the climate and physical geography in defining the distinctiveness of the proposed viticultural area.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required map, and we identify it below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, ''Saddle Rock-Malibu,'' will be recognized as a name of viticultural significance. Consequently, wine bottlers using ''Saddle Rock-Malibu'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin. On the other hand, we do not believe that any single part of the proposed viticultural area name standing alone, such as ''Saddle Rock'' or ''Malibu'' would have viticultural significance if the new area is established. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full ''Saddle Rock-Malibu'' name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(a)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and

obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a new label or a previously approved label uses the name ''Saddle Rock-Malibu'' for a wine that does not meet the 85 percent standard, the new label will not be approved, and the previously approved label will be subject to revocation, upon the effective date of the approval of the Saddle Rock-Malibu viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are also interested in receiving comments on the sufficiency and accuracy of the name, climatic, boundary, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Saddle Rock-Malibu viticultural area on brand labels that include the words ''Saddle Rock-Malibu'' as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid any conflicts, for example, by adopting a modified or different name for the viticultural area.

Although TTB believes that only the full name ''Saddle Rock-Malibu'' should be considered to have viticultural significance upon establishment of the proposed new viticultural area, we also invite comments from those who believe that ''Saddle Rock'' or ''Malibu'' standing alone would have viticultural significance upon establishment of the area. Comments in this regard should include documentation or other information supporting the conclusion that use of ''Saddle Rock'' or ''Malibu'' on a wine label could cause consumers and vintners to attribute to the wine in question the quality, reputation, or other characteristic of wine made from grapes grown in the proposed Saddle Rock-Malibu viticultural area.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. Your comments must include this notice number and your name and mailing address. Your comments must be legible and written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals. You may submit comments in one of five ways:

- *Mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—
  (1) Be on 8.5 by 11-inch paper;
  (2) Contain a legible, written signature; and
  (3) Be no more than five pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *E-mail:* You may e-mail comments to *nprm@ttb.gov.* Comments transmitted by electronic mail must—
  (1) Contain your e-mail address;
  (2) Reference this notice number on the subject line; and
  (3) Be legible when printed on 8.5 by 11-inch paper.
- *Online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''Send comments via e-mail'' link under this notice number.
- *Federal e-rulemaking portal:* To submit comments to us via the Federal e-rulemaking portal, visit *http://www.regulations.gov* and follow the instructions for submitting comments.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether to hold a public hearing.

Confidentiality

All submitted material is part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

You may view copies of this notice, the petition, the appropriate maps, and any comments we receive by appointment at the TTB Information Resource Center at 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and any comments we receive on this proposal on the TTB Web site. We may omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the TTB Information Resource Center. To access the online copy of this notice and the posted comments, visit *http://www.ttb.gov/alcohol/rules/index.htm.* Select the ''View Comments'' link under this notice number to view the posted comments.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866, 58 FR 51735. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Amend subpart C by adding § 9.__ to read as follows:

§ 9.__ Saddle Rock-Malibu.

(a) *Name.* The name of the viticultural area described in this section is ''Saddle Rock-Malibu''. For purposes of part 4 of this chapter, ''Saddle Rock-Malibu'' is a term of viticultural significance.

(b) *Approved Maps.* The United States Geological Survey, 1:24,000 scale, topographic map used to determine the boundary of the Saddle Rock-Malibu viticultural area is titled: Point Dume Quadrangle California, 7.5-Minute Series (Orthophotoquad), 1995.

(c) *Boundary.* The Saddle Rock-Malibu viticultural area is located in Los Angeles County, California. The boundary of the Saddle Rock-Malibu viticultural area is described below—

(1) The beginning point on the Point Dume map is the intersection of Decker Road and Mulholland Highway, section 3, T1S/R19W;

(2) From the beginning point, proceed north-northeast along Decker Road approximately 0.7 mile to its intersection with the southern boundary of the El Conejo land grant, section 3, T1S/R19W; then

(3) Proceed straight east-southeast along the El Conejo land grant boundary line approximately 0.4 mile to the point where the land grant boundary line changes direction to the northeast, section 2, T1S/R19W; then

(4) Proceed straight northeast for approximately 0.5 mile along the El Conejo land grant boundary line to its second intersection with the 1,700-foot contour line in section 2, T1S/R19W; then

(5) Proceed southeasterly along the meandering 1,700-foot contour line, crossing the R19W/R18W range line near the southwest corner of section 6, T1S/R18W, and continue along the 1,700-contour line to its intersection with Kanan Road near the southwest corner of section 6, T1S/R18W; then

(6) Proceed south along Kanan Road approximately 0.35 mile to its intersection the 1,800-foot contour line (very near the intersection of Kanan Road and an unnamed unimproved road), section 7, T1S/R18W; then

(7) Proceed southeasterly along the meandering 1,800-foot contour line to a point approximately 200 feet due north of the intersection of Mulholland Highway and two unnamed, unimproved roads near the center of section 7, T1S/R18W, and, from that point, proceed due south in a straight line to the intersection of Mulholland Highway and the two unnamed, unimproved roads, section 7, T1S/R18W; then

(8) Following the eastern-most unimproved road, proceed southerly along the meandering unimproved road, passing to the west of a 2,054-foot peak, and continue to the road's intersection with another unnamed, unimproved road immediately south of the section 18 north boundary line and due east of a 2,448-foot peak, section 18, T1S/R18W; then

(9) Proceed southwesterly along the unnamed, unimproved road to its intersection with the Latigo Canyon Road, just east of BM 2125, section 18, T1S/R18W; then

(10) Proceed northerly then westerly along Latigo Canyon Road to its intersection with Kanan Road very near the southeast corner of section 12, T1S/R19W; then

(11) Proceed south along Kanan Road for approximately 0.6 mile to its intersection with the 1,700-foot contour line, located immediately south of the four-way intersection of two unnamed, unimproved roads and Kanan Road, section 13, T1S/R19W; then

(12) Proceed 1.5 miles generally west-northwest along the unnamed, unimproved road through Zuma Canyon to its intersection with Encinal Canyon Road at about the 1,806-elevation mark, section 11, T1S/R19W; then

(13) Crossing Encinal Canyon Road, proceed northwesterly along the unnamed, unimproved road, which becomes a trail, and continue northerly to the trail's intersection with the 1,900-foot contour line, near the center of section 11, T1S/R19W; then

(14) Proceed northwesterly along the meandering 1,900-foot contour line, circling to the west of the 2,189-foot peak in section 11, to the contour line's intersection with Mulholland Highway at the northern boundary of section 11, T1S/R19W; then

(15) Proceed westerly about 0.8 mile on Mulholland Highway and return to the beginning point at its intersection with Decker Road, section 3, T1S/R19W.

Signed: December 19, 2005.

John J. Manfreda,

Administrator.

[FR Doc. 06–207 Filed 1–9–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–98–4470]

Pipeline Safety: Gas Gathering Line, Definition; Meeting of the Technical Pipeline Safety Standards Advisory Committee

AGENCY: Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Proposed rule; Notice of meeting.

SUMMARY: This notice announces a public meeting of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Technical Pipeline Safety Standards Committee (TPSSC) to vote on a proposed rule to use consensus standards to distinguish onshore gathering lines, to establish safety standards for certain higher-risk onshore gathering lines, and to change current standards on low-risk onshore gathering lines.

DATES: The TPSSC will meet on Thursday, January 19, 2006, from 10 a.m. to 12 noon, e.s.t.

Written comments must be received by January 26, 2006.

ADDRESSES: The Advisory Committee members will participate via telephone conference call. Members of the public may attend the meeting at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, room 3328.

FOR FURTHER INFORMATION CONTACT: For additional information regarding this meeting contact: Cheryl Whetsel, OPS, (202) 366–4431; *cheryl.whetsel@dot.gov*.

SUPPLEMENTARY INFORMATION:

1. *Meeting Details:* Members of the public may attend the meeting. PHMSA will post any additional information or changes on its Web page (*http://phmsa.dot.gov*).

Members of the public may make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Cheryl Whetsel, no later than January 12th of the topic and the length of the presentation. The presiding officer at the meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may submit written comments by mail or deliver them to the Dockets Facility by January 26, 2006, U.S.

Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically by logging onto the following Internet Web address: *http://dms.dot.gov*. Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should reference docket number RSPA–98–4470. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Cheryl Whetsel at (202) 366–4431 by January 12, 2006.

2. *TPSSC Background:* The TPSSC is a statutorily mandated advisory committee that advises PHMSA on proposed safety standards for gas pipelines. The TPSSC was established under section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1). The committee consists of 15 members—five each representing government, industry, and the public. The TPSSC is tasked with determining reasonableness, cost-effectiveness, and practicability of regulatory initiatives.

Federal law requires PHMSA to submit cost-benefit analyses and risk assessment information on each proposed safety standard to the advisory committees. The TPSSC evaluates the merits of the data and, when appropriate, provide recommendations on the adequacy of the cost-benefit analyses.

3. *SNPRM Background:* On September 25, 1991 (56 FR 48505), DOT published a notice of proposed rulemaking to revise the definition of ''gathering line'' in its gas pipeline safety standards. Because the proposal proved controversial, final action was postponed pending collection of additional information. In this Supplemental Notice of Proposed Rulemaking (SNPRM), PHMSA is proposing use of a consensus standard to distinguish onshore gathering lines. PHMSA's gas pipeline safety standards do not provide an adequate basis for distinguishing these pipelines from production facilities and transmission lines. In addition, PHMSA is proposing to establish safety standards for certain higher-risk onshore gathering lines, and to relax current standards on certain low-risk onshore gathering lines. (Onshore gathering lines in inlets of the Gulf of Mexico are not affected.) Operators would use a new risk-based approach to determine which of its gathering lines are ''regulated onshore gathering lines'' and what safety standards the lines must meet. At present, PHMSA's safety standards do not apply to onshore gathering lines in rural locations, while onshore gathering lines in non-rural locations must meet the same requirements as transmission lines. This regulatory approach is insufficient to assure that conditions on gathering lines that pose a greater risk to the public and property are addressed. And it does not take into account the lower risk some other gathering lines pose. The intended effects of the proposed rules are improved identification of gathering lines, improved public confidence in the safety of gathering lines, and safety requirements better tailored to gathering line risks. The TPSSC will be voting on the reasonableness, cost-effectiveness, and practicability of this proposed regulation.

PHMSA will issue a final rule based on the proposed rule, the comments received from the public, and the vote and comments of the advisory committee.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC on January 5, 2006.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 06–224 Filed 1–6–06; 2:33 pm]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 71, No. 6

Tuesday, January 10, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–053–2]

University of Wisconsin-Madison; Availability of Environmental Assessment and a Finding of No Significant Impact for Field Tests of Genetically Engineered Erwinia carotovora

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment for a field trial of genetically engineered strains of a bacterium, *Erwinia carotovora,* the causal agent of tuber soft rot disease in potato. The bacteria have been genetically engineered to disrupt the disease causing pathway. This field trial will allow researchers to better understand the function of each mutated gene under field conditions. The environmental assessment provides a basis for our conclusion that these field tests will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared for these field tests.

EFFECTIVE DATE: January 10, 2006.

ADDRESSES: You may read the environmental assessment, the finding of no significant impact, and any comments that we received on Docket No. 05–053–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Rudaina Alrefai, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–4866. To obtain copies of the environmental assessment (EA), the finding of no significant impact (FONSI), or the response to comments, contact Ms. Ingrid Berlanger at (301) 734–4885; e-mail: *Ingrid.E.Berlanger@aphis.usda.gov.* The EA, FONSI, and response to comments are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/05_09701r_ea.pdf.* The draft EA is available at *http://www.aphis.usda.gov/brs/aphisdocs/05_09701r_pea.pdf.*

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release into the environment of a regulated article.

On April 7, 2005, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS permit number 05–097–01r) from the University of Wisconsin-Madison, Department of Plant Pathology, Madison, WI, for a permit for a field trial of *Erwinia carotovora.* These bacteria have been genetically engineered not to express specific *hrp/hrc* (hypersensitive reaction on non-host plants and pathogenesis on host plants or conserved among plant and animal pathogens) genes resulting in the disruption of the disease-causing mechanism. These mutations are expected to make the bacterial strains avirulent or non-pathogenic. The application describes four genetically engineered strains to be used in this field trial.

The *E. carotovora* ssp. *carotovora* WPP14 strain was initially isolated from a diseased potato plant obtained from a commercial farm in Waushara County, WI. This strain was used to create four new genetically engineered strains by inserting a marker gene into genes that may be necessary for *E. carotovora* infection of potatoes. The four strains resulting from this mutagenesis that are proposed for use in this field trial are described below.

- Strain WPP40 contains an insertion of a kanamycin resistance gene (*aph*) cassette into *out*D. The *out*D gene encodes for an outer membrane porin that is required for a functional type II secretion system. This mutant is unable to secrete plant cell wall degrading enzymes and is avirulent. The kanamycin resistance gene cassette contains *aph*, which encodes neomycin phosphotransferase which was originally isolated from Tn5, and two FRT sites derived from *Saccharomyces cerevisiae.*
- Strain WPP60 has an insertion of a spectromycin resistance gene (*aad*A) cassette into *hrc*C, an outer membrane porin which is required for a functional type III secretion system. This mutant is unable to secrete harpins or effector (Avr) proteins. It is hypersensitive response minus. The spectinomycin resistance gene cassette is constructed from the *aad*A gene which encodes aminoglycoside-3 adenyltransferase, originally derived from *Shigella flexneri,* with termination sequences derived from bacterophage T4.
- Strain WPP195 has a deletion of *hrp*N and an insertion of a chloramphenicol resistance gene (*cat*) cassette and a modified green fluorescent protein (GFPmut2) into this locus. This mutant is unable to produce or secrete the harpin, HrpN. The *gfpmut*2 gene was originally cloned from *Aequorea victoria* and was modified to be brighter. Its expression is driven by the *nptII kan* promoter from Tn5. The *cat* gene encodes

cholramphenicol acetyltransferase, which was originally isolated from *Escherichia coli.* This construct also contains FRT sites.

• Strain WPP198 is an insertion of a similar chloramphenicol resistance cassette into *hrpL*, which is a sigma factor required for expression of the type III secretion system and its secreted substrates. The mutant is unable to produce or secrete harpins or effector (Avr) proteins. It is hypersensitive response minus.

The genetically engineered *E. carotovora* are considered regulated articles under the regulations in 7 CFR part 340 because they may be plant pests. The purpose of the field trial is to use genetically engineered *E. carotovora* strains with mutations in homologs of the well-characterized *Pseudomonas syringae hrp* genes as tools to:

• Understand the effects of specific genes on the fitness of *E. carotovora,*

• Use the results from these experiments to better understand the function of these genes in plant-bacterial interactions, and

• Compare the results obtained with *E. carotovora* mutants with those found for *P. syringae* to determine if homologous genes play similar roles in fitness in different environments.

In a notice published in the **Federal Register** on August 12, 2005 (70 FR 47170–47171, Docket No. 05–053–1), APHIS announced that it had prepared an environmental assessment (EA) for a field trial of the genetically engineered strains of *E. carotovora* and made the EA available for public review and comment. During the 30 day comment period for the draft EA, which ended on September 12, 2005, APHIS received six comments. Responses to the issues raised in the comments are provided as an attachment to the finding of no significant impact (FONSI). Three of the comments were from private individuals, one was from a public interest group, and the remaining two comments were from the same person, writing first as a private individual and then representing a public interest group. All six comments opposed the field test. One individual was generally opposed to field tests of genetically engineered organisms. However the comment did not provide support for the opposition. The remaining comments raised two issues. One issue is the concern that horizontal gene transfer of the antibiotic resistance gene in these bacterial strains might result in transfer of this trait to soil or enteric bacteria. This issue was addressed in the EA and is again addressed in the response to comments. The second issue is that the experiment is conducted with bacterial strains that may be as virulent as the native bacteria strains. APHIS disagrees with the comment that this field trial ''provides high risk with little or no benefit.'' This issue is also addressed in the response to comments.

APHIS has edited the EA to include specific contact information in Appendix I and to add a new section IX, ''Consultations,'' in the final EA. The changes are not substantive and do not impact the analysis in the EA. Copies of both the draft EA and the final EA are available (see **FOR FURTHER INFORMATION CONTACT**).

Pursuant to its regulations (7 CFR part 340) promulgated under the Plant Protection Act, APHIS has determined that this field trial will not pose a risk of the introduction or dissemination of a plant pest for the following reasons:

(1) *Erwinia carotovora* is widely spread in the environment and commonly present on plant roots of numerous species as well as in lakes, streams, rain, and ground water.

(2) Screening weeds for the past year around potato fields did not reveal any naturally-occurring ''hypersensitive reaction on non-host plants and pathogenesis on host plants or conserved among plant and animal pathogens'' (*hrp/hrc*) mutants of *E. carotovora* even though these mutants have been found on potato. Therefore, it is not likely that the host range of the bacterium will change because of the modification.

(3) Reversion of the genetically engineered strains would not pose any additional environmental risk because reverted mutants will be similar to the other *E. carotovora* strains that are commonly present on these plants. The risks associated with the introduction of genetically engineered organisms generally are the same kind as those associated with the introduction into the environment of unmodified organisms and organisms modified by other genetic techniques.

(4) The field trial is a confined release and would have no significant impact on the environment. The field release conditions and measures described in the permit should be sufficient to prevent any unplanned release of the transgenic bacteria or the inoculated plant material; or the persistence of the transgenic material in the environment.

(5) This small field test of 0.2 acre should not have any significant impact on existing agricultural practices because this test is solely for research purposes. The antibiotic resistance genes themselves should not cause these mutant strains to have any competitive advantage in the environment and would not interfere with current agricultural practices to control the soft rot disease in potato. Although spraying with streptomycin is used to control *Erwinia amylovora* on fruit trees, it is not normally used to control the soft rot disease in potatoes on this field station.

(6) Resistance to antibiotics is already widely prevalent in enteric bacteria and soil-borne bacteria. Gene transfer from *E. carotovora* to animals and plants is highly unlikely under the conditions of this field test.

(7) *Erwinia* species are not known as animal or human pathogens and there are no references that associate it with human or animal disease even though farm workers have been exposed to *Erwinia* spp. for decades. There should be no risk to university personnel handling the inoculated potatoes since they hand-inoculate potatoes while wearing gloves and all diseased plants are removed from the field. No potential impact of this experiment on people living in the area of the field trial test plot or any other human population can be identified.

(8) An examination of threatened and endangered species for Wisconsin listed in the U.S. Fish and Wildlife Service's Threatened and Endangered Species System [1] showed that 6 threatened or endangered plant species and 12 animal species exist or once existed in the State. Only one plant species has been reported in Waushara County but is not a host for E. carotovora. None of the listed threatened or endangered plant and animal species would be impacted by this test.

The EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Copies of the EA and FONSI are available from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 3rd day of January 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–76 Filed 1–9–06; 8:45 am]

BILLING CODE 3410–34–P

[1] *http://ecos.fws.gov/tess_public/servlet/gov.doi.tess_public.servlets.RegionLists?lead_region=3#WI.*

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, February 16, 2006. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held February 16 at 6 p.m.

ADDRESSES: The meeting will be held at the Southeast Alaska Discovery Center Learning Room (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *lkolund@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Lynn Kolund, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: January 3, 2006

Forrest Cole,

Forest Supervisor.

[FR Doc. 06–186 Filed 1–9–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee, Sundance, WY, USDA Forest Service

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) and Black Hills National Forests' Crook County Resource Advisory Committee will meet Tuesday, January 17, 2006 in Sundance, Wyoming for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on January 17th will begin at 6:30 p.m., at the USFS Bearlodge Ranger District office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include presentation of appointments to the Crook County Resource Advisory Committee, election of officers, review of previously funded projects and examination of new project proposals. A public forum will begin at 8:30 p.m. (MT).

FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Officer at (307) 283–1361.

Dated: January 3, 2006.

Steven J. Kozel,

District Ranger Bearlodge Ranger District.

[FR Doc. 06–191 Filed 1–9–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Tongass National Forest, USDA Forest Service, Agriculture.

ACTION: Notice of new fee site.

SUMMARY: The Tongass National Forest proposes to begin charging a $5/day, $10/three-day, $20/week, and $75/season fee for entering the Fish Creek Wildlife Observation Site (Fish Creek) near Hyder, Alaska. There is strong public support and appreciation for the experience provided at Fish Creek. Funds from the fees will be used for providing safety improvements for the public and protection for the wildlife as well as interpretive and visitor comfort services.

DATES: Fish Creek will begin charging a fee on July 1, 2006.

ADDRESSES: Forest Supervisor, Tongass National Forest, Federal Building, 648 Mission Street, Ketchikan, AK 99901.

FOR FURTHER INFORMATION CONTACT: Scott Fitzwilliams, Public Services Staff and Fee Coordinator, 907–747–4236.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. The intent of this notice is to give publics an opportunity to comment if they have concerns or questions about new fees.

The Tongass National Forest currently has two other wildlife viewing fees sites. These sites are often at capacity throughout their season. A business analysis of Fish Creek has shown that people desire having for of this sort of recreation experience on the Tongass National Forest. A market analysis indicates that the $5/10/20/75 per day/three-day/week/season is both reasonable and acceptable for this sort of unique recreation experience.

People wanting to purchase passes for Fish Creek can do so at the Forest Service office in Hyder or at Fish Creek. The Forest Service is also working to make passes available at local businesses in the communities of Hyder and Stewart.

Dated: January 3, 2006.

Forrest Cole,

Tongass National Forest Supervisor.

[FR Doc. 06–185 Filed 1–9–06; 8:45 am]

BILLING CODE 3410–14–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–580–839
A–583–833

Certain Polyester Staple Fiber From Taiwan and the Republic of Korea: Notice of Extension of Time Limit for 2004–2005 Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 10, 2006.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas or Andrew McAllister, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3813 or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On June 30, 2005, the Department published a notice of initiation of administrative reviews of the antidumping duty orders on certain polyester staple fiber (''PSF'') from Taiwan and the Republic of Korea (''Korea''), covering the period May 1, 2004, through April 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 37749 (June 30, 2005). The preliminary results for the antidumping duty administrative reviews of certain PSF from Taiwan and Korea are currently due no later than January 31, 2006.

Extension of Time Limits for Preliminary Results

The Department requires additional time to review, analyze, and verify the sales and cost information and to issue supplemental questionnaires. Moreover, the Department requires additional time to review and analyze the model match criteria, and it is thus not practicable to complete this review within the original time limit (*i.e.*, January 31, 2006). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than May 24, 2006, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 4, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–104 Filed 1–9–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–485–805)

Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 10, 2006.

SUMMARY: In response to requests by Duferco Steel Inc. (Duferco), an importer of subject merchandise, and United States Steel Corporation (the petitioner), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe (seamless pipe) from Romania. The period of review (POR) is August 1, 2004, through July 31, 2005.

The respondent, S.C. Silcotub S.A. (Silcotub), informed the Department that it would not be participating in the review. Accordingly, we preliminarily determine that the application of adverse facts available is warranted with respect to Silcotub.

FOR FURTHER INFORMATION CONTACT: Janis Kalnins at (202) 482–1392 or John Holman at (202) 482–3683, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background≤

On August 10, 2000, the Department published an antidumping duty order on seamless pipe from Romania. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania*, 65 FR 48963 (August 10, 2000) (*Amended Final*).

On August 1, 2005, the Department published a notice of opportunity to request an administrative review of this order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 44085. In accordance with 19 CFR 351.213(b)(3), on August 30, 2005, Duferco requested that the Department conduct an administrative review of Silcotub. On August 31, 2005, the petitioner requested a review of Silcotub. On September 28, 2005, the Department published a notice of initiation of administrative review of the antidumping duty order on seamless pipe from Romania covering the period August 1, 2004, through July 31, 2005. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631.

On September 26, 2005, the Department issued its questionnaire[1] to Silcotub. Because we had reason to believe or suspect that Silcotub made sales at prices below the cost of production during the review, we initiated a sales–below-cost inquiry in order to determine whether Silcotub made sales during the POR at below–cost prices.[2] See, *e.g., Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part: Certain Pasta From Italy*, 66 FR 34414, 34415 (June 28, 2001). Silcotub did not respond by the deadline of November 2, 2005. In a November 28, 2005, letter, Silcotub informed the Department that it was declining to participate in the administrative review.

Scope of the Order

The products covered by the order are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of the order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall–thickness, manufacturing process (hot finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home-market sales or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market-economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review.

[2] In the 2002-03 administrative review, the Department disregarded Silcotub's home-market sales that failed the cost test. See *Notice of Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania*, 70 FR 7237 (February 11, 2005) (*2002-03 Final Results*). Accordingly, the Department initiated a sales-below-cost inquiry in the 2003-04 administrative review. Silcotub withdrew its participation from that review without responding to the Department's cost-of-production questionnaire. See *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not to Revoke Order in Part*, 70 FR 41206 (July 18, 2005) (*2003-04 Final Results*). As a result, the Department used adverse facts available in determining the margin for Silcotub in that review. *Id.*

the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to the scope of this order is dispositive. For further information on merchandise subject to this order, see *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination Not to Revoke in Part*, 70 FR 24520 (May 10, 2005).

Use of Facts Available

In accordance with section 776(a) of the Tariff Act of 1930, as amended (the Act), we preliminarily determine that the use of facts available as the basis for the weighted–average dumping margin is appropriate for Silcotub. Silcotub did not submit a response to our antidumping duty questionnaire. Consequently, we find that it has withheld ''information that has been requested by the administering authority'' under section 776(a)(2)(A) of the Act and we must use facts otherwise available to assign a margin to Silcotub.

In accordance with section 776(b) of the Act, we are making an adverse inference in our application of the facts available. This is appropriate because Silcotub did not provide responses to our questionnaire, which are necessary for us to complete our margin calculations. Therefore, we find that Silcotub has not acted to the best of its ability in providing us with relevant information which is under its control.

In selecting an adverse facts available rate, the Department's practice has been to assign respondents that fail to cooperate with the Department the highest margin determined for any party in the less–than-fair–value (LTFV) investigation or in any administrative review of the proceeding. *See Sigma Corp. v. United States*, 117 F.3d 1401,1411 (Fed. Cir. 1997). As such, we have preliminarily assigned Silcotub an adverse facts available rate of 15.15 percent, which is the LTFV weighted–average margin we calculated for Silcotub during the original investigation. See *Amended Final*.

Section 776(c) of the Act provides that, to the extent practicable, the Department shall corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, at 870 (1994) (SAA), clarifies that the final determination concerning the subject merchandise is ''secondary information'' and states that ''corroborate'' means to determine that the information used has probative value. See SAA at 870.

As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), in order to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins. The only source for margins is administrative determinations. Thus, with respect to an administrative review, if the Department chooses as facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. We also find that this rate, calculated from a prior segment of the proceeding and used in the prior administrative review,[3] is relevant.

The data upon which the Department relied in calculating the 15.15 rate in the LTFV investigation was that of Silcotub and Sota Communication Company. During the period of investigation, Silcotub produced the product which Sota Communication Company sold to the United States. Therefore, we examined for the LTFV investigation Silcotub's factor–of-production information in our calculation of the 15.15 percent rate. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania*, 65 FR 5594 (February 4, 2000).

[3] After withdrawing its participation from the 2003-04 administrative review, Silcotub was assigned, as adverse facts available, the LTFV weighted-average rate of 15.15 percent. See *2003-04 Final Results*.

Furthermore, there is no information on the record that calls into question the validity of this rate. Therefore, we find that this rate is corroborated to the extent practicable. Also, we find that this rate is sufficiently high as to reasonably ensure that Silcotub does not obtain a more favorable result by failing to cooperate. Accordingly, we determine that the rate of 15.15 percent, the highest weighted–average margin determined for any firm during any segment of this proceeding, is in accordance with the requirements of section 776(c) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the dumping margin for S.C. Silcotub S.A. for the period August 1, 2004, through July 31, 2005, is 15.15 percent.

Any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 37 days after the publication of this notice. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Parties are also requested to submit such arguments, and public versions thereof, with an electronic version on a diskette.

Upon publication of the final results of this review, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Because we are applying adverse facts available to all exports of subject merchandise produced or exported by Silcotub, we will instruct CBP to assess the final percentage margin against the entered customs values on all applicable entries during the period of review.

Further, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of seamless pipe from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) The cash–deposit rate for Silcotub will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not

covered by this review, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered by this review, a prior review, or the original LTFV investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash–deposit rate will be 13.06 percent, the all–others rate established in the 2002–03 administrative review. See *2002–03 Final Results*, 70 FR at 7239. These cash–deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 4, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–103 Filed 1–9–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE.

International Trade Administration

A–570–890

Wooden Bedroom Furniture from The People's Republic of China: Notice of Court Decision Not in Harmony

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On December 20, 2005, the United States Court of International Trade (''Court'') sustained the final remand determination made by the Department of Commerce (''the Department'') pursuant to the Court's remand of the amended final determination of the investigation of wooden bedroom furniture from the People's Republic of China. *See Decca Hospitality Furnishings, LLC v. United States*, Ct. No. 05–00002, Slip Op. 05–161 (Ct. Int'l Trade December 20, 2005) (''*Decca Remand II*''). This case arises out of the Department's Final *Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004), as amended, 70 FR 329 (January 4, 2005) (''*Final Determination*''). The final judgment in this case was not in harmony with the Department's January 2005 *Final Determination*.

EFFECTIVE DATE: January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0414.

SUPPLEMENTARY INFORMATION:

Background

In *Decca Hospitality Furnishings, LLC v. United States*, 391 F. Supp. 2d 1298 (CIT 2005), the Court remanded the Department's determination to reject, as untimely, certain information submitted by Decca Hospitality Furnishings, LLC on behalf of its affiliate Decca Furniture, Ltd. (''Decca''). Specifically, the Court's order directed that:

> In its remand determination Commerce may reopen the record and may find (a) that Decca received actual and timely notice of the Section A Questionnaire requirement, (b) that the evidence Decca presented does not satisfy the evidentiary requirements for a separate rate, or (c) that Decca is entitled to a separate rate.

Id. at 1317.

On October 25, 2005, the Department issued its draft results of redetermination pursuant to remand for comment by the interested parties. On October 27, 2005, Decca submitted comments in response to the Department's draft results of redetermination. No other party filed comments in response to the Department's draft results of redetermination pursuant to remand. On November 7, 2005, the Department issued its final results of redetermination pursuant to remand to the Court. The remand redetermination explained that option (a) of the Court's remand instructions was not a viable option for the Department to pursue because it was not possible for the Department to determine if Decca received actual and timely notice of the Section A Questionnaire requirement. Therefore, pursuant to options (b) and (c), the Department reopened the record and allowed Decca to resubmit its July 2, 2004, submission in order to analyze the evidence presented by Decca to determine its eligibility for a separate rate. Additionally, the Department issued two supplemental questionnaires to Decca to address some deficiencies found in Decca's July 2, 2004, submission. Decca submitted timely and complete responses to these questionnaires. Based on our analysis of Decca's evidence, we determined that Decca qualifies for a separate rate in the investigation of wooden bedroom furniture from the PRC. *See Final Results of Redetermination Pursuant to Court Remand*, November 7, 2005.

On December 20, 2005, the Court found that the Department duly complied with the Court's remand order and sustained the Department's remand redetermination. See Decca Remand II. The granting of a separate rate to Decca changes Decca's antidumping duty rate from the PRC–wide rate of 198.08 percent to the Section A respondent rate of 6.65 percent.

Timken Notice

In its decision in *Timken Co., v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (''Timken''), the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's decision in *Decca Remand II* on December 20, 2005, constitutes a final decision of that court that is not in harmony with the Department's final determination of sales at less than fair value. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or, if appealed, upon a final and conclusive court decision.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: December 20, 2005.

Gary S. Taverman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–77 Filed 1–9–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–533–821)

Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain hot–rolled carbon steel flat products from India for the period January 1, 2004, through December 31, 2004, the period of review (POR). For information on the net subsidy rate for the reviewed company, see the ''Preliminary Results of Review'' section, *infra*. If the final results remain the same as the preliminary results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the ''Preliminary Results of Administrative Review'' section, *infra*. Interested parties are invited to comment on these preliminary results. (*See* the ''Public Comment'' section, *infra*).

EFFECTIVE DATE: January 10, 2006.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or Preeti Tolani, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1767 or (202) 482–0395, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2001, the Department published in the **Federal Register** the CVD order on certain hot–rolled carbon steel flat products from India. *See Notice of Amended Final Determination and Notice of Countervailing Duty Orders: Certain Hot–Rolled Carbon Steel Flat Products from India and Indonesia*, 66 FR 60198 (December 3, 2001) (*Hot–Rolled Amended Final Determination*). On December 1, 2004, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 69889 (December 1, 2004). On December 30, 2004, we received a timely request for review from Essar Steel Ltd. (Essar), an Indian producer and exporter of subject merchandise, and on January 3, 2005, we received an untimely request for review from petitioner.[1] On January 31, 2005, the Department initiated an administrative review of the CVD order on certain hot–rolled carbon steel flat products from India, covering POR January 01, 2004 through December 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 4818 (January 31, 2005).

On February 3, 2005, the Department issued a questionnaire to the Government of India (GOI) and Essar. We received questionnaire responses from Essar on April 11, 2005, and from the GOI on April 7, 2003. On June 28, 2005, we issued supplemental questionnaires to the GOI and Essar; the responses were received on July 11, 2005, from the GOI and July 20, 2005, from Essar. On August 18, 2005, the Department issued a second supplemental questionnaire to Essar. On August 25, 2005, Essar provided a response.

On May 2 and June 29, 2005, petitioner submitted new subsidy allegations. These allegations covered the following programs: GOI's provision of high–grade iron ore for less than adequate remuneration, the State Government of Gujarat's (SGOG) tax incentives, and the State Government of Maharashtra's (SGOM) tax incentives. On July 19, 2005, the Department initiated an investigation of the new subsidy allegations. *See* Memorandum to Melissa G. Skinner regarding ''Administrative Review of the Countervailing Duty Order on Certain Hot–Rolled Carbon Steel Flat Products from India, New Subsidy Allegations'' (New Subsidy Allegation Memorandum). On July 19, 2005, additional supplemental questionnaires were issued to the GOI and Essar. The responses were received on August 10 and August 25, 2005, from Essar and on September 2, 2005, from the GOI. On September 12, 2005, we issued a supplemental questionnaire to the GOI and on September 20, 2005, to Essar. We received responses from the GOI on October 7 and 14, 2005, and from Essar on October 4 and 11, 2005.

On September 7, 2005, the Department published in the **Federal Register** an extension of the deadline for the preliminary results. *See Notice of Extension of Time Limits for Preliminary Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India*, 70 FR 53166 (September 7, 2005).

On October 20 through October 28, 2005, we conducted verifications of the questionnaire responses of the GOI and Essar in New Delhi and Mumbai, India.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The only company subject to this review is Essar. This review covers eleven programs.

Scope of Order

The merchandise subject to this order is certain hot–rolled flat–rolled carbon–quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in the scope of this order are vacuum–degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high–strength low–alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low–carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or

[1] Petitioner in this case is United States Steel Corporation.

2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico–manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is currently classifiable in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled flat–rolled carbon–quality steel covered by this order, including: vacuum–degassed fully stabilized; high–strength low–alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Subsidies Valuation Information

Benchmarks for Loans and Discount Rate

Benchmark for Short–Term Loans

In accordance with 19 CFR 351.505(a)(3)(ii), for those programs requiring the application of a short–term benchmark interest rate where the firm has no comparable commercial loans, the Department may use a national average interest rate for comparable commercial loans. Essar did not have any comparable, commercial loans denominated in the appropriate foreign currency. Therefore, we are using the currency–specific ''Lending rates'' from private creditors as published in the *International Financial Statistics*. *See Final Affirmative Countervailing Duty Determination: Certain Hot–Rolled Carbon Steel Flat Products from India*, 66 FR 49635 (September 28, 2001) (*HRC Investigation*), and the Accompanying Issues and Decision Memorandum (HRC Investigation Decision Memo), at Benchmarks for Loans and Discount Rate.

Benchmark for Long–Term Loans issued up to 2000

For those programs requiring a rupee–denominated discount rate or the application of a rupee–denominated, long–term benchmark interest rate, we used, where available, company–specific, weighted–average interest rates on commercial long–term, rupee–denominated loans. We note, however, that Essar did not have rupee–denominated, long–term loans from commercial banks for all required years. Therefore, for those years for which we did not have company- specific information, we relied on a rupee–denominated, long–term benchmark interest rate from the immediately preceding year as directed by 19 CFR 351.505(a)(2)(iii).

Benchmark for Long–Term Loans issued in 2001 and 2002

In the most recently completed administrative review, we found Essar to be uncreditworthy during 2001 and 2002. *See Final Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India*, 69 FR 26549 (May 13, 2004) (*HRC First Review Final*), and Accompanying Issues and Decision Memorandum (HRC First Review Decision Memo). As no new evidence has been provided to the Department with respect to Essar's uncreditworthiness during 2001 and 2002, we will continue to apply the uncreditworthy methodology for those programs requiring a long–term benchmark for 2001 and 2002. For our long–term interest rate, we used India's prime lending rate (PLR), as published by the Reserve Bank of India (RBI). We note that we converted the PLR into a benchmark interest rate for uncreditworthy companies using the formula set forth in 19 CFR 351.505(a)(3)(iii).

Benchmark for Long–Term Loans issued from 2003 and 2004

For those programs requiring a rupee–denominated discount rate or the application of a rupee–denominated, long–term benchmark interest rate, we used company–specific interest rates, as reported by Essar.

Programs Preliminarily Determined To Be Countervailable

1. Export Promotion Capital Goods Scheme (EPCGS)

The EPCGS provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. Under this program, producers may import capital equipment at reduced rates of duty by undertaking to earn convertible foreign exchange equal to five times the CIF value of capital goods to be fulfilled over a period of eight years (12 years in the case where the CIF value is Rs. 100 Crore[2]). For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus penalty interest.

In prior proceedings, we determined that import duty reductions provided

[2] A crore is equal to 10,000,000 rupees.

under the EPCGS constituted a countervailable export subsidy. *See e.g., Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 34950 (May 16, 2002) (*PET Film*), and PET Film Issues and Decision Memorandum (PET Film Decision Memo), at section II.A.4. ''EPCGS.'' Specifically, the Department found that under the EPCGS program, the GOI provides a financial contribution under section 771(5)(D)(ii) of the Tariff Act of 1930, as amended (the Act), in the form of revenue foregone that otherwise would be due, that a benefit is thereby conferred, as defined by section 771(5)(E) of the Act, and that this program is specific under section 771(5A)(B) of the Act because it is contingent upon export performance. No new information or evidence of changed circumstances has been provided with respect to this program. Therefore, we continue to find that import duty reductions provided under the EPCGS are countervailable export subsidies.

We have determined the benefit under this program in accordance with our findings and treatment of benefit in *HRC Investigation* and *PET Film. See HRC Investigation* at Analysis of Programs I.E. ''Export Promotion of Capital Goods Scheme (EPCGS)'' and PET Film Decision Memo, at section II.A.4. ''EPCGS.'' Specifically, there are two benefits under the EPCGS program. The first benefit is the amount of unpaid duties that would have to be paid to the GOI if the export requirements are not met. The repayment of this liability is contingent on subsequent events, and in such instances it is the Department's practice to treat any balance on an unpaid liability as an interest–free loan. *See* 19 CFR 351.505(d)(1). Because Essar had not yet met its export obligation, we preliminarily determine that the company has an outstanding contingent liability during the POR. We further determine that the amount of the contingent liability to be treated as an interest–free loan is the amount of the import duty reduction or exemption for those EPCGS licenses which Essar applied but, as of the end of the POR, had not received a waiver of its obligation to repay the duties from the GOI.

Accordingly, for those unpaid duties for which Essar has yet to fulfill its export obligations, we determine the benefit to be the interest that Essar would have paid during the POR had it borrowed the full amount of the duty reduction at the time of import. Pursuant to 19 CFR 351.505(d)(1), we used a long–term interest rate as our benchmark to calculate the benefit of a contingent liability interest–free loan because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period for Essar to fulfill its export commitments) occurs at a point in time more than one year after the date the capital goods were imported. Specifically, we used the calculated long–term benchmark interest rate for Essar, as described in the ''Subsidies Valuation'' section, *supra*. The rate used corresponded to the year in which Essar imported the item under the program. Consistent with our policy, absent acknowledgment from the GOI that the liability has been eliminated, we continue to treat benefits of these licenses as contingent liabilities. *See* ''Export Promotion of Capital Goods Scheme (EPCGS)'' section from the HRC First Review Decision Memo.

The second benefit is the waiver of import duty on imports of capital equipment covered by those EPCGS licenses for which export requirements have been met. Essar reported that it imported machinery under the EPCGS in the years prior to the POR and during the POR. Upon importation under these licenses Essar received reduced import duty liabilities and agreed to the export obligations prescribed under the program, as noted above. For some of its licenses, Essar reported to the GOI that it met its export requirements and requested waiver of the obligation to repay the duties otherwise due for importation of the equipment. For certain EPCGS licenses Essar provided evidence that the GOI granted these waivers during the POR. For those licenses upon which waivers were granted, we followed our methodology set forth in the *HRC Investigation* and summed the benefits. We then performed the 0.5 percent test to determine whether the benefit should be allocated or expensed. For one license waived in 2002, we divided the benefit by Essar's export sales for 2002 and found that the benefit was less than 0.5 percent. Consistent with the policy set forth in 19 CFR 351.524(b)(2), we expensed that license during the year in which it was waived. For other waived licenses, we found that the benefit exceeded the 0.5 percent test and we are allocating the benefit pursuant to the methodology described under 19 CFR 351.524(d)(1).

Essar reported that it paid application fees in order to obtain its EPCGS licenses. We preliminarily determine that the application fees paid by Essar qualify as an ''application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy.'' *See* section 771(6)(A) of the Act. As a result, we have offset the benefit in an amount equal to the fees paid.

To calculate the subsidy rate, we summed the benefits from the waived licenses and those licenses which have yet to be waived, which we determine conferred a benefit on Essar in the form of contingent liability loans. Where licenses related to imports of capital goods during 2004, we prorated the contingent liability by the actual number of days. After subtracting the application fees, we divided Essar's total benefit under the program by its respective total export sales during the POR. On this basis, we preliminarily determine the net countervailable subsidy from this program to be 2.12 percent *ad valorem*.

2. State Government of Gujarat Tax Incentives

Pursuant to a 1995 Industrial Policy of Gujarat and an Incentive Policy of 1995–2000, the SGOG offered incentives, such as sales tax exemptions and deferrals, to companies that locate or invest in certain disadvantaged or rural areas in the State of Gujarat. A company could be eligible to claim exemptions or deferrals valued up to 90 percent of the total eligible capital investment. These policies exempt companies from paying sales tax on the purchases of raw materials, consumable stores, packing materials and processing materials. There are two schemes available under this policy: Pioneer and Prestigious. To be eligible for the incentives, companies must make a fixed capital investment of over 5 crores (Pioneer scheme) or 300 crores (Prestigious scheme) in a qualified under–developed area in the state of Gujarat. *See* the January 3, 2006, Memorandum to Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, from Tipten Troidl and Preeti Tolani, Case Analysts, Regarding: Countervailing Duty Administrative Review of Certain Hot–Rolled Carbon Steel Flat Products from India: Verification of the Questionnaire Responses Submitted by the Government of India, at pages 3–4 (GOI Verification Report). The amount of this eligible capital investment is linked to the amount of the incentives received over a period of eight to fourteen years, depending on the category of participation. For the Pioneer scheme, which initially began in 1986, companies making a capital investment during 1986 and 1991 were allowed to utilize this program. For the Prestigious scheme, tax incentives were offered only for investment units which started

production between 1990 and 1995. *See* GOI Verification Report at 4.

During the current review, we found that Essar had investments under both the Pioneer and the Prestigious schemes. During the POR, Essar only took sales tax exemptions. In *PET Resin*, the Department determined that the purchases under these two schemes resulted in companies not paying the state sales tax otherwise due, and thus constituted a countervailable subsidy. *See Final Affirmative Countervailing Duty Determination: Bottle–Grade Polyethylene Terephthalate (PET) Resin from India*, 70 DR 13460 (March 21, 2005) (*PET Resin*), and Accompanying Issues and Decision Memorandum (PET Resin Decision Memo) at page 10.

Consistent with our findings in *PET Resin*, we preliminarily find that this program is countervailable. It is limited to only those companies that make an investment in a specified disadvantaged area and is therefore specific under section 771(5A)(D)(iv) of the Act. We also preliminarily find that the SGOG provides a financial contribution under section 771(5)(D)(ii) of the Act by foregoing the collection of sales tax revenue and that Essar receives a benefit under section 771(5)(E) of the Act in the amount of sales tax that Essar does not pay.

Essar reported that it claimed tax exemptions on purchases during the POR. To calculate the benefit under this program we multiplied the tax rate by the amount of purchases Essar reported it claimed tax exemptions for in 2004. We summed the amounts for both the Pioneer and Prestigious schemes. We then divided this amount by Essar's total sales. On this basis, we preliminarily calculated an *ad valorem* rate of 0.12 percent for 2004.

3. Bombay Relief Undertaking (BRU) Act

Enacted in 1958 and later amended in 1974, the BRU is a provincial law enacted by the SGOG that is intended to safeguard employment. Under the BRU, companies designated as ''relief undertakings'' have all litigation against them stayed for a period of one year. In disputes between companies and their creditors, the effect is that principal and interest payments are also put on hold, as a creditor is unable to sue for collection. During the time in which litigation is stayed, the company has the opportunity to become current on its financial debts. Subsequent BRU declarations are allowable after the initial declaration. A company can be protected under the BRU for up to ten years. To be designated as a relief undertaking, a company must submit an application which the SGOG evaluates according to three criteria: (1) Whether the company's balance sheet indicates a loss, (2) whether there is an allegation that unemployment will occur if the applicant is not declared a relief undertaking, and (3) whether there is information demonstrating that the company has the potential to turn itself around.

Essar was declared a relief undertaking and was granted protection beginning on March 19, 2002. *See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from India*, 69 FR 907 (January 7, 2004) (*HRC First Review Prelim*) at 911. The Department determined that the SGOG's protection of Essar from litigation under the BRU constituted a financial contribution under section 771(5)(B)(iii) of the Act. In particular, we found that by granting Essar protection under the BRU and by prohibiting Essar's creditors from pursing any pending litigation against the company, ''the SGOG directed the creditors to not collect principal and interest payments on loans that otherwise would be due.'' *HRC First Review Final* and HRC First Review Decision Memo at page 5. Moreover, we found that under section 771(E)(ii) of the Act, Essar benefitted under this program ''in an amount equal to the principal and interest it would have had to pay absent the legal protection afforded under the BRU.'' *Id.* Lastly, the Department found this program was specific under section 771(5A)(D)(iii)(I) of the Act.

During this POR, Essar applied for and was granted an extension of its original one-year protection under the BRU. Its initial application for an extension was denied by the SGOG, but upon amending its application to seek protection only from unsecured foreign lenders, Essar's request for an extension was granted. *See* GOI's July 11, 2005, submission at page 13 and Exhibit 8. The SGOG extended Essar's BRU protection for a one-year period from September 11, 2003, to September 10, 2004. In granting Essar protection, the SGOG stated that it was ''. . . pleased to direct that dues of the foreign un-secured lenders only, in relation to the said undertaking rights, privileges, obligations, liabilities (other than those liabilities etc, towards its employees) occurred or incurred before dated 11th September, 2003 and remedy for the enforcement thereof shall be suspended and proceedings relating thereto pending before any Court, Tribunal, officer or Authority shall be stayed during one year commencing from 11th September, 2003 and ending on 10th September, 2004.'' *Id.*

With respect to the issue of specificity, during the course of this review we asked the SGOG to provide certain information regarding the application process and approval of BRU protection as well as the companies granted relief undertaking status. In our initial questionnaire, our June 28, 2005, supplemental and our September 14, 2005, supplemental, we asked the SGOG to submit information on the companies and industries who applied for and were granted relief during the POR. In their October 7, 2005, questionnaire response, the SGOG submitted a list of only those companies that were granted either initial protection or an extension of their protection. They did not provide any information on those companies who applied for relief and whose applications were rejected. During the time period that Essar was granted its second protection under BRU, the SGOG granted five companies initial protection, 10 companies (including Essar) an extension of their initial protection, one company a third extension, and 3 companies a fourth extension of their protection, for a total of 19 companies in 10 industries. However, the SGOG did not provide the information requested concerning the number of companies whose applications were rejected.

In the *HRC First Review Prelim*, the Department found that eight companies were granted protection in 2001 and six in 2002, while 25–30 applicants had submitted applications during that time. In light of the existence of generic criteria, the absence of any specific measure for evaluating the criteria, and the number of companies whose applications were rejected, the Department determined that the SGOG exercised discretion in a manner in which it grants approval under this program to a limited number of users, leading the Department to determine the program was *de facto* specific.

In this review, the SGOG did not provide the Department with the information it requested on this issue. Section 776(a)(2)(A) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department. As described above, the SGOG failed to provide the requested information concerning the total number of applications during this review. Therefore, we must resort to the use of facts otherwise available. Furthermore, section 776(b) of the Act provides that in selecting from among the facts available, the Department may

use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Department finds that, by not providing necessary information specifically requested by the Department, despite numerous opportunities, the SGOG has failed to cooperate to the best of its ability. Therefore, in selecting from among the facts otherwise available, the Department determines that an adverse inference is warranted. When employing an adverse inference in an administrative review, section 776(b) of the Act allows the Department to rely upon information derived from the petition, a final determination in the investigation, any previous review or any other information placed on the record. In applying adverse facts available in the instant review, we have used information on the record of this administrative review. Therefore, as adverse facts available, as consistent with the our findings in the last administrative review, and because the SGOG did not provide us with the number of applicants, the Department preliminarily concludes that the SGOG continues to exercise discretion in the manner in which it grants approval under this program to a limited number of users. Therefore, we preliminarily find this program to be specific under section 771(5A)(D)(iii)(I) of the Act.

Essar has argued that it did not have any protection from the government under the BRU since it expired in 2004. *See* Essar's August 25, 2005, submission at page 7, and October 4, 2005, submission at page 5. Moreover, during verification Essar officials explained that although one creditor had sued Essar in a London court, pending the outcome of the litigation, Essar had placed the full amount of the loan into a reserve account with the Court. Essar further explained that if the creditor wins the litigation, the creditor will receive the amount in this reserve; however, if the Court rules in favor of Essar, the amount in the reserve account will be returned. *See* the January 3, 2006, Memorandum to Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 3, from Tipten Troidl and Preeti Tolani, Case Analysts, Regarding: Countervailing Duty Administrative Review of Certain Hot–Rolled Carbon Steel Flat Products from India: Verification of the Questionnaire Responses Submitted by Essar Steel Ltd. (Essar Verification Report), at page 11. However, Essar was not able to submit any documentation to support this claim. Absent any such documentation, we were unable to verify this claim.

Therefore, the Department preliminarily determines that the SGOG's protection of Essar from litigation under the BRU continues to constitute a financial contribution under section 771(5)(B)(iii) of the Act to the extent that the SGOG is prohibiting Essar's creditors from pursuing any pending litigation against the company and thereby directing creditors not to collect principal and interest payments on loans that otherwise would be due. We also preliminarily find that Essar receives a benefit under this program in an amount equal to the interest and principal it would have had to pay absent the legal protection afforded under the BRU.

To calculate the benefit to Essar, we summed the amount of interest and principal payments that Essar would have otherwise been required to make had it not been under the protection of the BRU. We treated these payments as interest–free short–term loans. Therefore, we calculated the interest that would have been due by the interest rate listed in their loan agreement. *See* the GOI's July 11, 2005, submission at page 80, Annexure 8. We added this amount to the outstanding principal and multiplied the sum by the short–term interest benchmark, as discussed in the ''Benchmarks for Loans and discount Rate'' section, *supra*. We then divided this amount by Essar's total sales for 2004. As information on the record indicates that the protection under the BRU expired on September 10, 2004, we are only calculating a net subsidy rate for this program up to that date. On this basis, we preliminarily find that Essar received a countervailable subsidy of 0.63 percent *ad valorem*.

4. Sale of High–Grade Iron Ore for Less Than Adequate Remuneration

On May 2 and June 29, 2005, petitioner submitted new subsidy allegations, alleging that the GOI, through the government–owned National Mineral Development Corporation (NMDC), provided high–grade iron ore to Essar for less than adequate remuneration. On July 19, 2005, the Department initiated an investigation into whether Essar received a direct subsidy from the GOI when purchasing iron ore from the NMDC. *See* New Subsidy Allegation Memorandum.

Essar reported that it purchased high–grade iron ore (*i.e.*, iron ore with Fe content of 64 percent or above) from the NMDC during the POR. In accordance with section 771(5) of the Act, to find a countervailable subsidy, the Department must determine that a government provided a financial contribution and that a benefit was thereby conferred, and that the subsidy is specific within the meaning of section 771(5A) of the Act.

Section 771(5)(D)(iii) of the Act states that the provision of a good or service (other than general infrastructure) by a government (or any public entity) constitutes a financial contribution. During verification, the Department found that the NMDC is a mining company governed by the GOI's Ministry of Steel and that the GOI holds 98 percent of its shares. *See* GOI Verification Report, at page 5. Accordingly, we preliminarily determine that the NMDC is a part of the GOI. Therefore, we preliminarily find that the GOI directly, through the government–owned NMDC, provided a financial contribution as defined under section 771(5)(D)(iii) of the Act to Essar.

We preliminarily find that the GOI's provision of high–grade iron ore is specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipient of the subsidy is limited to industries that use iron ore, including the steel industry, and is thus limited in number.

Section 771(5)(E)(iv) of the Act provides that a benefit is conferred by a government when the government provides the good or service for less than adequate remuneration. Pursuant to 19 CFR 351.511(a)(2)(i) the Department will normally seek to measure the adequacy of remuneration by comparing the government price for the goods or service to a market–determined price resulting from actual transactions in the country in question. The regulations provide that such market–determined prices could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. In seeking a market–determined benchmark price, we found that Essar purchases more than 98 percent of its high–grade iron ore from NMDC, and the remainder from a mine run by the State of Orissa. *See* Essar Verification Report at page 19. Moreover, the record contains no information on actual transaction prices between private parties in India. Additionally, a review of GOI import statistics demonstrates that there is no distinction in iron ore imports based on grade so we have no basis to determine whether import statistics reflect prices associated with imports of high–grade iron ore. Therefore, the Department preliminarily determines that there is no record information regarding actual transactions between private parties that

could be used as an ''in–country'' benchmark to compare against Essar's purchases from NMDC. Thus, the Department is unable to measure the adequacy of remuneration using actual market–determined prices in India, as directed by 19 CFR 351.511(a)(2)(i).

Under 19 CFR 351.511(a)(2)(ii), where actual market–determined prices are not available with which to make the comparison under paragraph (a)(2)(i), the Department will seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such prices would be available to purchasers in the country in question. This second tier directs the Department to examine prices which it would be reasonable to conclude that purchasers could obtain in India. Information on the record indicates that there are prices from the world market for comparable goods which can be used as a benchmark to determine whether the GOI provides high–grade iron ore to Essar for less than adequate remuneration. During verification, NMDC and MMTC[3] officials provided copies of the *Tex Report*. The *Tex Report* is a daily Japanese publication that reports on world–wide price negotiations for iron ore.[4] The officials explained that annual negotiations occur between steel makers and iron ore suppliers, either in Japan or in other countries (including European countries). During these negotiations, the participating parties agree on a percentage change (either up or down) from the base price. *See* GOI Verification Report at page 6. The February 16, 2004, edition of the *Tex Report* reported that several Japanese integrated steelmakers had concluded negotiations with an Indian mission including MMTC, Kudremukh Iron Ore (KIOCL), and officials of the Indian government regarding prices for iron ore, including high–grade iron ore. The price for this iron ore is quoted on an FOB Indian port basis. In addition, the February 24, 2005, edition of the *Tex Report* reported that several Japanese steelmakers had concluded talks with an Australian company for high–grade iron ore. This publication includes the prices for high–grade iron ore that were set for 2004. Based upon this information, we preliminarily determine that the prices reported in the *Tex Report* constitute world market prices that would be available to Essar in accordance with 19 CFR 351.511(a)(2)(ii).

To measure the adequacy of remuneration, we compared the price that Essar actually paid for its high–grade iron ore to an average of the prices of high–grade iron ore set forth in the *Tex Reports*. We made the following adjustments to the benchmark information: We converted the iron ore lumps and fines' prices listed in U.S. cents per dry long ton to U.S. dollars. We multiplied the per unit U.S. dollar price by 64 (iron ore is priced by one unit of Fe content) to calculate a U.S. dollar high–grade iron ore amount. We then converted the dry long ton to a wet long ton. We applied the conversion from dry long ton to wet long ton for those purchases that were already listed in U.S. dollars with an Fe content of 64. We then applied the average exchange rate for 2004 to calculate a Rupee per metric ton price for high–grade iron ore. We then averaged all of the prices to arrive at the benchmark used to compare against Essar's purchases of high–grade iron ore.

To calculate the benefit, we compared Essar's monthly prices for iron ore to the benchmark rate, and multiplied this price differential by the quantity that Essar purchased from NMDC. We then divided this amount by Essar's total sales for 2004. We preliminarily calculated a rate of 0.65 percent *ad valorem*.

Program Preliminarily Determined Not To Be Used

1. Duty Free Replenishment Certificate (DFRC)

The DFRC scheme was introduced by the GOI in 2001 and is administered by the Director–General for Foreign Trade (DGFT). The DFRC is a duty replenishment scheme that is available to exporters for the import of inputs used in the manufacture of goods without payment of basic customs duty. The DFRC differs from other duty exemption schemes previously reviewed by the Department to the extent that the exemption is earned on specified exports and is applicable to future imports. In order to receive a license, which entitles the recipient to import duty free certain inputs used in the production of the exported product, as identified in a Standard Input/Output Norm (SION), within the following 24 months, a company must: (1) export manufactured products listed in the GOI's export policy book and against which there is a SION for inputs required in the manufacture of the export product based on quantity; and (2) have realized the payment of export proceeds in the form of convertible foreign currency. See GOI Verification Report at 10; *see also* the GOI's July 11, 2005, submission at page 70, Annexure 6. The application must be filed within six months of the realization of the profits. DFRC licenses are transferrable, yet the transferee is limited to importing only those products and in the quantities specified on the license. *Id*.

Essar exported merchandise during the POR for which it applied for a DFRC license. However, it did not receive its DFRC license until after the POR. Although 19 CFR 351.519(b)(2) provides that the Secretary will normally consider any benefit from a duty drawback or exemption program as having been received as of the date of exportation, we preliminary find that an exception to this normal practice is warranted here in view of the unique manner in which this program operates. Specifically, a company may not submit an application for a DFRC license until the proceeds of the sale are realized. The license, once granted, specifies the quantity of the particular inputs that the bearer may then subsequently import duty free.

In *HRC First Review Final*, we noted that the benefits from another duty exemption program, the Duty Entitlement Passbook Scheme, were conferred as of the date of exportation of the shipment because it is at that point that ''the amount of the benefit is known by the exporter.'' *See* HRC First Review Decision Memo at page 6. However, in the case of the DFRC, the company does not know at the time of export the value of the duty exemption that it will ultimately receive; it merely knows the quantity of the inputs it will likely be able to import duty free if its application for a DFRC license is granted. Unlike the Duty Entitlement Passbook Scheme, under the DFRC program the respondent will only know the total value of the duty exemption when it subsequently uses that license to import the specified products duty free.

Accordingly, we preliminarily determine that any benefit from the DFRC program would be received as of the date of the exemption of payment of duties. In this case, the benefit would not be received until Essar began to import inputs and claim the exemption. Because Essar did not receive the license for the POR export until 2005, we preliminarily determine that this program was not used during this POR.

[3] MMTC was formally called Minerals & Metals Trading Corporation.

[4] Copies of several issues of the *Tex Report* reporting on negotiated iron ore prices with Australian, Brazilian iron ore producers and Japanese and European steel makers are provided as an exhibit E-15 of the Essar Verification Report.

2. Pre–shipment Export Financing

3. Duty Entitlement Passbook (DEPS)

4. Target Plus Scheme

5. Advance Licenses

6. Tax Incentives from the State Government of Maharashtra (SGOM)

Programs Preliminary Found Not To Be Countervailable

1. Corporate Debt Restructuring

On August 23, 2001, and February 5, 2003, the RBI and the government bank of India set forth guidelines for corporations and their creditors to follow during the course of a corporate debt restructuring (''CDR''). *See* the GOI's July 11, 2005, submission at page 40, Annexure 2. The CDR mechanism has a set of guidelines that all companies must follow. *See* GOI's Verification Report at page 2.

The organization of the CDR mechanism has three levels: the CDR Core Group, the Empowered Group and the CDR Cell. *See id*; *see also HRC First Review Prelim* at 913. The Core Group is responsible for overseeing the CDR as a whole, while the Empowered Group is responsible for making the decision on the restructuring packages. The CDR Cell works with the company and oversees the restructuring package. *Id*. The CDR cell is comprised of the company's main lenders and it oversees the actual restructuring of the company. *Id*.

Essar was one such company that, at the determination of its creditors, participated in such a restructuring program. Essar's restructuring involved debt from private lenders as well as from lending institutions owned/controlled by the GOI. In the *HRC First Review Final* we determined that Essar did not use the CDR program during the POR. *See HRC First Review Final* and HRC First Review Decision Memo at Corporate Debt Restructuring (CDR) page 7. Specifically, in the *HRC First Review Prelim*, we found that the restructuring plan for Essar did not take effect until after the POR. *See HRC First Review Prelim*. Essar's debt restructuring was in effect and covered debt outstanding during the period of the current review.

The Department does not automatically find reorganizations, workout programs or bankruptcy proceedings to be countervailable. Rather, the Department must find that the program is not generally available in the country or, if it is generally available in the country in question, that it is provided in a manner that is inconsistent with typical practice. *See e.g.*, *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004), and Accompanying Issues and Decision Memorandum at Comment 4 (where the Department found that KAMCO's debt forgiveness to Sammi was not specific or preferential as it was similar to debt forgiveness to other companies in court receivership where KAMCO was the lead creditor) and *Final Affirmative Countervailing Duty Determination and Negative Critical Circumstances Determination: Carbon and Certain Alloy Seel Wire Rod from Germany*, 67 FR 55808 (August 30, 2002), and Accompanying Issues and Decision Memorandum at 24–25 (where the Department found that Saarstahl and its creditors followed established procedures and that there was no evidence indicating that the German government acted in a manner that caused the terms of Saarstahl's bankruptcy/restructuring proceedings to be unduly favorable to the company).

In the prior administrative review of this order, the Department found that the RBI and a group of lenders introduced the CDR Mechanism to restructure corporations' debt in August 2001. *See HRC First Review Prelim* at 913. The Inter–Creditor Agreement (ICA) was signed in February 2002 to deal with the increasing amount of non–performing assets that banks were holding. The RBI and the CDR Standing Forum, which consisted of members from various banks in India, reviewed other countries' restructuring programs and ultimately based the CDR framework on the London Approach. The CDR is a non–statutory and voluntary organization whose members are bound by the ICA. Lender participation in the CDR is voluntary. However, when a restructuring package is accepted by at least 75 percent of the lenders, the remaining 25 percent must either comply with the terms of the agreement, or, if they decide to opt out, they may take a payout at a discounted rate. *Id*.

We preliminarily determine that Essar did not receive a benefit from any government–provided financial contribution during the course of its restructuring. Record evidence indicates that Essar and its creditors followed the existing framework and guidelines of the CDR and that Essar's participation in the restructuring program was made at the behest of its secured creditors. There is no evidence of government influence over the decision making ability of the CDR cell, and/or any private lenders.

In view of the fact that there is no evidence of government influence over the decision making ability of the CDR cell and given that the private lenders freely agreed to be a part of Essar's CDR restructuring package, we preliminarily find that Essar's loans from private lenders that were included as part of Essar's restructuring package serve as a comparable commercial benchmark for evaluating the concurrently restructured loans from the GOI–owned/controlled lenders.[5] Exhibit 2 of Essar's July 20, 2005, submission provides a list of Essar's restructured loans from both private and GOI–owned/controlled banks and demonstrates that Essar's loans from private and government banks were restructured on the same terms, including at the same interest rates. Further, a review of Essar's approved restructuring package and amendments to that approved restructuring package further demonstrates that there was no distinction in the treatment of debt from private and government banks. The GOI–owned/controlled banks, which held a minority share of Essar's debt, agreed to the same terms and conditions set by the company's private creditors. Therefore, we preliminarily determine that this program is not countervailable as Essar did not receive any benefit from any GOI–provided financial contribution.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a subsidy rate for Essar subject to this administrative review, for 2004. We preliminarily determine the total estimated net countervailable subsidy rate is 3.52 percent *ad valorem* for 2004.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct CBP, within 15 days of publication, to liquidate shipments of certain hot–rolled carbon steel flat products from India entered, or withdrawn from warehouse, for consumption from January 1, 2004, through December 31, 2004 at 3.52 percent *ad valorem* of the f.o.b. invoice price on all shipments of the subject merchandise from Essar. Also, the rate of cash deposits of estimated countervailing duties will be set at 3.52

[5] As it is the Department's practice to treat any material change to an outstanding loan as a new loan, the restructured loans from GOI-owned/controlled banks can be considered to be contemporaneous with the private-lender loans. *See e.g.*, *Final Affirmative Countervailing Duty Determinations: Certain Cut-to-Length Carbon Steel Plate from Mexico*, 69 FR 1972 (January 13, 2004), and Accompanying Issues and Decision Memorandum at Comment 4; *Final Affirmative Countervailing Duty Determinations: Stainless Steel Plate in Coils from Italy*, 64 FR 15508, 15516 (March 31, 1999).

percent *ad valorem* for all shipments of certain hot–rolled carbon steel flat products made by Essar from India entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review. The Department will issue appropriate instructions directly to CBP within 15 days of the final results of this review.

Because the Uruguay Round Agreements Act (URAA) replaced the general rule in favor of a country–wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non–reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. A requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal–Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the pre–URAA antidumping regulation on automatic assessment, which was identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non–reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. *See HRC Amended Final Determination*, 66 FR 60200. These rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested. In addition, for the period April 20, 2001, through December 31, 2002, the assessment rates applicable to all non–reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, 37 days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 677f(I)(1)).

Dated: January 3, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–105 Filed 1–9–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092705C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendments 14 and 15 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico and Amendments 27 and 28 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico; Scoping Meetings

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

ACTION: Notice; intent to prepare draft supplemental environmental impact statements (DSEISs), scoping meetings, request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) previously published a notice of intent in the **Federal Register** (70 FR 57859, October 5, 2005) to prepare a DSEIS for a joint Amendment 14 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the Gulf of Mexico (Shrimp FMP) and Amendment 27 to the FMP for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP). This notice supplements the previous notice and provides notice of the Council's intent to prepare a second DSEIS for a subsequent joint Amendment 15 to the Shrimp FMP and Amendment 28 to the Reef Fish FMP. The alternatives in the two joint amendments will consider measures to reduce red snapper fishing mortality and bycatch in the shrimp and reef fish fisheries, and to achieve optimum yield (OY) in the shrimp fishery. The purpose of this notice of intent is to solicit public comments on the scope of issues to be addressed in the DSEISs.

DATES: Written comments must be received by February 9, 2006.

The meetings will be held in January 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments on the scope of the DSEISs, and requests for additional information on the joint amendments, should be sent to the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; phone: 813–348–1630; fax: 813–348–1711. Comments may also be sent by e-mail to: *rick.leard@gulfcouncil.org*.

The locations of all scoping meetings are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Rick Leard by phone: 813–348–1630, by fax: 813–348–1711, or by e-mail: *rick.leard@gulfcouncil.org*.

SUPPLEMENTARY INFORMATION: Shrimp and reef fish in the Gulf of Mexico are managed under their respective FMPs. Both fisheries contribute to fishing mortality of red snapper.

Age 0 and Age 1 red snapper are taken by shrimp trawls, and Age 2 and older red snapper are caught in the directed commercial and recreational red snapper fishery. Because red snapper are overfished and are undergoing overfishing, reducing fishing mortality on these younger age classes is needed to help rebuild the stock. Actions to reduce bycatch of red snapper are anticipated to reduce bycatch fishing mortality for other reef fish species as well.

The Council previously published a notice in the **Federal Register** (70 FR 57859, October 5, 2005) announcing its intent to prepare a DSEIS for an action to jointly amend its Shrimp and Reef Fish FMPs. The Council currently is considering dividing the actions into two separate joint amendments: Shrimp Amendment 14/Reef Fish Amendment 27, and Shrimp Amendment 15/Reef Fish Amendment 28. Therefore, the Council will develop a DSEIS for each joint amendment. The DSEISs will describe and analyze management alternatives to reduce fishing mortality on red snapper in the shrimp and reef fish fisheries, and to achieve OY in the shrimp fishery. Alternatives for the joint Shrimp Amendment 14/Reef Fish Amendment 27 focus on, but are not limited to, alternatives to reduce fishing mortality and bycatch of red snapper in the directed reef fish fishery. These actions include possible adjustments to the total allowable catch for red snapper, and a suite of harvesting restrictions, such as size limits, bag limits, or gear restrictions for the directed recreational and commercial red snapper fisheries. Additional actions will consider alternatives to develop the basis for a long-term shrimp effort management strategy to be established in the second joint amendment, and to update the certification criterion for shrimp trawl bycatch reduction devices.

The second document, a joint Shrimp Amendment 15/Reef Fish Amendment 28, will focus on, but not be limited to, alternatives to restrict shrimp fishing effort to achieve OY, such as gear restrictions, limitations on permit transferability, quotas, vessel monitoring systems, and possible time-area closures for the shrimp fishery. Other actions will consider additional harvesting restrictions for the directed reef fish fisheries, including time-area closures.

The Council has scheduled the following 10 scoping meetings to provide the opportunity for additional public input: The scoping hearings will begin at 7 p.m. local time, and conclude at the end of public testimony or no later than 10 p.m. at each of the following locations:

1. Monday, January 23, 2006, Four Points by Sheraton, 3777 North Expressway, Brownsville, TX 78520, 956–547–1500;
2. Monday, January 23, 2006, Holiday Inn Mobile I–10 Bellingrath Gardens, 5465 Highway 90 West, Mobile, AL 36619, 251–666–5600;
3. Tuesday, January 24, 2006, University of Texas Marine Science Institute Auditorium, 750 Channel View Drive, Port Aransas, TX 78373, 361–749–6711;
4. Tuesday, January 24, 2006, LaFont Inn, 2703 Denny Avenue, Pascagoula, MS 39567, 228–762–7111;
5. Wednesday, January 25, 2006, Holiday Inn Galveston, 5002 Seawall Boulevard, Galveston, TX 77550, 409–740–3581;
6. Wednesday, January 25, 2006, Hilton Garden Inn Orange Beach, 23092 Perdido Beach Boulevard, Orange Beach, AL 36561, 251–974–1600;
7. Thursday, January 26, 2006, Larose Regional Park Gym, 307 East 5th Street, Larose, LA 70373, 985–693–7355;
8. Thursday, January 26, 2006, National Marine Fisheries Service Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408, 850–234–6541;
9. Monday, January 30, 2006, Tampa Marriott Westshore, 1001 North Westshore Boulevard, Tampa, FL 33607, 813–287–2555; and
10. Tuesday, January 31, 2006, DoubleTree Grand Key Resort, 3990 South Roosevelt Boulevard, Key West, FL 33040, 305–293–1818.

In accordance with NOAA Administrative Order (NAO) 216–6, Section 5.02(c), the Council has identified this preliminary range of alternatives as a means to initiate discussion for scoping purposes only. This may not represent the full range of alternatives that eventually will be evaluated by the Council.

Once the Council completes the DSEISs associated with the joint amendments to the Shrimp and Reef Fish FMPs, it will submit the documents to NMFS for filing with the Environmental Protection Agency (EPA). The EPA will publish a notice of availability of the DSEISs for public comment in the **Federal Register**. The DSEISs will have a 45-day comment period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of the National Environmental Policy Act (NEPA; 40 CFR parts 1500–1508) and to NOAA Administrative Order 216–6 regarding NOAA's compliance with NEPA and the CEQ regulations.

The Council will consider public comments received on the DSEISs in developing the final supplemental environmental impact statements (FSEISs) and before adopting final management measures for the joint amendments. The Council will submit both the final amendments and the supporting FSEISs to NMFS for review by the Secretary of Commerce (Secretary) under the Magnuson-Stevens Fishery Conservation and Management Act.

NMFS will announce, through a notice published in the **Federal Register**, the availability of the final joint amendments for public review during their respective Secretarial review periods. During Secretarial review, NMFS will also file the FSEISs with the EPA for a final 30-day public comment period. These comment periods will be concurrent with the Secretarial review periods and will end prior to final agency action to approve, disapprove, or partially approve the final joint amendments.

NMFS will announce, through a notice published in the **Federal Register**, all public comment periods on the final joint amendments and the proposed implementing regulations. The EPA will publish a notice of availability of the associated FSEISs for public comment in the **Federal Register**. NMFS will consider all public comments received during the respective Secretarial review periods, whether they are on the final amendments, the proposed regulations, or the FSEISs, prior to final agency action.

Dated: January 5, 2006.

John H. Dunnigan,

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

[FR Doc. 06–206 Filed 1–5–06; 2:43 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 123005E]

Endangered Species; Permit No. 1227

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

ACTION: Notice; modification of scientific research permit.

SUMMARY: Notice is hereby given that a request for modification of scientific research Permit No. 1227 submitted by the National Marine Fisheries Service, Southwest Fisheries Science Center (SWFSC) has been granted.

ADDRESSES: The modification 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

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of 50 CFR 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

The modification extends the expiration date of the permit from December 31, 2005, to December 31, 2006, for takes of leatherback (Dermochelys coriacea) sea turtles. The permit allows the SWFSC to conduct sea turtle research in the Pacific Ocean. The purpose of the research is to identify critical forage habitats, genetic stock structure, migratory corridors, and potential fishery impacts on this species in the Pacific Issuance of this modification, 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 any threatened and endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 5, 2006.

Steve Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–128 Filed 1–9–06; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

NCCC Advisory Board Meeting

The Corporation for National and Community Service gives notice under Public Law 92–463 (Federal Advisory Committee Act) that it will hold a meeting of the AmeriCorps National Civilian Community Corps (NCCC) Advisory Board. The Board advises the Director of the NCCC concerning the administration of the program and assists in the development and administration of the Corps:

Date and Time: Thursday, January 19, 2006, 9 a.m.–2 p.m.

Place: Corporation for National and Community Service, 1201 New York Avenue, NW., 8th Floor, Room 8312, Washington, DC 20525.

Status: Open.

Matters to be Considered: The Board will discuss a proposal that establishes two new committees of the Advisory Board, which should result in the Board being in a position to better support and advance the overall goals and objectives of the NCCC. These two committees will be concerned primarily with Board development and strategic initiatives, respectively.

Accommodations: Upon request, meeting notices will be made available in alternative formats to accommodate visual and hearing impairments. Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. Friday, January 13, 2006.

For Further Information Contact: Ms. Erma Hodge, Executive Assistant, NCCC, Corporation for National and Community Service, 10th Floor, 202–606–6696. E-mail: *ehodge@cns.gov.*

Dated: January 4, 2006.

Merlene Mazyck,

Director, National Civilian Community Corps.

[FR Doc. E6–92 Filed 1–9–06; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer 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 February 9, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

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 the Chief Information Officer, 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: January 3, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Local-Flex Application.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 6,400.

Abstract: Application for local educational agencies (LEAs) seeking to enter into local flexibility demonstration agreements (''Local-Flex'' agreements). By statute, the Department can select 80 LEAs through a competitive process with which to enter into Local-Flex agreements. These agreements give LEAs the flexibility to consolidate certain Federal education funds and to use those funds for any educational purpose permitted under the Elementary and Secondary Education Act (ESEA) in order to meet the State's definition of adequate yearly progress (AYP).

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 2914. 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., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *IC_DocketMgr@ed.gov* or faxed to 202–245–6623. 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 the e-mail address *IC_DocketMgr@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. E6–79 Filed 1–9–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 13, 2006.

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 the Chief Information Officer, 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. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 3, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Teacher Cancellation Low Income Directory.

Frequency: Annually.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 6,983.

Abstract: There are 57 State Agencies that contribute to the development of a directory of elementary and secondary schools which qualify for the teacher cancellation benefit. The directory allows post-secondary institutions to determine whether or not a teacher who received a Federal Perkins Loan, Direct loan, or Federal Family Education Loan at their school is eligible to receive a loan cancellation as provided under Title I of the Elementary and Secondary Education Act of 1965.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2964. 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., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *IC_DocketMgr@ed.gov* or faxed to 202–245–6623. 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 *IC_DocketMgr@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. E6–80 Filed 1–9–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 13, 2006.

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 the Chief Information Officer, 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. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 3, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Annual Performance Reporting (APR) Forms for NIDRR Grantees (RERCs, RRTCS, FIPs, ARRTs, DBTACs, DRRPs, D&Us, SBIRs, Research Fellowships, and Model Systems).

Frequency: Annually.

Affected Public: Not-for-profit institutions; businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 340.

Burden Hours: 5,440.

Abstract: Information collection to obtain annual performance data from NIDRR grantees. The Department of Education will use the information for monitoring of grantees, program planning, budget development and Government Performance and Results Act (GPRA) and Program Assessment Rating Tool (PART) reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2963. 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., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *IC_DocketMgr@ed.gov* or faxed to 202–245–6623. 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 the e-mail address *IC_DocketMgr@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. E6–81 Filed 1–9–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Small Business Innovative Research Program (SBIR); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133S–1.

Dates: Applications Available: January 10, 2006.

Deadline for Transmittal of Applications: March 13, 2006.

Eligible Applicants: Entities that are, at the time of award, small business concerns as defined by the Small Business Administration (SBA). This definition is included in the application package.

All technology, science, or engineering firms with strong research capabilities in any of the priority areas listed in this notice are encouraged to participate.

Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business concern must serve as the grantee.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make a SBIR award until the SBA makes a determination.

Estimated Available Funds: The Administration has requested $5,000,000 for the SBIR program for FY 2006, of which we intend to use an estimated $1,125,000 for new Phase I awards. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation for the Office of Special Education and Rehabilitative Services (OSERS), minus prior commitments for Phase II continuation awards.

Estimated Average Size of Awards: $75,000.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for a single budget period of six months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: Maximum award amount includes direct and indirect costs and fees.

Estimated Number of Awards: 15.

Estimated Range of Awards: $60,000–$75,000.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to six months for Phase I. Full Text of Announcement.

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research or research and development (R/R&D) needs, increase the commercial application of Department of Education (ED) supported research results, and improve the return on investment from Federally funded research for economic and social benefits to the Nation.

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The goals of the SBIR program are in concert with NIDRR's proposed Long-Range Plan (Plan) published in the **Federal Register** on July 27, 2005 (70 FR 43521). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister/other/2005-3/072705d.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.

Executive Order 13329—Manufacturing-Related Innovation

Executive Order 13329 states that continued technological innovation is critical to a strong manufacturing sector of the United States economy and directs Federal agencies to assist the private sector in its manufacturing innovation efforts. ED's SBIR Program encourages innovative R&D projects that are manufacturing related, as defined by the Executive Order. Manufacturing-related R&D encompasses improvements in existing methods or processes, or wholly new processes, machines or systems. Broadly speaking, ED's SBIR program encourages R&D in manufacturing through systems-level technologies, such as artificial intelligence and other information technology devices, software, systems, and product design. For more information on Executive Order 13329, please visit the following Web site: *http://www.sba.gov/sbir/execorder.html* or contact Carol Cohen at: *Carol.Cohen@ed.gov*.

Background

The Small Business Reauthorization Act of 2000 (Act) was enacted on December 21, 2000. The Act requires certain agencies, including ED, to establish SBIR programs by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns through a uniform, highly competitive three-phase process.

The three phases of the SBIR program are:

Phase I: Phase I projects determine, insofar as possible, the scientific or technical merit and feasibility of ideas submitted under the SBIR program. The application should concentrate on research that will significantly contribute to proving the scientific or technical feasibility of the approach or concept and that would be a prerequisite to further ED support in Phase II.

Phase II: Phase II projects expand on the results of and further pursue the development of Phase I projects. Phase II is the principal R/R&D effort. It requires a more comprehensive application, outlining the effort in detail including the commercial potential. Phase II applicants must be Phase I awardees with approaches that appear sufficiently promising as a result of Phase I. Awards are for periods of up to two years in amounts up to $500,000.

Phase III: In Phase III, the small business must use non-SBIR capital to pursue commercial applications of the R/R&D. Also, under Phase III, Federal agencies may award non-SBIR follow-on funding for products or processes that meet the needs of those agencies.

All SBIR projects funded by NIDRR must address the needs of individuals with disabilities and their families. 29 U.S.C. 762. Activities may include exploring the uses of technology to ensure equal access to education, employment, community environments, and information for individuals with disabilities and improving the quality and utility of disability and rehabilitation research.

Priorities: Under this competition we are particularly interested in applications that address one of the following priorities.

Invitational Priorities: For FY 2006 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these invitational priorities a competitive or absolute preference over other applications. The invitational priorities relate to innovative research utilizing new technologies to address the needs of individuals with disabilities and their families.

These priorities are:

(1) Development of technology to support access, promote integration, or foster independence of individuals with disabilities in the workplace, recreational activities, or educational settings.

(2) Development of technology to enhance sensory or motor function of individuals with disabilities.

(3) Development of technology to support access to employment, promote sustained employment, and promote employment advancement for individuals with disabilities.

(4) Development of accessible information technology including Web access technology, software, and other systems and devices that promote access to information in educational, employment, and community settings, and voting technology that improves access for individuals with disabilities.

(5) Development of technology to support independent access to health care services in the community for individuals with disabilities.

Applicants should describe the approaches they expect to use to collect empirical evidence that demonstrates the effectiveness of the technology they are proposing in an effort to assess the efficacy and usefulness of the technology.

Note: NIDRR encourages applicants to adhere to universal design principles and guidelines for more access0ble designs. Universal design is defined as ''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'' (The Center for Universal Design, 1997, n.p.). Accessible design of consumer products minimizes or alleviates barriers that reduce the ability of individuals with disabilities to effectively or safely use standard consumer products. (For more information see—*http://www.trace.wisc.edu/docs/consumer_product_guidelines/consumer.pcs/disabil.htm*.)

Reference: The Principles of Universal Design, Version 2.0. Raleigh, NC: North Carolina State University. Web: *http://www.design.ncsu.edu*).

Program Authority: The Small Business Reauthorization Act of 2000, Pub. L. 106–554 (15 U.S.C. 631 and 638) and title II of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760 *et seq.*).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $5,000,000 for the SBIR program for FY 2006, of which we intend to use an estimated $1,125,000 for new Phase I awards. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation for OSERS, minus prior commitments for Phase II continuation awards.

Estimated Average Size of Awards: $75,000.

Estimated Range of Awards: $60,000–$75,000.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for a single budget period of six months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: Maximum award amount includes direct and indirect costs and fee.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to six months for Phase I.

III. Eligibility Information

1. *Eligible Applicants:* Entities that are, at the time of award, small business concerns as defined by the SBA. This definition is included in the application package.

All technology, science, or engineering firms with strong research capabilities in any of the priority areas listed in this notice are encouraged to participate. Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business concern must serve as the grantee.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make an SBIR award until the SBA makes a determination.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the ED Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.

To obtain a copy of the application package from ED Pubs, write or call the following: ED Pubs, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133S–1.

Individuals with disabilities may 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 under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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 competition.

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. You must limit Part III to the equivalent of no more than 25 pages, excluding any documentation of prior multiple Phase II and III awards, if applicable, and required forms, 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.
- Single space 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 that 10 pitch (characters per inch).
- Draw all graphs, diagrams, tables, and charts in black ink. Do not include glossy photographs or materials that cannot be photocopied in the body of the application.

The page limit does not apply to Part II, the budget section, including the narrative budget justification; the one-page abstract; the resumes; the bibliography; the letters of support; certifications; statements; related application(s) or award(s); or documentation of multiple Phase II awards, if applicable.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Content Restrictions:* If an applicant chooses to respond to more than one invitational priority, it must submit a separate application for each priority. There is no limitation on the number of different applications that an applicant may submit under this competition. An applicant may submit separate applications on different priorities, or different applications on the same priority. However, an applicant may address only one priority in an application.

4. *Submission Dates and Times: Applications Available:* January 10, 2006.

Deadline for Transmittal of Applications: March 13, 2006.

Applications for grants under this competition may be submitted electronically using the *Grants.gov* Apply site (*http://www.Grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

5. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. The Small Business Innovative Research Program—CFDA Number 84.133S–1 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the *Grants.gov* Apply site *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.

You may access the electronic grant application for the Small Business Innovative Research Program—CFDA Number 84.133S–1 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.

Please note the following:

- Your participation in *Grants.gov* is voluntary.
- 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 time and date stamped.

Your application must be fully uploaded and submitted, and must be date/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 date/time stamped by the *Grants.gov* system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from *Grants.gov,* we will notify you if we are rejecting your application because it was date/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 application 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 of the steps in the *Grants.gov* registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (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/assets/GrantsgovCoBrandBrochure8X11.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 successfully submit an application via *Grants.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, 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 an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The Department will retrieve your application from *Grants.gov* and send you a second confirmation by e-mail that will include 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 System Unavailability

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 as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with *Grants.gov,* along with the *Grants.gov* Support Desk Case Number (if available). 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: Extensions referred to 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 deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), 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 84.133S–1), 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 84.133S–1), 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, or

(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, or

(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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.133S–1), 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 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment 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 competition are from 35 CFR 75.210 of EDGAR 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 also notify you informally.

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 of 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.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert peer review, a portion of its grantees to determine:

- The degree to which the grantees are conducting high-quality research, as reflected in the appropriateness of study designs, the rigor with which accepted standards of scientific and engineering methods are applied, and the degree to which the research builds on and contributes to the level of knowledge in the field; and
- The number of new or improved assistive and universally designed technologies, products, and devices developed by grantees that are deemed to improve rehabilitation services and outcomes, enhance opportunities for participation by individuals with disabilities and are successfully transferred to industry or other private entities for potential commercialization.

VII. Agency Contact

For Further Information Contact: Carol G. Cohen, U.S. Department of Education, 400 Maryland Avenue, SW., room 6035, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7303 or e-mail: *Carol.cohen@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed 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: January 4, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–126 Filed 1–9–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–30–000]

California Electricity Oversight Board; People of the State of California, ex rel., Bill Lockyer, Attorney General of the State of California, and California Department of Water Resources v. Calpine Energy Services, L.P.; Calpine Corporation; Power Contract Financing, and Gilroy Energy Center, L.L.C.; Order Providing Interim Guidance

Issued January 3, 2006.

Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly.

1. On December 19, 2005, the California Electricity Oversight Board, the California Attorney General, and the California Department of Water Resources (California State Parties) filed a Petition for Emergency Declaratory Order Requiring Continuing Performance of Jurisdictional Power Purchase Agreement and Complaint Requesting Fast Track Processing (Petition). The Petition seeks a Commission order requiring Calpine Energy Services, LP, and Calpine Corporation (Calpine) to continue to supply power, and otherwise perform, under a Master Power Purchase and Sale Agreement (Calpine 2 Contract). As explained in more detail below, because of a recently issued Ex Parte Temporary Restraining Order (TRO) against the Commission, we cannot grant the relief requested. However, in the event the Commission participates in the bankruptcy proceedings, we hereby provide interim guidance to the parties regarding the standard to be applied in this case, and require certain additional filings.

Background

2. The California State Parties state in their Petition that they expect Calpine to file for reorganization under Chapter 11 of the United States Bankruptcy Code and, when it does, to request that the Bankruptcy Court reject the Calpine 2 Contract. The California State Parties state that, if the Commission does not act to require performance of the

Calpine 2 Contract, the Bankruptcy Court may enjoin the Commission from so acting. The Petition states that a similar result occurred when Mirant Corporation filed for bankruptcy and the Bankruptcy Court enjoined the Commission from taking certain actions with respect to Mirant.

3. The California State Parties argue that the Commission should grant the relief requested because ''rejection of the Calpine 2 Contract would: (1) Force California consumers to bear significantly higher costs; (2) undermine the parties' 2002 global settlement entered in order to resolve the State's claims arising in its 2000–01 energy crises; (3) jeopardize the State's efforts to put in place protections to ensure that the health, safety and welfare of California ratepayers are not adversely affected by a similar crisis in the future; and (4) threaten the stability of California electricity markets and potentially undermine the reliability of the California electricity grid, particularly during summer 2006.'' Petition at 6. The California State Parties state that an order granting this relief would be consistent with the Commission's action in *Blumenthal* v. *NRG Power Marketing, Inc.,* 103 FERC ¶ 61,188 (2003), *reh'g denied,* 104 FERC ¶ 61,211 (2003) (orders requiring performance), and *Blumenthal* v. *NRG Power Marketing, Inc.,* 104 FERC ¶ 61,210 (2003) (order upholding contract) (*NRG*).

4. On December 21, 2005, Calpine filed for bankruptcy in the United States Bankruptcy Court in the Southern District of New York. The Bankruptcy Court immediately issued an *Ex Parte* Temporary Restraining Order Against Federal Energy Regulatory Commission (TRO) that prohibits the Commission from taking any action ''to require or coerce the Debtors to continue performing under the executory contracts identified in Schedule 1.'' One of the contracts identified in Schedule 1 of the TRO is the Calpine 2 Contract.

Authority To Act

5. Although the Bankruptcy Code provides that the filing of a bankruptcy petition automatically stays certain actions against the debtor,[1] the Code also provides an exception from this automatic stay for:

> An action or proceeding by a governmental unit * * * to enforce such governmental unit's or organization's police and regulatory powers, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.[2]

6. As noted earlier, the TRO entered on December 21, 2005 by the Bankruptcy Court in the Southern District of New York precludes the Commission from granting the relief requested. However the TRO does not preclude the Commission from issuing this Interim Guidance Order. Accordingly, this order provides guidance to the parties regarding the standards that will be applied in this case. It does not ''require or coerce'' Calpine to continue performing its executory contracts.

Discussion

7. In *NRG,* the Commission addressed ''an issue of first impression: Whether a bankruptcy court's approval of a public utility seller's request to reject a contract between it and a buyer precludes the Commission from making an independent determination, pursuant to the Federal Power Act (FPA), as to whether that seller must continue [to] fulfill its contractual obligations to provide service to the buyer.'' [3] In answering that question, ''[t]he Commission found that, even if a public utility files for bankruptcy, the utility still must meet its obligations under the FPA.'' [4] The Commission then proceeded to address in a paper hearing whether NRG could meet the *Mobile Sierra* standard applicable to a request to terminate the contract under section 205 of the FPA. The Commission held that NRG could not do so and therefore ordered it to perform under the contract.[5]

8. Subsequently to our decision in *NRG,* the United States Court of Appeals for the Fifth Circuit decided *Mirant Corp.* v. *Potomac Electric Power Co.* (*In re Mirant*).[6] In *Mirant,* the 5th Circuit addressed the same fundamental issue decided in *NRG,* namely whether a Bankruptcy Court has the authority to reject a Commission-jurisdictional contract without the seller first obtaining approval from the Commission to terminate that contract under section 205. The court held, in pertinent part, as follows:

> It is clear that FERC has the exclusive authority to determine wholesale rates, *see Mississippi Power & Light, 487 U.S. at 371,* and Mirant does not contest that it would need FERC approval to either modify the rates in the Back-to-Back Agreement or to completely abrogate that agreement. *Cf. 11 U.S.C. 362(b)(4)* (creating exception from automatic stay for agencies acting to enforce their regulatory power). Under the Bankruptcy Code, however, Mirant's *rejection* of the Back-to-Back Agreement is a *breach* of that contract. *See 11 U.S.C. 365(g)* (''The rejection of an executory contract * * * constitutes a breach of such contract * * *.''); *see also In re Continental Airlines, 981 F.2d 1450, 1459 (5th Cir. 1993) (''[section] 365(g)(1)* speaks only in terms of 'breach.' The statute does not invalidate the contract, or treat the contract as if it did not exist.''). Thus, whether the FPA preempts a district court's jurisdiction over a bankruptcy rejection necessarily depends upon whether the FPA generally preempts a district court's jurisdiction over claims of breach related to executory power contracts.
>
> Outside of the bankruptcy context, the FPA does not provide FERC with exclusive jurisdiction over the breach of a FERC approved contract. While the FPA does preempt breach of contract claims that challenge a filed rate, district courts are permitted to grant relief in situations where the breach of contract claim is based upon another rationale.
>
> * * * * *
>
> We conclude that the FPA does not preempt Mirant's rejection of the Back-to-Back Agreement because it would only have an indirect effect upon the filed rate. When an executory contract is rejected in bankruptcy, the non-breaching party receives an unsecured claim against the bankruptcy estate for an amount equal to its damages from the breach. *See 11 U.S.C. 365(g)(1), 502(g).* If Mirant's rejection of the Back-to-Back Agreement was approved, then PEPCO's unsecured claim against the bankruptcy estate would be based upon the amount of electricity it would have otherwise sold to Mirant under that agreement *at the filed rate.*
>
> * * * * *
>
> The FPA does not preempt a district court's jurisdiction to authorize the rejection of an executory contract subject to FERC regulation as part of a bankruptcy proceeding. A motion to reject an executory power contract is not a collateral attack upon that contract's filed rate because that rate is given full effect when determining the breach of contract damages resulting from the rejection. Further, there is nothing within the Bankruptcy Code itself that limits a public utility's ability to choose to reject an executory contract subject to FERC regulation as part of its reorganization process.

378 F.3d at 519–522 (emphasis in original).

9. Moreover, as the *Mirant* court recognized, the Commission has a number of regulatory responsibilities under the Federal Power Act that continue while a bankruptcy case is pending, that do not necessarily impact a debtor's ability to reject a contract.[7]

[1] 11 U.S.C. 362(a)(1).

[2] 11 U.S.C. 362(b)(4).

[3] 104 FERC ¶ 61,210 at P1.

[4] *Id.*

[5] *NRG,* 104 FERC ¶ 61,210.

[6] 378 F.3d 511 (5th Cir. 2004) (*Mirant*).

[7] *See also Louisiana Pub. Serv. Comm'n* v. *Mabey (In re Cajun Elec. Power Coop., Inc.),* 185 F.3d 446, 453 (5th Cir. 1999) (noting that Bankruptcy Code '' 'indirectly suggests continued governmental

10. The 5th Circuit also provided guidance on the standard to be applied in determining whether rejection of an FPA-jurisdictional contract by a bankruptcy court is appropriate. The court noted that the standard ordinarily applicable is the ''business judgment rule,'' but it found that the Supreme Court had given greater protection to certain contracts affected with the public interest, such as collective bargaining agreements. *NLRB* v. *Bildisco & Bildisco, 465 U.S. 513* (1984). The 5th Circuit therefore held that a higher standard may be appropriate for FPA-jurisdictional contracts, reasoning as follows:

The nature of a contract for the interstate sale of electricity at wholesale is also unique. Additionally, Congress found when it passed the FPA that the public has an interest in the transmission and sale of electricity. *16 U.S.C. 824(a).* This includes an interest in the continuity of electrical service to the customers of public utilities. *16 U.S.C. 824a(g)* * * *. Clearly the business judgment standard normally applicable to rejection motions is more deferential than the public interest standard applicable in FERC proceedings to alter the terms of a contract within its jurisdiction. Use of the business judgment standard would be inappropriate in this case because it would not account for the public interest inherent in the transmission and sale of electricity.

Therefore, upon remand, the district court should consider applying a more rigorous standard to the rejection of the Back-to-Back Agreement. If the district court decides that a more rigorous standard is required, then it might adopt a standard by which it would authorize rejection of an executory power contract only if the debtor can show that it ''burdens the estate, [] that, after careful scrutiny, the equities balance in favor of rejecting'' that power contract, and that rejection of the contract would further the Chapter 11 goal of permitting the successful rehabilitation of debtors. *See Bildisco, 465 U.S. at 526–27.* When considering these issues, the courts should carefully scrutinize the impact of rejection upon the public interest and should, *inter alia,* ensure that rejection does not cause any disruption in the supply of electricity to other public utilities or to consumers. *Cf. Id. at 527* (requiring the bankruptcy court to balance the interests of the debtor, the creditors and the employees when determining what constitutes a successful rehabilitation). The bankruptcy court has already indicated that it would include FERC as a party in interest for all purposes in this case under *11 U.S.C. 1109(b)* and *Fed. R. Bankr. P. 2018.* We presume that the district court would also welcome FERC's participation, if this case is not referred back to the bankruptcy court. Therefore, FERC will be able to assist the court in balancing these equities.

378 F.3d at 525 (footnote omitted).[8]

11. Although the Commission reached a different result in *NRG,* a federal court of appeals has now spoken to the issue addressed in *NRG* and we intend to follow that authority. Under that authority, the Commission is precluded from taking action under the FPA that impacts a debtor's ability to reject an executory contract. A Bankruptcy Court cannot reject a FERC-jurisdictional contract under the business judgment rule ''because it would not account for the public interest inherent in the transmission and sale of electricity.'' *Id.* Rather, such a court must ''carefully scrutinize the impact of rejection upon the public interest and * * * ensure that rejection does not cause any disruption in the supply of electricity to other public utilities or to consumers.'' *Id.*

12. The Commission seeks comment on whether rejection of the Calpine 2 Contract would impact the public interest,[9] including whether rejection of the Calpine 2 Contract would cause ''any disruption in the supply of electricity to other public utilities or to consumers.'' *Id.*[10] By seeking comment on this issue, the Commission does not intend to supplant the role of the Bankruptcy Court in considering whether to reject the Calpine 2 Contract. Rather, the purpose of our inquiry is to develop a record on which the Commission can, as necessary, make a determination, and then inform the Bankruptcy Court, of its views regarding potential rejection of the Calpine 2 Contract by the Bankruptcy Court. In the *Mirant* case, the 5th Circuit ''presume[d] that the district court would * * * welcome FERC's participation'' and that ''FERC will be able to assist the court in balancing the equities.''[11] In order to provide such assistance, we need to develop an appropriate record to render a decision.

13. In addressing the effect of rejection on the public interest, the parties should not confine their arguments to the factors normally considered in a *Mobile-Sierra* context. As the court in *Mirant* held, rejection of an executory contract constitutes a *breach* of contract, not approval to terminate it under section 205 of the FPA. *See* 378 F.3d at 519 (''*rejection* of the Back-to-Back Agreement is a *breach* of that contract'' for which damages lie) (emphasis in original). In a section 205 proceeding, the issue is whether a party can terminate its obligations and *thereafter have no liability to its counterparty.* To obtain such approval, a party with a *Mobile Sierra* clause must meet a very high burden under the public interest test. In this case, however, there is no request by Calpine to terminate its obligations and thereafter be free of liability to the California State Parties. Rather, the issue is how the public interest bears on the Bankruptcy Court's determination of whether to permit Calpine to breach its obligations and, if so, to pay damages for such breach as determined by the Bankruptcy Court.

14. We therefore direct the California State Parties to amend their filing within fifteen (15) days to address the standard adopted in *Mirant.* Intervenors shall have fifteen (15) days from the date of that filing to file responses. Because we are also concerned whether rejection of the Calpine 2 Contract may pose reliability concerns, we also direct the California Independent System Operator Corporation (California ISO) to address this issue in response to the California State Parties' amended filing within 15 days of their amended filing.

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regulatory jurisdiction' during the pendency of the bankruptcy proceeding'') (citation omitted), *cited in Mirant,* 378 F.3d at 523; *FCC* v. *Nextwave Personal Communications Inc.,* 537 U.S. 293, 307 n.5 (2003) (on review of FCC's regulatory decisionmaking, in case involving both Bankruptcy Code and Communications Act, Court noted that Second Circuit had, on appeal from bankruptcy court, denied subject matter jurisdiction to decide whether FCC's regulatory decision was proper exercise of its discretion, and that D.C. Circuit, on petition for review of FCC decision, had ''recognized and seemingly approved that distinction [between regulatory and bankruptcy matters]'').

[8] On remand, the district cout denied the rejection motion on other grounds, and responded to the 5th Circuit by articulating a heightened standard for rejection, under which the court would have to determine whether rejection would compromise the public interest (with input from the Commission, after affording it ''an opportunity to engage in appropriate inquiry to enable it to evaluate the effect * * * on the public interest''). *In re Mirant Corp.,* 318 B.R. 100, 108 (N.D. Tex. 2004). An appeal from that order is pending before the 5th Circuit. *See Official Comm. of Unsecured Creditors* v. *Potomac Elec. Power Co., et al.* (*In re Mirant Corp.*), Case No. 05–10033 (5th Cir).

[9] To the extent any party believes it should seek leave of the Bankruptcy Court to submit further pleadings in this case, it should do so.

[10] In Calpine's Memorandum of Law in Support of Debtors' Motion for Declaratory Judgment, *Ex Parte* Temporary Restraining Order, and Preliminary Injunction Against the Federal Energy Regulatory Commission, at p. 5, Calpine asserts:

If the Court permits the rejection of the energy contracts, there will be no disruption in the supply of power. For its part, Calpine will continue to produce all the energy that it may profitably do so, and CDWR and the other counter-parties to the contracts could readily obtain power from the national grid or from Calpine, albeit at the market rates.

See also Complaint for Declaratory Judgment, *Ex Parte* Temporary Restraining Order, and Preliminary and Permanent Injunction Against the Federal Energy Regulatory Commission, at P 15 (''If the Court permits the rejection of the energy contracts, there will be no disruption in the supply of power. Calpine will continue to supply electricity to CDWR and the other counter-parties to the contracts, albeit at the market rates.'').

[11] *In re Mirant Corp., supra* note 6.

The Commission will then be in a position to inform the Bankruptcy Court, as necessary, of the impact on the public interest of a potential rejection of the Calpine 2 Contract, or take such other action as may be appropriate under the circumstances.[12]

15. Finally, consistent with the due date established above for intervenors to submit responses to the California State Parties' amended filing, interventions shall be due on or before 15 days after the California State Parties submit their amended filing.[13]

The Commission orders:

(A) The California State Parties are hereby directed to amend their December 19, 2005 filing within 15 days of the date of this order, as discussed in the body of this order.

(B) Interventions and responses to the California State Parties' amended filing will be due within 15 days after the California State Parties submit their amended filing, as discussed in the body of this order.

(C) The California ISO is hereby directed to file a response to the California State Parties' amended filing within 15 days after the California State Parties submit their amended filing, as discussed in the body of this order.

(D) The December 22, 2005 notice of filing in Docket No. EL06–30–000 is hereby superseded by the comment procedures established in Ordering Paragraphs (A)–(C).

(E) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. E6–87 Filed 1–9–06; 8:45 am]

BILLING CODE 6717–01–P

[12] In the *Mirant* case, the 5th Circuit ''presume[d] that the district court would * * * welcome FERC's participation'' and that ''FERC will be able to assist the court in balancing the equities.'' *Id.*

[13] On December 22, 2005, the Commission issued a notice of the California State Parties' filing, with interventions and protests due on or before January 19, 2006. However, the January 19 comment date established by that notice is superseded by the comment procedures established in this order.

DEPARTMENT OF ENERGY

Southwestern Power Administration

Robert D. Willis Hydropower Rate Schedules

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: Pursuant to Delegation Order Nos. 00–037.00, effective December 6, 2001, and 00–001.00B, effective July 28, 2005, the Deputy Secretary has approved and placed into effect on an interim basis Rate Order No. SWPA–55, which increases the power rate for the Robert Douglas Willis Hydropower Project (Willis) pursuant to the following Willis Rate Schedule:

Rate Schedule RDW–05, Wholesale Rates for Hydro Power and Energy Sold to Sam Rayburn Municipal Power Agency (Contract No. DE–PM75–85SW00117).

The effective period for the rate schedule specified in Rate Order No. SWPA–55 is January 1, 2006, through September 30, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6696, *gene.reeves@swpa.gov.*

SUPPLEMENTARY INFORMATION: The existing hydroelectric power rate for the Robert D. Willis project is $452,952 per year. The Federal Energy Regulatory Commission approved this rate on a final basis on June 24, 2004, for the period November 1, 2003, through September 30, 2007. The 2005 Willis Power Repayment Studies indicate the need for an increase in the annual rate by $195,144 or 43.1 percent beginning January 1, 2006.

The Administrator, Southwestern Power Administration (Southwestern) has followed Title 10, Part 903 Subpart A, of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' (Part 903) in connection with the proposed rate schedule. On August 29, 2005, Southwestern published notice in the **Federal Register** (70 FR 51033), of a 60-day comment period, together with a Public Information Forum and a Public Comment Forum, to provide an opportunity for customers and other interested members of the public to review and comment on a proposed rate increase for the Willis project. Both public forums were canceled when no one expressed an intention to participate. Written comments were accepted through October 28, 2005. One comment was received from Gillis & Angley, Counsellors at Law, on behalf of Sam Rayburn Municipal Power Agency and the Vinton Public Power Authority, which stated that they had no objection to the proposed rate adjustment.

Information regarding this rate proposal, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74103.

Following review of Southwestern's proposal within the Department of Energy, I approved Rate Order No. SWPA–55, on an interim basis, which increases the existing Robert D. Willis rate to $648,096, per year, for the period January 1, 2006, through September 30, 2009.

Dated: December 23, 2005.

Clay Sell,

Deputy Secretary.

In the Matter of Southwestern Power Administration Robert D. Willis Hydropower Project Rate; Order Confirming, Approving and Placing Increased Power Rate Schedule in Effect on an Interim Basis

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, the Secretary of Energy delegated to the Administrator of Southwestern the authority to develop power and transmission rates, delegated to the Deputy Secretary of the Department of Energy the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. Delegation Order No. 0204–108, as amended, was rescinded and subsequently replaced by Delegation Orders 00–037.00 (December 6, 2001) and 00–001–00B (July 28, 2005). The Deputy Secretary issued this rate order pursuant to said delegations.

Background

Dam B (Town Bluff Dam), located on the Neches River in eastern Texas downstream from the Sam Rayburn Dam, was originally constructed in 1951 by the U.S. Army Corps of Engineers (Corps) and provides streamflow regulation of releases from the Sam Rayburn Dam. The Lower Neches Valley Authority contributed funds toward construction of both projects and makes established annual payments for the right to withdraw up to 2000 cubic feet of water per second from Town Bluff Dam for its own use. Power was

legislatively authorized at the project, but installation of hydroelectric facilities was deferred until justified by economic conditions. A determination of feasibility was made in a 1982 Corps study. In 1983, the Sam Rayburn Municipal Power Agency (SRMPA) proposed to sponsor and finance the development at Town Bluff Dam in return for the output of the project to be delivered to its member municipalities and participating member cooperatives of the Sam Rayburn Dam Electric Cooperative. Since the hydroelectric facilities at the Town Bluff Dam have been completed, the facilities have been renamed the Robert Douglas Willis Hydropower Project (Willis).

The Willis rate is unique in that it excludes the costs associated with the hydropower design and construction performed by the Corps, because all funds for these costs were provided by SRMPA. Under the Southwestern/SRMPA power sales Contract No. DE–PM75–85SW00117, SRMPA will continue to pay all annual operating and marketing costs, as well as expected capital replacement costs, through the rate paid to Southwestern, and will receive all power and energy produced at the project for a period of 50 years.

In the FERC Docket No. EF04–4081–000, issued June 24, 2004, for the period November 1, 2003, through September 30, 2007, the FERC confirmed and approved the current annual Willis rate of $452,952.

Discussion

Southwestern's 2005 Current Power Repayment Study (PRS) indicates that the existing annual power rate of $452,952 does not represent the lowest possible rate needed to meet cost recovery criteria. The increased revenue requirement is due to an increase in the U.S. Army Corps of Engineers (Corps) projected future replacement investment and future operations and maintenance expense estimates. The Revised PRS indicates that an increase in annual revenues of $195,144 beginning January 1, 2006, is sufficient to accomplish repayment of the Federal investment in the required number of years. Accordingly, Southwestern developed a proposed rate schedule based on that increased revenue requirement.

Title 10, Part 903, Subpart A of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustment,'' has been followed in connection with the proposed rate adjustment. More specifically, opportunities for public review and comment during a 60-day period on the proposed Willis power rate were announced by a **Federal Register** (70 FR 51033) notice published on August 29, 2005. A Public Information Forum was scheduled to be held September 13, 2005, and a Public Comment Forum was scheduled for October 13, 2005, both in Tulsa, Oklahoma. Both forums were canceled as no one expressed an intent to participate. Written comments were due by October 28, 2005. Southwestern provided the **Federal Register** notice, together with requested supporting data, to the customer and interested parties for review and comment during the formal period of public participation. In addition, prior to the formal 60-day public participation process, Southwestern discussed with the customer representatives the preliminary information on the proposed rate adjustment. Only one formal comment was received during the public process. That comment, on behalf of SRMPA and the Vinton Public Power Authority, expressed no objection to the final proposed rate. Upon conclusion of the comment period in October 2005, Southwestern finalized the PRS and rate schedule for the proposed annual rate of $648,096 which is the lowest possible rate needed to satisfy repayment criteria. This rate represents an annual increase of 43.1 percent.

Availability of Information

Information regarding this rate increase, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74103.

Comments and Responses

Southwestern received one written comment in which the customer representative expressed no objection to the proposed rate adjustment.

Other Issues

There were no other issues raised during the informal meeting or during the formal public participation period.

Administrator's Certification

The 2005 Revised Willis PRS indicates that the annual power rate of $648,096 will repay all costs of the project, including amortization of the power investment consistent with provisions of the Department of Energy (DOE) Order No. RA 6120.2. In accordance with Delegation Order Nos. 00–037.00 (December 6, 2001) and 00–001.00A (September 17, 2002), and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Willis power rate is consistent with applicable law and the lowest possible rate consistent with sound business principles.

Environment

The environmental impact of the rate increase proposal was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act, 10 CFR part 1021, and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me, I hereby confirm, approve and place in effect on an interim basis, for the period January 1, 2006, through September 30, 2009, the annual Robert D. Willis Rate of $648,096 for the sale of power and energy from Robert D. Willis project to the Sam Rayburn Municipal Power Agency, under Contract No. DE–PM75–85SW00117, as amended. This rate shall remain in effect on an interim basis through September 30, 2009, or until the FERC confirms and approves the rate on a final basis.

Dated: December 23, 2005.

Clay Sell,

Deputy Secretary.

[FR Doc. E6–123 Filed 1–9–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Sam Rayburn Dam Power Rate Schedule

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: Pursuant to Delegation Order Nos. 00–037.00, effective December 6, 2001, and 00–001.00B, effective July 28, 2005, the Deputy Secretary has approved and placed into effect on an interim basis Rate Order No. SWPA–54, which increases the power rate for the Sam Rayburn Dam Project (Rayburn) pursuant to the following Sam Rayburn Dam Rate Schedule:

Rate Schedule SRD–05, Wholesale Rates for Hydropower and Energy Sold to Sam Rayburn Dam Electric Cooperative, Inc. (Contract No. DE–PM75–92SW00215)

The effective period for the rate schedule specified in Rate Order No.

SWPA–54 is January 1, 2006, through September 30, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6696, *gene.reeves@swpa.gov.*

SUPPLEMENTARY INFORMATION: The existing hydroelectric power rate for the Rayburn is $2,513,700 per year. The Deputy Secretary of Energy confirmed, approved and placed in effect on an interim basis this rate on November 16, 2004, for the period January 1, 2005, through September 30, 2008. This rate has not yet been approved on a final basis by the Federal Energy Regulatory Commission (FERC). The 2005 Rayburn Power Repayment Studies indicates the need for an increase in the annual rate by $300,364 or 12 percent beginning January 1, 2006.

The Administrator, Southwestern Power Administration (Southwestern) has followed Title 10, Part 903 Subpart A, of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' (Part 903) in connection with the proposed rate schedule. On August 29, 2005, Southwestern published notice in the **Federal Register** (70 FR 51034), of a 90-day comment period, together with a Public Information Forum and a Public Comment Forum, to provide an opportunity for customers and other interested members of the public to review and comment on a proposed rate increase for the Willis project. Both public forums were canceled when no one expressed an intention to participate. Written comments were accepted through November 28, 2005. One comment was received from Gillis & Angley, Counsellors at Law, on behalf of Sam Rayburn Municipal Power Authority (an entity of Sam Rayburn Dam Electric Cooperative), which stated that they had no objection to the proposed rate adjustment.

Information regarding this rate proposal, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74103.

Following review of Southwestern's proposal within the Department of Energy, I approved Rate Order No. SWPA–54, on an interim basis, which increases the existing Sam Rayburn rate to $2,816,064, per year, for the period January 1, 2006, through September 30, 2009.

Dated: December 23, 2005.

Clay Sell,

Deputy Secretary.

In the Matter of: Southwestern Power Administration, Sam Rayburn Dam Project Rate; Order Confirming, Approving and Placing Increased Power Rate Schedule in Effect on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, the Secretary of Energy delegated to the Administrator of Southwestern the authority to develop power and transmission rates, delegated to the Deputy Secretary of the Department of Energy the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. Delegation Order No. 0204–108, as amended, was rescinded and subsequently replaced by Delegation Orders 00–037.00 (December 6, 2001) and 00–001–00B (July 28, 2005). The Deputy Secretary issued this rate order pursuant to said delegations.

Background

The Sam Rayburn Dam Project (Rayburn) is located on the Angelina River in the State of Texas in the Neches River Basin. Since the beginning of its operation in 1965, it has been marketed as an isolated project, under contract with Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC) (Contract No. DE–PM75–92SW00215). SRDEC is comprised of two separate entities, the Sam Rayburn G&T, and the Sam Rayburn Municipal Power Agency.

This rate supersedes the annual rate of $2,513,700 which was confirmed, approved and placed in effect on an interim basis by the Deputy Secretary of Energy on November 16, 2004, for the period January 1, 2005, through September 30, 2008. This rate has not yet been approved on a final basis by the Federal Energy Regulatory Commission (FERC).

Discussion

Southwestern's 2005 Current Power Repayment Study (PRS) indicates that the existing annual power rate of $2,513,700 does not represent the lowest possible rate needed to meet cost recovery criteria. The increased revenue requirement is due to an increase in the U.S. Army Corps of Engineers (Corps) projected future replacement investment and future operations and maintenance expense estimates. The Revised PRS indicates that an increase in annual revenues of $302,364 beginning January 1, 2006, is sufficient to accomplish repayment of the Federal investment in the required number of years. Accordingly, Southwestern developed a proposed rate schedule based on that increased revenue requirement.

Title 10, Part 903, Subpart A of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustment,'' has been followed in connection with the proposed rate adjustment. More specifically, opportunities for public review and comment during a 90-day period on the proposed Rayburn power rate were announced by a **Federal Register** (70 FR 51034) notice published on August 29, 2005. A Public Information Forum was scheduled to be held September 13, 2005, and a Public Comment Forum was scheduled for October 13, 2005, both in Tulsa, Oklahoma. Both forums were canceled as no one expressed an intent to participate. Written comments were due by November 28, 2005. Southwestern provided the **Federal Register** notice, together with requested supporting data, to the customer and interested parties for review and comment during the formal period of public participation. In addition, prior to the formal 90-day public participation process, Southwestern discussed with the customer representatives the preliminary information on the proposed rate adjustment. Only one formal comment was received from Gillis & Angley, Counsellors at Law, on behalf of Sam Rayburn Municipal Power Agency (an entity of Sam Rayburn Dam Electric Cooperative, Inc.), which stated that they had no objection to the proposed rate adjustment.

Upon conclusion of the comment period in November 2005, Southwestern finalized the PRS and rate schedule for the proposed annual rate of $2,816,064, which is the lowest possible rate needed to satisfy repayment criteria. This rate represents an annual increase of 12 percent.

Availability of Information

Information regarding this rate increase, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74103.

Comments and Responses

Southwestern received one written comment in which the customer representative expressed no objection to the proposed rate adjustment.

Other Issues

There were no other issues raised during the informal period or during the formal public participation period.

Administrator's Certification

The 2005 Revised Rayburn PRS indicates that the annual power rate of $2,816,064 will repay all costs of the project, including amortization of the power investment consistent with provisions of the Department of Energy (DOE) Order No. RA 6120.2. In accordance with Delegation Order Nos. 00–037.00 (December 6, 2001) and 00–001.00B (July 28, 2005), and Section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Rayburn power rate is consistent with applicable law and the lowest possible rate consistent with sound business principles.

Environment

The environmental impact of the rate increase proposal was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act, 10 CFR 1021, and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me, I hereby confirm, approve and place in effect on an interim basis, for the period January 1, 2006, through September 30, 2009, the annual Sam Rayburn Dam Rate of $2,816,064 for the sale of power and energy from Sam Rayburn Dam to the Sam Rayburn Electric Cooperative, Inc., under Contract No. DE–PM75–92SW00215, dated October 7, 1992.

This rate shall remain in effect on an interim basis through September 30, 2009, or until the FERC confirms and approves the rate on a final basis.

Dated: December 23, 2005.

Clay Sell,

Deputy Secretary.

[FR Doc. E6–108 Filed 1–9–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Central Arizona Project—Rate Order No. WAPA–124

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of order concerning transmission service rates.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–124 and Rate Schedules CAP–FT2, CAP–NFT2, and CAP–NITS2, placing transmission rates from the Central Arizona Project (CAP) of the Western Area Power Administration (Western) into effect on an interim basis. The provisional rates will be in effect until the Federal Energy Regulatory Commission (Commission) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repayment of power investment, within the allowable periods.

DATES: Rate Schedules CAP–FT2, CAP–NFT2, and CAP–NITS2 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after January 1, 2006, and will be in effect until the Commission confirms, approves, and places the rate schedules in effect on a final basis through December 31, 2010, or until the rate schedules are superseded.

FOR FURTHER INFORMATION CONTACT: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–7348, e-mail *carlson@wapa.gov,* or Mr. Jack D. Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved Rate Schedules CAP–FT1, CAP–NFT1, and CAP–NITS1 for transmission service on December 11, 2000 (Rate Order No. WAPA–88, 65 FR 77368, December 11, 2000). The Commission confirmed and approved the rate schedules on July 31, 2001, in FERC Docket No. EF01–5111–000. The existing rate schedules CAP–FT1, CAP–NFT1, and CAP–NITS1 are effective from January 1, 2001, through December 31, 2005.

The existing rate schedules are being superseded by rate schedules CAP–FT2, CAP–NFT2, and CAP–NITS2. The provisional formula rates for point-to-point transmission service and Network Integration Transmission Service (NITS) on the CAP 115kV and 230–kV transmission lines are based on the calculation of a revenue requirement that recovers the CAP 115kV and 230–kV transmission lines costs for facilities associated with providing transmission service and the non-facilities costs allocated to transmission service. These rate formulas include costs for scheduling, system control, and dispatch service. The provisional rates for point-to-point transmission service on the CAP 115–kV/230–kV transmission system are determined by combining the average annual amortization costs with the average annual operations and maintenance costs, and dividing them by the average annual contract rate of delivery for the 5-year period FY 2006–FY 2010.

The revised formula rates reflect a 2.87-percent decrease for 2006 when compared to the existing CAP transmission rates, which expire December 31, 2005. The decrease in the firm point-to-point rate is the result of increased transmission reservations combined with relatively stable expenses since the approval of Rate Order WAPA–88. Implementation of the revised formula rates will result in a firm transmission service rate of $9.55 per kilowattyear for 2006.

NITS allows a transmission customer to integrate, plan, economically dispatch, and regulate its network resources to serve its native load in a way comparable to how a transmission provider uses its own transmission system to service its native load customers. The monthly charge methodology for NITS on the CAP 115–kV and 230–kV transmission lines is the product of the transmission customer's load-ratio share times one-twelfth of the annual transmission revenue requirement. The customer's load-ratio share is calculated on a rolling 12-month basis. The customer's load-ratio share is equal to that customer's hourly load coincident with the CAP 115–kV and 230–kV transmission lines monthly transmission system peak divided by the resultant value of the CAP 115–kV and 230–kV transmission lines monthly

transmission system peak minus the CAP 115–kV and 230–kV transmission lines coincident peak for all firm point-to-point transmission service plus the CAP 115–kV and 230–kV transmission lines firm point-to-point transmission service reservations.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00B, and in compliance with 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA–124, the proposed formula rate for CAP transmission, into effect on an interim basis. The new Rate Schedules CAP–FT2, CAP–NFT2, and CAP–NITS2, will be promptly submitted to the Commission for confirmation and approval on a final basis.

Dated: December 23, 2005.

Clay Sell,

Deputy Secretary.

DEPARTMENT OF ENERGY

Deputy Secretary

[Rate Order No. WAPA–124]

In the Matter of: Western Area Power Administration Rate Adjustment for the Central Arizona Project. Order Confirming, Approving, and Placing the Central Arizona Project Transmission Service Rates Into Effect on an Interim Basis

This rate was established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Administrator: The Administrator of the Western Area Power Administration (Western).

BATO: Balancing Authority and Transmission Operations area. Formerly referred to as a Control Area.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kW.

CAP: Central Arizona Project, one of three related water development projects that make up the Colorado River Basin Project.

Commission: Federal Energy Regulatory Commission.

CROD: Contract rate of delivery. The maximum amount of capacity made available to a customer for a period specified under a contract or service agreement.

Customer: An entity with a contract [BF8] or service agreement that is receiving service from Western's Desert Southwest Region.

CY: Calendar year; January 1 through December 31.

DOE: United States Department of Energy.

DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting and ratemaking procedures.

Energy: Measured in terms of the work it is capable of doing over a period of time. It is expressed in kilowatthours.

FERC: The Commission (to be used when referencing Commission Orders).

Firm: A type of product and/or service available at the time requested by the customer.

Formula Rates: A rate which is based upon a formula calculated yearly.

FY: Fiscal year; October 1 to September 30.

kV: Kilovolt—the electrical unit of measure of electric potential that equals 1,000 volts.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWmonth: Kilowattmonth—the electrical unit of the monthly amount of capacity.

kWh: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.

mill: A monetary denomination of the United States that equals one tenth of a cent or one thousandth of a dollar.

NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*).

NITS: Network Integration Transmission Service.

Non-firm: A type of product and/or service not always available at the time requested by the customer.

O&M: Operation and Maintenance.

Power: Capacity and energy.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

Revenue Requirement: The revenue required to recover annual expenses (such as O&M, transmission service expenses, interest, deferred expenses) and repayment of Federal investments, and other assigned costs.

SCADA: Supervisory Control and Data Acquisition.

WALC: Western Area Lower Colorado BATO, operated by Desert Southwest Region.

Western: United States Department of Energy, Western Area Power Administration.

Effective Date

The new interim rates will take effect on the first day of the first full billing period beginning on or after January 1, 2006, and will remain in effect until December 31, 2010, pending approval by the Commission on a final basis.

Public Notice and Comment

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. The steps Western took to involve interested parties in the rate process were:

1. On June 22, 2005, Western mailed a notice announcing an informal meeting, which was held July 12, 2005. At this informal meeting, Western explained the rationale for the rate adjustment, presented rate designs and methodologies, and answered questions.

2. A **Federal Register** notice published on July 1, 2005 (70 FR 38130), announced the proposed rates for the Central Arizona Project, began a public consultation and comment period, and announced the public information and public comment forums.

3. On July 18, 2005, Western's Desert Southwest Region mailed letters to all the Central Arizona Project customers and interested parties transmitting the Brochure for Proposed Rates and the **Federal Register** notice published on July 1, 2005.

4. On July 21, 2005, Western mailed data to the Central Arizona Project customers and interested parties, in response to customers' data request at the informal customer meeting.

5. On July 22, 2005, beginning at 10 a.m., Western held a public information forum at the Desert Southwest Regional office in Phoenix, Arizona. Western provided detailed explanations of the proposed rates for CAP, and a list of issues that could affect the proposed rates. Western also answered questions, provided rate brochures, supporting documentation, and informational handouts.

6. On August 22, 2005, beginning at 1 p.m., Western held a comment forum to give the public an opportunity to comment for the record. There were no comments at this forum.

7. Western received one comment letter during the consultation and comment period, which ended September 29, 2005. All formally submitted comments have been considered in preparing this Rate Order.

Comments

Written comments were received from the following organizations: Central Arizona Water Conservation District.

Project Description

The CAP was authorized by passage of the Colorado River Basin Project Act (Act of September 30, 1968, Pub. L. 90–537, 82 Stat. 885) for the purposes of furnishing irrigation

water and municipal water supplies to the water-deficient areas of Arizona and western New Mexico through direct diversion or exchange of water, conservation and development of fish and wildlife resources, enhancement of recreation opportunities, and for other purposes.

The Secretary of the Interior was directed to construct, operate and maintain the CAP, consisting of the following principal works: (1) A system of main conduits and canals, including a main canal and pumping plants for diverting and carrying water; (2) water storage facilities and power-pumping plants; (3) aqueducts and pumping plants; (4) related canals, regulating facilities, hydroelectric power plants, and electrical transmission facilities required for the operation of said principal works; (5) related water distribution and drainage works; and (6) appurtenant works.

The Colorado River Basin Project Act also authorized Federal participation with non-Federal interests for construction, operation, and maintenance of a thermal generating power plant (Navajo Generating Station or NGS) whereby the United States acquired the rights to plant capacity, including the delivery of power and energy over appurtenant transmission facilities to mutually agreed upon delivery points, as the Secretary of the Interior determines is required to provide pumping power for the CAP.

When not required for the CAP, the NGS power and energy may be disposed of by the Secretary of the Interior for other purposes at such prices the Secretary determines, including its marketing in conjunction with the sale of power and energy from Federal power plants in the Colorado River system, so as to produce the greatest practicable amount of power and energy that can be sold at firm power and energy rates.

On August 4, 1977, the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565; 42 U.S.C. 7101) was signed into law, establishing the DOE. Section 302(a)(3) of the Act created Western within DOE. Section 302(a)(1)(E) transferred the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities to the DOE.

Transmission Rate Methodology Study

Western prepared a transmission rate methodology study to ensure that transmission service rates are adequate to recover the costs associated with providing transmission service on the CAP 115/230-kV transmission system. The design includes all transmission expenses and associated offsetting revenues.

Western reviews the CAP rate design each year to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the Central Arizona Project revenues. Repayment criteria are based on law, policies including DOE Order RA 6120.2, and authorizing legislation.

The revised firm transmission rate for CAP firm transmission reflects an overall rate decrease of approximately 2.87 percent for 2006 when compared to the existing CAP firm transmission rate in Rate Schedule CAP-FT1.

COMPARISON OF CURRENT AND PROVISIONAL FIRM TRANSMISSION RATE

Type of service	Existing rates 115/230-kV system	Proposed formula rates 115/230-kV system 1/1/2006	Percent change
Firm Transmission Service	$9.83/kW/year	$9.55/kW/year	(2.87%)
Nonfirm Transmission Service	1.12 mills/kWh	1.09 mills/kWh	(2.87%)

Western's revised rate formula will be used to calculate rates annually for all current and future CAP transmission service. The current CAP transmission rate formula became effective on January 1, 2001. The current CAP rate under WAPA Rate Order No. 88 will expire December 31, 2005. The revised transmission rate formula is expected to be effective January 1, 2006, through December 31, 2010. These rate formulas include costs for scheduling, system control, and dispatch service.

The methodology is an annual formula that will divide the average annual transmission revenue requirement by the average annual transmission reservations to determine the rate for firm point-to-point transmission service. The annual transmission revenue requirement includes O&M expenses, administrative and general expenses, investment costs, and interest expense. This revenue requirement is offset by any CAP transmission system revenue credits, such as revenue from non-firm or short-term sales, to determine the net revenue requirement.

Firm Point-to-Point

Western seeks approval of the rate design formula to calculate the transmission rate to be applied annually. Using this formula, the provisional rate for firm CAP transmission service is $9.55 per kW-year for 2006, a 2.87-percent decrease from the existing transmission rate of $9.83 per kW-year, which became effective January 1, 2001. The decrease is due to transmission capacity reservations increasing more rapidly than increases in total annual costs. The rate formula is calculated annually, using the most recent 5-year projections of total expenses and revenues. If needed, a revised rate will become effective each January 1. The proposed rate formula would be effective January 1, 2006, through December 31, 2010.

The cost/kW-year is calculated using the following two-step formula:

$$(1)\ ARR - TRC = NARR$$

$$(2)\ \frac{NARR}{TSTL}$$

Where:

ARR = Annual Revenue Requirement. The costs associated with facilities that support the transfer capability of the CAP transmission system, excluding generation facilities. These costs include investment costs, interest expense, administrative and general expenses, and operation and maintenance expense. The revenue requirement for CAP is based on projected average costs for the upcoming 5-year rate-setting period.

TRC = Transmission Revenue Credits. The revenues generated by the CAP transmission system not related to the revenues from the sale of long-term firm transmission.

NARR = Net Annual Transmission Revenue Requirement. The Annual Revenue Requirement minus Transmission Revenue Credits.

TSTL = CAP Transmission System Total Load. The sum of the total average CAP transmission capacity under long-term reservation, including the total network integration loads at system peak for the upcoming 5-year rate-setting period.

Nonfirm Point-to-Point

The proposed rate for nonfirm point-to-point CAP transmission service is a mills/kWh rate, based upon the current firm point-to-point rate and may be discounted. This rate will remain in effect for the same period as the firm point-to-point rate and will also be reviewed annually. The provisional rate for CAP non-firm transmission service is based on the current CAP firm point-to-point transmission rate. The provisional rate is expressed in mills/kWh and is a maximum of 1.09 mills/kWh for 2006. Transmission availability will be posted on Western's OASIS.

Network Integration Transmission Service

The proposed rate for network transmission is a formula calculation based upon the annual transmission revenue requirement. There are no changes to the existing network integration transmission service formula under Rate Schedule CAP–NITS2.

NITS allows a transmission customer to integrate, plan, economically dispatch, and regulate its network resources to serve its native load in a way comparable to how a transmission provider uses its own transmission system to service its native load customers. The monthly charge methodology for NITS on the CAP 115-kV and 230-kV transmission lines is the product of the transmission customer's load-ratio share times one-twelfth of the annual transmission revenue requirement. The customer's load-ratio share is calculated on a rolling 12-month basis. The customer's load-ratio share is equal to that customer's hourly load coincident with the CAP 115-kV and 230-kV

transmission lines monthly transmission system peak divided by the resultant value of the CAP 115-kV and 230-kV transmission lines monthly transmission system peak minus the CAP 115-kV and 230-kV transmission lines coincident peak for all firm point-to-point transmission service plus the CAP 115-kV and 230-kV transmission lines firm point-to-point transmission service reservations.

The proposed revenue requirement includes the costs for scheduling, system control, and dispatch service. The reactive supply and voltage control ancillary service must be purchased from the WALC BATO. The transmission customer may self-supply the four remaining ancillary services or request them from WALC. These four ancillary services are regulation and frequency response service, energy imbalance service, spinning reserve service, and supplemental reserve service. The rates for these ancillary services are set forth in Rate Schedules DSW–SD1, DSW–RS1, DSW–EI1, DSW–FR1, DSW–SPR1, and DSW–SUR1. Western is currently engaged in a public process to implement new Rates Schedules for ancillary services, which are expected to be effective April 1, 2006.

Certification of Rates

Western's Administrator certified that the provisional rates for CAP transmission service are the lowest possible rates consistent with sound business principles. The provisional rates were developed following administrative policies and applicable laws.

Basis for Rate Development

According to Reclamation Law, Western must establish transmission rates sufficient to recover operation, maintenance, purchased power and interest expenses, and repayment of investment.

The existing rate for CAP firm transmission under Rate Schedule CAP–FT1 expires December 31, 2005. Effective January 1, 2006, Rate Schedule CAP–FT1 will be superseded by the new rates in Rate Schedule CAP–FT2. The provisional rate for CAP firm point-to-point transmission is $9.55 per kW per year.

Statement of Revenue and Related Expenses

The following table provides a summary of projected revenue and expense data for the CAP firm transmission rate through the 5-year provisional rate approval period.

CAP FIRM TRANSMISSION.—COMPARISON OF 5-YEAR RATE PERIOD (FY 2006–FY 2010)

[Total revenues and expenses]

	Existing formula rate	Proposed formula rate	Difference
Total Revenues	$34,429,675	$40,103,745	$5,674,070
Revenue Distribution			
Expenses:			
O&M (including replacements expense)	6,417,770	10,864,596	4,446,826
Purchased Power and Wheeling	0	0	0
Interest	19,343,148	17,931,221	(1,411,927)
Other	345,140	1,813,043	1,467,903
Total Expenses	26,106,058	30,608,860	4,502,802
Principal Payments:			
Original Project and Additions	8,323,302	9,484,969	1,161,667
Replacements	0	0	0
Total Principal Payments	8,323,302	9,484,969	1,161,667
Total Revenue Distribution	34,429,360	40,093,829	5,664,469

The cost data reflects an increase in total costs when comparing the existing rates to the proposed rates. The increases in total costs, however, are outpaced by increases in total transmission reservations, resulting in a proposed rate decrease of 2.87 percent effective January 1, 2006.

Comments

The comments and responses regarding the firm transmission rate, paraphrased for brevity when not affecting the meaning of the statement(s), are discussed below. Direct quotes from comment letters are used for clarification where necessary. The rate process issues discussed are, (1) Central Arizona Water Conservation District (CAWCD) O&M costs, (2) Western expenses to the CAP transmission system, and (3) capital additions and replacements.

1. CAWCD O&M Costs

Comment: The CAWCD representative strongly supports including the costs identified during the public process. However, there are other CAP transmission system O&M costs incurred by CAWCD, in addition to the McCullough O&M charge, which are not reflected in Western's rate review.

Response: Western has committed to continue to work with CAWCD to ensure that costs appropriately attributed to the CAP 115/230-kV transmission system will be included in the rate calculation. O&M expenses incurred by CAWCD to aid in maintaining the Federal transmission system are appropriately included in the transmission rate. Costs will be reviewed annually as part of the annual review to determine adequacy of the transmission rate.

2. Western Expenses to the CAP Transmission System

Comment: The CAWCD representative indicated the CAP transmission line miles and SCADA point values that are used to allocate costs for transmission system studies (''STUDM'' costs) and costs for assets providing benefit to multiple power systems (''RENTM'' costs), respectively, are too high and should be adjusted.

Response: Western has responded to CAWCD's review of the allocation practices and stated that adjustments will be made where appropriate in FY 2006. Any resulting increase or decrease in the revenue requirement which results in an over or under collection will be accounted for in the subsequent year.

3. Capital Additions and Replacements in Rate

Comment: The CAWCD representative indicated that Western's July 2005 rate adjustment brochure states that no capital additions or replacements are projected for FY 2006 through FY 2010. The customer believes the brochure statement to be untrue, and anticipates annual costs for capital additions or replacements in FY 2007 and beyond to average at least $500,000. Those costs should be included in the CAP transmission rate methodology. CAWCD encourages Western to modify the proposed CAP transmission rate to be charged for CY 2006 to include projections for new capital investments.

Response: Western is working with CAWCD and the Bureau of Reclamation to ensure appropriate amortization costs for capitalized replacements or additions are included in the rate calculation. Based on reviews of available data, Western has included an estimate of $625,000 in replacements for the rate to be charged in CY 2006. In the event capitalized replacements or additions are added to plant-in-service in a given year, and the amortization costs (principal and interest) were not included in

the rate calculation, they will be included in the subsequent year.

Availability of Information

Information about this rate adjustment, including power repayment studies, comments, letters, memorandums, and other supporting material made or kept by Western to develop the provisional rates, is available for public review in the Desert Southwest Customer Service Region, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, Arizona.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the NEPA of 1969 (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Submission to the Federal Energy Regulatory Commission

The interim rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to the Commission for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective January 1, 2006, Rate Schedules CAP–FT2, CAP–NFT2, and CAP–NITS2 for the Central Arizona Project of the Western Area Power Administration. The rate schedules shall remain in effect on an interim basis, pending the Commission's confirmation and approval of them or substitute rates on a final basis through December 31, 2010.

Dated: December 23, 2005.

Clay Sell,

Deputy Secretary.

Rate Schedule CAP–FT2
Supersedes Rate Schedule CAP–FT1

United States Department of Energy Western Area Power Administration

Central Arizona Project

Schedule of Rate(s) for Firm Point-to-Point CAP 115-kv/230-kv Transmission Service

Effective: The first day of the first full billing period beginning on or after January 1, 2006, through December 31, 2010.

Available: In the area served by the Central Arizona Project (CAP) 115-kV/230-kV transmission system.

Applicable: The transmission service customers shall compensate the CAP where firm capacity and energy are supplied to the CAP 115-kV/230-kV transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the CAP 115-kV/230-kV system specified in the contract or service agreement. The formula for the annual revenue requirement used to calculate the charges for this firm service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Desert Southwest Region may modify the charges for firm point-to-point transmission service upon written notice to the transmission customer. Any change to the charges to the transmission customer for firm point-to-point transmission, shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service contract or service agreement. DSW shall charge the transmission customer in accordance with the revenue requirements then in effect.

Character and Conditions of Service: Alternating current at 60 Hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract or service agreement over the CAP 115-kV/230-kV transmission system.

Formula Rate for Firm Point-to-Point Transmission Service

Annual Rate = 5-Year Average Annual Revenue Requirement divided by the 5-Year Average Contract Rate of Delivery, rounded to the nearest penny.

Monthly Rate = Annual Rate divided by 12, rounded to the nearest penny.

Calculated Rates

For 2006, the annual firm rate calculates to $9.55 per kW year, and the monthly firm rate calculates to $0.80 per kW month. Based on updated financial and load data, recalculated rates will go into effect on January 1 of each year during the effective rate schedule period.

Adjustments

For Reactive Power: There shall be no entitlement to transfer of reactive kilovolt amperes at delivery points, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses: Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the contract or service agreement.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm transmission obligations, such overrun shall be billed at 10 times the above rates.

Rate Schedule CAP–NFT2
Supersede Rate Schedule CAP–NFT1

United States Department of Energy Western Area Power Administration

Central Arizona Project

Schedule of Rate(s) for Nonfirm Point-to-Point CAP 115-kV/230-kV Transmission Service

Effective: The first day of the first full billing period beginning on or after January 1, 2006, through December 31, 2010.

Available: In the marketing area served by the Central Arizona Project 115-kV/230-kV transmission system.

Applicable: The transmission service customer shall compensate the Central Arizona Project (CAP) for nonfirm point-to-point transmission service where capacity and energy are supplied to the CAP 115-kV/230-kV transmission system at points of interconnection with other systems, transmitted subject to the availability of the transmission capacity, and delivered less losses, to points of delivery on the CAP 115-kV/230-kV system specified in the contract or service agreement.

Character and Conditions of Service: Alternating current at 60 Hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract or service agreement over the CAP 115-kV/230-kV transmission system.

Formula Rate for Nonfirm Point-to-Point Transmission Service

Nonfirm Point-To-Point Transmission Service Rate: Each Contractor shall be billed monthly a mills per kilowatthour rate of scheduled or delivered kilowatthours at point of delivery, established by contract, payable monthly. This rate is equal to the CAP 115-kV/230-kV Firm Transmission dollar per kilowattyear rate then in effect divided by 8760, multiplied by 1,000, rounded to two decimal places.

Calculated Rate

For 2006, the nonfirm rate calculates to 1.09 mills/kWh. Based on updated financial and load data, a recalculated rate will go into effect on January 1 of each year during the effective rate schedule period.

Adjustments

For Reactive Power: There shall be no entitlement to transfer of reactive kilovolt amperes at delivery points, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

For Losses: Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the contract or service agreement.

Rate Schedule CAP–NITS2
Supersedes Rate Schedule CAP–NITS1

United States Department of Energy Western Area Power Administration

Central Arizona Project

Schedule of Rate(s) for Network Integration Transmission Service

Effective: The first day of the first full billing period beginning on or after January 1, 2006, through December 31, 2010.

Applicable: The transmission customer shall compensate the CAP each month for Network Integration Transmission Service (NITS) pursuant to the applicable Network Integration Transmission Service Agreement and annual revenue requirement referred to below. The formula for the annual revenue requirement used to calculate the charges for this service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Desert Southwest Region (DSW) may modify the charges for NITS upon written notice to the transmission customer. DSW shall charge the transmission customer in accordance with the revenue requirement then in effect.

Formula Rate

Monthly Charge = Transmission Customer's Load-Ratio Share × (Revenue Requirement/12)

Calculated Rate

The NITS rate is calculated using a projected annual revenue requirement. Based on updated financial and load data, a recalculated revenue requirement will go into effect on January 1 of each year during the effective rate schedule period.

[FR Doc. E6–110 Filed 1–9–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8020–5]

National Advisory Council for Environmental Policy and Technology Environmental Technology Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Environmental Technology Subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy, technology, and management issues. The Environmental Technology Subcommittee was formed to assist EPA in evaluating its current and potential role in the development and commercialization of environmental technologies by suggesting how to optimize existing EPA programs to facilitate the development of sustainable private sector technologies, and by suggesting alternative approaches to achieving these goals. The purpose of the meeting is to discuss the Subcommittee's recommendations on these issues. The Subcommittee will also discuss new issues that it may address in the future. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/cal-nacept.htm.*

DATES: The NACEPT Environmental Technology Subcommittee will hold a two day open meeting on Thursday, January 19, from 9 a.m. to 5 p.m. and Friday, January 20, from 8:30 a.m. to 1:30 p.m. Due to extenuating circumstances, contractual arrangements of the meeting space were delayed.

ADDRESSES: The meeting will be held at the Madison Hotel, 1177 15th Street, NW., Washington, DC 20005. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, *joyce.mark@epa.gov,* 202–233–0068, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Subcommittee should be sent to Mark Joyce, Designated Federal Officer, at the contact information above. The public is welcome to attend all portions of the meeting.

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at 202–233–0068 or *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 4, 2006.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. E6–98 Filed 1–9–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0006; FRL–7746–6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data regarding *In Vitro* Dermal Absorption Rate Testing of Certain Chemicals of Interest to the Occupational Safety and Health Administration. Data were received on the following chemicals: Biphenyl (CAS No. 92-52-4); tert-butylcatechol (TBC) (CAS No. 98-29-3); carbon disulfide (CAS No. 75-15-0); catechol (CAS No. 120-80-9); chlorobenzene (CAS No. 108-90-7); cyclohexanol (CAS No. 108-93-0); p-dichlorobenzene (CAS No. 106-46-7); dimethylacetamide (DMAc) (CAS No. 127-19-5); ethylene dichloride (CAS No. 107-06-2); hydroquinone monomethyl ether (HQMME) (CAS No. 150-76-5); methyl formate (CAS No. 107-31-3); vinyl toluene (CAS No. 25013-15-4); and p-xylene (CAS No. 106-42-3). These data were submitted pursuant to a test rule issued by EPA under section 4 of the Toxic Substances Control Act (TSCA).

FOR FURTHER 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*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of this chemical. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number

EPA–HQ–OPPT–2003–0006. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA DocketCenter is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

Agency Website: EPADOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Test Data Submissions

Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after these data are received by EPA.

1. Test data for biphenyl were submitted by the Biphenyl Work Group and received by EPA on June 17, 2005. The submission includes a final study report submission titled: ''*In Vitro* Dermal Absorption Rate Testing.'' (See document ID No. EPA–HQ–2003–0006–0273.) The submission also includes a letter clarifying that the Biphenyl Work Group is not claiming trade secrecy or confidentiality on this report.

2. Test data for TBC were submitted by the Tertiary-Butylcatechol Consortium and received by EPA on July 20, 2005. The submission includes a final report titled: ''[^{14}C] Tert-Butylcatechol (TBC): Percutaneous Penetration of [^{14}C] Tert-Butylcatechol Through Human Split-thickness Skin Membranes (*in-vitro*).'' (See document ID No. EPA–HQ–2003–0006–0284.)

3. Test data for carbon disulfide were submitted by the Carbon Disulfide Dermal Absorption Task Group (Task Group) of the American Chemistry Council and received by EPA on August 15, 2005. The submission includes an appended final study report titled: ''Carbon Disulfide: *In Vitro* Dermal Absorption Rate Testing.'' (See document ID No. EPA–HQ–2003–0006–0289.)

4. Test data on catechol were submitted by the Catechol Consortium and received by EPA on August 26, 2005. The submission includes a final study report titled ''[^{14}C] Catechol: Percutaneous Penetration of [^{14}C] Catechol Through Human Split-thickness Skin Membranes (*in-vitro*).'' (See document ID No. EPA–HQ–2003–0006–0287.)

5. Test data for chlorobenzene were submitted by the Chlorobenzene Producers Association (CPA) and received by EPA on June 6, 2005. The submission includes a final study report titled ''Chlorobenzene: *In Vitro* Dermal Absorption Rate Testing.'' (See document ID No. EPA–HQ–2003–0006–0255.)

6. Test data for cyclohexanol were submitted on behalf of the Cyclohexanol Dermal Absorption Testing Committee and received by EPA on August 29, 2005. The submission includes a final study report from SafePharm Laboratories titled: ''The *In Vitro* Dermal Absorption of [^{14}C] Cyclohexanol through Human Skin.'' (See document ID No. EPA–HQ–2003–0006–0286.)

7. Test data for p-dichlorobenzene were submitted by the Chlorobenzene Producers Association and received by EPA on June 6, 2005. The submission includes a final study report titled: ''p-Dichlorobenzene: *In Vitro* Dermal Absorption Rate Testing.'' (See document ID No. EPA–HQ–2003–0006–0255.)

8. Test data for DMAc were submitted by DuPont Chemical Solutions Enterprise and received by EPA on June 21, 2005. The submission includes a final study report titled: ''Dimethylacetamide: *In Vitro* Dermal Absorption Rate Testing.'' (See document ID No. EPA–HQ–2003–0006–0274.)

9. Test data for ethylene dichloride were submitted by the Hazardous Air Pollutant (HAP) Task Force and received by EPA on June 24, 2005. The submission includes a final study report titled: ''Ethylene Dichloride: *In Vitro* Dermal Absorption Rate Testing.'' (See document ID No. EPA–HQ–2003–0006–0280.)

10. Test data for HQMME were submitted by the Hydroquinone Monomethyl Ether Dermal Absorption Task Group (Task Group) of the American Chemistry Council Hydroquinone Precursors and Derivatives Panel, and received by EPA on September 27, 2005. The submission includes an appended final study report titled: ''Hydroquinone Monomethyl Ether: Measurement of the *In Vitro* Rate of Percutaneous Absorption Through Human Skin.'' (See document ID No. EPA–HQ–2003–0006–0293.)

11. Test data for methyl formate were submitted by Celanese Chemicals and received by EPA on July 18, 2005. The submission includes a final study report titled: ''Methyl Formate: *In Vitro* Dermal Absorption Rate Testing.'' (See document ID Nos. EPA–HQ–2003–0006–0281 and EPA–HQ–2003–0006–0282.) The submission also includes a letter clarifying that Celanese is not claiming confidentiality on this report.

12. Test data for vinyl toluene were submitted on behalf of Deltech Corporation by the University of Louisiana and received by EPA on April 4, 2005. The submission includes a final study report submission titled: ''Vinyl Toluene: *In Vitro* Dermal Absorption Rate Testing.'' (See document ID Nos. EPA–HQ–2003–0006–0247 and EPA–HQ–2003–0006–0248.) The submission also includes two letters clarifying that the study is not claimed confidential or trade secret.

13. Test data for p-xylene were submitted by the p-Xylene Dermal Absorption Task Group of the American Chemistry Council and received by EPA on September 27, 2005. The submission includes an appended final study report titled: ''p-Xylene: *In Vitro* Dermal Absorption Rate Testing.'' (See document ID No. EPA–HQ–2003–0006–0291.)

These chemical substances are used in a wide variety of applications as industrial solvents, which may result in exposures of a substantial number of workers as described in the support document for the Proposed Rule (64 FR

31074, June 9, 1999, Table 3 - Exposure Information for Chemical Substances).

EPA has initiated its review and evaluation process for these submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Hazardous substances.

Dated: December 29, 2005.

Jim Willis,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. E6–100 Filed 1–9–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodine Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—12/05/2005			
20060211	Novartis AG	Chiron Corporation	Chiron Corporation.
20060214	MVP Health Plan, Inc	Preferred Care, Inc	Preferred Care, Inc.
20060220	Allis-Chalmers Energy Inc	Joe Van Matre	Specialty Rental Tools Inc.
20060224	Josue Christiano Gomes da Silva	Spring Global S.A.	Springs Global S.A.
20060229	KKR European Fund II, Limited Partnership.	Vestar-AIV Holdings A L.P.	FL Spring, S.p.A.
20060235	Roger S. Penske	Stephen P. Cushman	Cush A-KM, Inc., Cush Enterprises, Cush H-E, Inc., Cush J-KM, Inc., Cush M-E, Inc., M.S.M. Group, Inc.
20060237	Hanson PLC	PaverModule, Inc.	PaverModule, Inc.
20060240	Horizon Health Corporation	P. Byron DeFoor	Delaware Investment Associates, LLC, Focus Healthcare, LLC, Focus Healthcare of Delaware, LLC, Focus Health of Florida, LLC, Focus Healthcare of Georgia, LLC, Focus Healthcare of Ohio, LLC, Highpoint Investment, LLC.
20060241	Ronald B. Dana	Rex V. Ecoff	Liquid Transport Corp.
20060242	Francisco Partners, L.P.	FrontRange Limited	Cayo Communications, Inc., FrontRange Solutions Inc.
20060259	Lodge Holdco I LLC	La Quinta Corporation	La Quinta Corporation.
20060264	Berkshire Fund VI, L.P.	PDS Associates, Inc.	PDS Associates, Inc.
20060267	GUS plc	PriceGrabber.com, LLC	PriceGrabber.com, LLC.
Transactions Granted Early Termination—12/06/2005			
20060215	Aleris International, Inc.	Ormet Corporation	Ormet Corporation.
20060275	Jones Lang LaSalle Incorporation	Spaulding and Slye Partner LLC	Spaulding and Slye LLC.
Transactions Granted Early Termination—12/08/2005			
20060256	U.S. Bancorp	Wachovia Corporation	Delaware Trust Company, National Association, Wachovia Bank and Trust Company (Cayman) Ltd., Wachovia Bank, National Association, Wachovia Bank of Delaware, National Association, Wachovia Trust Company of California.
20060277	Avnet, Inc.	Calence, LLC	Calence, LLC.
20060279	General Atlantic Partners 82, L.P.	NYMEX Holdings, Inc.	NYMEX Holdings, Inc.
Transactions Granted Early Termination—12/09/2005			
20060253	Goense Bounds & Partners A, L.P.	Frank Scardino	Capital Drywall, Inc.
20060254	Goense Bounds & Partners A, L.P.	James R. Gates and Angela Gates	Capital Drywall, Inc.
20060282	Aetna Inc.	Express Scripts, Inc.	Aetna Specialty Pharmacy, LLC.
20060285	Merrill Corporation	WordWave, Inc.	WordWave, Inc.

Trans No.	Acquiring	Acquired	Entities
20060286	Franz Haniel & Cie. GmbH	George Mosher	Alfax Wholesale Furniture, Inc., National Business Furniture, Inc., Officefurniture.com, Inc.
20060288	Kelso Investment Associates VII, L.P..	Voting Trust 12/4/68 of v/s of Hallmark Cards, Incorporated.	Hallmark Entertainment, LLC.
20060303	Gores ENT Holdings, Inc.	Enterasys Networks, Inc.	Enterasys Networks, Inc.
Transactions Granted Early Termination—12/12/2005			
20060231	Agrium Inc.	Royster-Clark Ltd.	Royster-Clark Ltd.
20060250	Novartis AG	Abbott Laboratories	TAP Pharmaceutical Products Inc.
20060251	Novartis AG	Takeda Pharmaceuticals Company, Ltd.	TAP Pharmaceutical Products, Inc.
20060255	Legg Mason Investment Trust, Inc.	Syntroleum Corporation	Syntroleum Corporation.
20060257	Intel Corporation	Micron Technology, Inc.	Micron Technology, Inc.
20060271	Deutsche Bahn AG	The Brink's Company	BAX Global Inc.
20060300	CSK Auto Corporation	J.W. Childs Equity Partners III, L.P.	Murray's Discount Auto Stores.
20060301	Macquarie Bank Limited	The Mallah Organizations, Inc.	TMO Parent LLC.
20060306	D.E. Shaw Composite International Fund.	KRG Capital Fund II, L.P.	Aspen Marketing Holdings, Inc.
20060314	Tate & Lyle PLC	Continental Custom Ingredients, Inc.	Continental Custom Ingredients, Inc.
20060315	DC Chemical Co., Ltd.	Phelps Dodge Corporation	Columbia Chemical Company.
Transactions Granted Early Termination—12/13/2005			
20060276	Anheuser-Busch Employees' Credit Union.	Merian Credit Union	Merian Credit Union.
20060287	Cortec Group Fund III, L.P.	Linsalata Capital Partners Fund III, L.P..	Snyder Acquisition Corporation.
20060294	Garda World Security Corporation	SPX Corporation	Vance International, Inc.
Transactions Granted Early Termination—12/14/2005			
20060280	The George B. Horne Voting Trust	Evan J. Segal	Dormont Manufacturing Company, Dormont Realty Partners LLC.
200602894	MKS Instruments, Inc.	TWCP, L.P.	Ion Systems, Inc.
20060295	Marathon Fund Limited Partnership V.	Westlake Hardware, Inc.	Westlake Hardware, Inc.
20060297	SAP AG	KhiMetrics, Inc.	KhiMetrics, Inc.
20060305	Dycom Industries, Inc.	The Berwind Company LLC	Prince Telecom Holdings, Inc.
Transactions Granted Early Termination—12/16/2005			
20060260	Hoshizaki Electric Company, Ltd.	Lancer Corporation	Lancer Corporation.
20060291	Reckitt Benckiser PLC	Boots Group PLC	BHI Holdings (BHI) Limited, Boots Healthcare Deutschland GmbH, The Boots Company plc.
Transactions Granted Early Termination—12/19/2005			
20060261	The TriZetto Group, Inc.	CareKey, Inc.	CareKey, Inc.
20060273	Finmeccanica S.p.A.	Textron Inc.	Bell/Agusta Aerospace Company LLC.
20060304	Western Forest Products Inc.	Partners Limited	Cascadia Forest Products Ltd.
20060316	A.B.C. Learning Centres Limited	Benjamin R. Jacobson	Learning Care Group, Inc.
20060317	Christopher M. Jeffries	The Sports Club Company, Inc.	Pontius Realty, Inc., SF Sports Club, Inc., Talla New York, Inc., Washington D.C. Sports Club, Inc.
20060319	Spring Nextel Corporation	Alamosa Holdings, Inc.	Alamosa Holdings, Inc.
20060323	Archer-Daniels-Midland Company	Mellon Financial Corporation	Mellon Financial Corp. #4.
20060325	Gray Television, Inc.	University of Notre Dame du Lac	Michiana Telecasting Corp.
20060336	MHM Holdings GmbH	Bilakhia Holdings Private Limited	Micro Inks Limited.
Transactions Granted Early Termination—12/20/2005			
20060308	Roche Holding Ltd.	BioCryst Pharmaceuticals, Inc.	BioCryst Pharmaceuticals, Inc.
20060326	Bank of America Corporation	Precision Camera & Video Repair, Inc..	Precision Camera & Video Repair, Inc.
20060332	Saurer AG	Fairfield Manufacturing Company, Inc..	Fairfield Manufacturing Company, Inc.
20060333	Brazos Electric Power Cooperative, Inc.	Dean Vanech	Ponderosa Pine Energy Partners, Ltd.

Trans No.	Acquiring	Acquired	Entities
20060338	MarineMax, Inc.	Cecil Van Tuyl	Lake Port Marine, Inc., Port Arrowhead, Inc., Port Arrowhead Marine, Inc.
Transactions Granted Early Termination—12/21/2005			
20060327	OCM/GFI Power Opportunities Fund II, L.P..	GT Equipment Technologies, Inc.	GT Equipment Technologies, Inc.
Transactions Granted Early Termination—12/22/2005			
20060565	Sierra Pacific Resources	Pinnacle West Capital Corporation	GenWest, LLC.
20060263	Wyeth	Trubion Pharmaceuticals, Inc.	Trubion Pharmaceuticals, Inc.
20060346	Embridge Inc.	BP P.L.C.	Olympic Pipe Line Company.
Transactions Granted Early Termination—12/23/2005			
20060335	Richard L. Scott	Secure Computing Corporations	Secure Computing Corporations.
20060345	Danaher Corporation	Visual Networks, Inc.	Visual Networks, Inc.
20060347	Yell Group PLC	James W. Clarke, Sr.	Clarke Directory Publications, Inc.
20060349	PMC-Sierra, Inc.	Bali Investments S.a.r.l.	Avago Technologies Storage (U.S.A.) Inc.
20060356	Brown & Brown, Inc.	Horace M. Johnson, Jr.	Axion Intermediaries, LLC.
20060359	Sprint Nextel Corporation	Velocita Holdings, LLC	Velocita Wireless Holding Corp.
20060361	The Related Company, L.P.	Equinox Holdings, L.P.	Equinox Holdings, L.P.
20060363	OCM/GFA Power Opportunities Fund II, L.P..	Equitable Resources Inc.	Noresco Holdings, Inc.
20060366	Steel Dynamics, Inc.	Roanoke Electric Steel Corporation	Roanoke Electric Steel Corporation.
20060377	Silver Lake Partners II, L.P.	Serena Software, Inc.	Serena Software, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–176 Filed 1–09–06; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0209]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food Contact Substances Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Contact Substances Notification'' 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 Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 24, 2005 (70 FR 61452), 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 0910–0495. The approval expires on December 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at ''*http://www.fda.gov/ohrms/dockets*''.

Dated: January 3, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–91 Filed 1–9–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0120]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Experimental Study of Carbohydrate Content Claims on Food Labels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Experimental Study of Carbohydrate Content Claims on Food Labels'' 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 Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 17, 2005 (70 FR 48423), 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 0910–0570. The approval expires on December 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: January 3, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–94 Filed 1–9–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999D–2145] (formerly 99D–2145)

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products; Draft Revised Guidance for Industry on Impurities in New Veterinary Medicinal Products (Revised); Request for Comments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comments of a draft revised guidance for industry (#93) entitled ''Impurities in New Veterinary Medicinal Products (Revised)'' VICH GL11(R). This draft revised guidance, which updates a final guidance on the same topic for which a notice of availability was published in the **Federal Register** of July 7, 2000 (the 2000 guidance), has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft revised document is intended to assist in developing registration applications for approval of veterinary medicinal products submitted to the European Union, Japan, and the United States. The revised guidance addresses only those impurities in new veterinary medicinal drug products classified as degradation products.

DATES: Submit written or electronic comments by February 9, 2006, to ensure their adequate consideration in preparation of the final guidance document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft revised guidance document.

Submit written comments on the draft revised guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the draft revised guidance and the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Dennis Bensley, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6956, e-mail: *dbensley@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonization of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. VICH is a parallel initiative for veterinary medicinal products. VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and Includes input from both regulatory and industry representatives.

The VICH steering committee is composed of member representatives from the European Commission; European Medicines Evaluation Agency; European Federation of Animal Health; Committee on Veterinary Medicinal Products; FDA; the U.S. Department of Agriculture; the Animal Health Institute; the Japanese Veterinary Pharmaceutical Association; the Japanese Association of Veterinary Biologics; and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH steering committee as follows: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH steering committee meetings.

II. Draft Revised Guidance on Impurities in New Veterinary Medicinal Products

In May 2005, the VICH steering committee agreed that a draft revised guidance entitled ''Impurities in New Veterinary Medicinal Products (Revised)'' VICH GL11(R) should be made available for public comment. The draft revised guidance is a revision of a final guidance on the same topic for which a notice of availability was published in the **Federal Register** of July 7, 2000 (65 FR 42019). The draft revised guidance clarifies the 2000 guidance, adds information, and provides consistency with more recently published VICH guidances. The draft revised guidance is a product of the Quality Expert Working Group of VICH. Comments about this draft will be considered by FDA and the Quality Expert Working Group.

This draft revised document is intended to provide guidance for new animal drug applications on the content and qualification of impurities in new veterinary drug substances intended to be used for new veterinary medicinal products, produced by chemical syntheses and not previously registered in a country, region, or member state.

The draft guidance has been revised to add information to certain sections and to provide clarification to other sections of the previous guidance. The

revisions include changes in the following ways: (1) The text on the recommended reporting, identification, and qualification thresholds; (2) the recommended deletion of the exception to conventional rounding practice; (3) modification of the decision tree in Attachment 2, which sets out a recommended approach to identifying and qualifying degradation products; and (4) additions and revisions to the previous glossary including definitions for the terms ''unspecified degradation product,'' ''reporting threshold,'' and ''identification threshold.''

In addition, the guidance was updated to reference, where appropriate, other more recently published VICH guidances relevant to this topic. Finally, minor editorial changes were made to improve the clarity and consistency of the document.

III. Paperwork Reduction Act of 1995

This draft revised guidance contains information collection previsions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this draft revised guidance have been approved under OMB control number 0910–0032.

IV. Significance of Guidance

This draft revised document, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' In addition, guidance documents must not include mandatory language such as ''shall,'' ''must,'' ''require,'' or ''requirement,'' unless FDA is using these words to describe a statutory or regulatory requirement.

The draft revised VICH guidance (#93) represents the agency's current thinking on impurities in new veterinary drug medicinal products. This draft revised guidance does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative method may be used as long as it satisfies the requirements of applicable statutes and regulations.

V. Comments

This draft revised guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this draft revised guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft revised guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

Electronic comments may also be submitted on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this Internet site, select Docket No. 1999D–2245, entitled ''Draft Revised Guidance for Industry on Impurities in New Veterinary Medicinal Products (Revised)'' (VICH GL11(R)) and follow the directions.

Copies of the draft guidance document entitled ''Draft Revised Guidance for Industry on Impurities in New Veterinary Medicinal Products (Revised)'' VICH GL11(R) may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm*.

Dated: December 30, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–90 Filed 1–9–06; 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.

Polysaccharide Derived Nitric Oxide Releasing Carbon Bound Diazeniumdiolates

Joseph A. Hrabie et al. (NCI)

U.S. Provisional Application No. 60/731,946 filed 31 Oct 2005 (HHS Reference No. E–279–20050–US–01)

Licensing Contact: John Stansberry; 301/435–5236; *stansbej@mail.nih.gov*

The invention discloses a method for producing nitric oxide(NO)-releasing derivatives of any material containing a reducing sugar component. It may be used to produce NO-releasing cotton bandages or surgical fabrics, cellulose filters or dialysis membranes, and drug formulating/compounding agents to prevent stomach irritation. The method involves incorporation of a diazeniumdiolate ($-N_2O_2$) group at one or more carbons via the base-catalyzed replacement of acidic hydrogens and is thus compatible with traditional polysaccharide processing techniques. Monosaccharides such as glucose may also be derivatized.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Hydropneumatic Fluid Control for a Cell Culturing System

Alexandr Chanturiya, Svetlana Glushakova, and Joshua Zimmerberg (NICHD)

U.S. Provisional Application No. 60/725,327 filed 12 Oct 2005 (HHS Reference No. E–166–2005/0–US–01)

Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*

Available for licensing and commercial development is a hydropneumatic fluid control system in which cell culture media is perfused through a bioreactor by gas pressure where the direction of the gas directs the direction of perfusion. The gas can also act to regulate the pH of the cell culture media. Containers holding the cell culture media are situated on either side of an axis of rotation of a platform. The weight of the container as it fills with media forces the platform to oscillate. The oscillation actuates a piston—also coupled to the platform—which regulates a valve that switches the flow of gas to the other container. This system does not use electricity and, with an appropriate gas mixture, saturates cell culture media with gas.

In addition to licensing, the technology is available for further

development through collaborative research opportunities with the inventors.

A Knockout Mouse for Transcription Factor Nurr1

Dr. Vera Nikodem (NIDDK)
HHS Reference No. E–024–1999/0—Research Tool
Licensing Contact: Marlene Shinn-Astor; 301/435–4426; *shinnm@mail.nih.gov*

Transcriptional factor Nurr1 is an obligatory factor for neurotransmitter dopamine biosynthesis only in ventral midbrain as demonstrated by the Nurr1 genomic locus inactivation using homologous recombination.

From a neurological and clinical perspective, it suggests an entirely new mechanism for dopamine depletion in a region where dopamine is known to be involved in Parkinson's disease. Clinically, our findings indicate that activation of Nurr1 may be therapeutically useful for Parkinson's disease patients; therefore, the mice would be useful in Parkinson's disease research.

Dated: January 3, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–86 Filed 1–9–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Anthrax Lethal Factor Is a MAPK Kinase Protease

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Nos. 6,485,925 B1, issued November 26, 2002, 6,893,835 B2, issued May 17, 2005, and 6,911,203 B1, issued June 28, 2005, and U.S. Patent App. No. 11/112,137, filed April 22, 2005 and published on September 8, 2005 as U.S. Pat. Pub. No. 2005/0196822 A1, all titled ''Lethal Factor is a MAPK Kinase Protease'' (HHS Ref. Nos. E–066–1998/0–US–06, –07, –08, and –10) to Van Andel Research Institute, of Grand Rapids, Michigan. The patent rights in these inventions have been assigned to the Government of the United States.

The prospective exclusive license territory will be worldwide. The field of use may be limited to the development and sale of Anthrax lethal factor, a MAPK kinase protease, as a therapeutic agent for the treatment of cancer.

DATES: Only license applications which are received by the National Institutes of Health on or before March 13, 2006 will be considered.

ADDRESSES: Requests for information, inquiries, comments, and other materials relating to the contemplated co-exclusive license should be directed to: Thomas P. Clouse, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301–435–4076; Facsimile: 301–402–0220; E-mail: *clouset@mail.nih.gov.* Copies of the U.S. patent publications can be obtained from *http://www.uspto.gov.*

SUPPLEMENTARY INFORMATION: The above-identified patents relates to the discovery that Mitogen Activated Protein Kinase (MAPK) signal transduction pathway is an evolutionarily conserved pathway for effecting gene regulation that controls cell proliferation and differentiation in response to extracellular signals and also plays a crucial role in regulating oocyte meiotic maturation. The above-identified patent discloses in vitro and in vivo methods of screening for modulators, homologues, and mimetics of LF mitogen activated protein kinase kinase (MAPKK) protease activity. Mos (i.e., an oncogene first identified as the transforming determinant of Moloney Murine Sarcoma Virus) is a serine/threonine kinase which phosphorylates and activates MAPK1 kinase which in turn phosphorylates and activates MAPK. The patent also discloses that LF prevents activation of MAPK in oocytes of Xenopus laevis and tumor derived NIH3T3 (490) cells expressing an effector domain mutant form of the human V12HaRas oncogene. The tumor derived NIH3T3 cells reverted to a more normal morphology after LF treatment. Therefore, LF directly inhibits the Mos/MAPK pathway. Tumor cells utilize MAPK kinases in a different way than normal cells as in tumor cells there is a constitutive MAPK kinase activity. Additionally, MAPKK1 was found to be a proteolytic substrate for the metalloprotease LF. By analysis of MAPKK2, a consensus sequence for LF activity was found. The disclosure is claimed in the above-identified patent and other patents in the same patent family.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 3, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–89 Filed 1–9–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Strategic Prevention Framework State Incentive Grant (SPF SIG) Program—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) is responsible for the Evaluation of the Strategic Prevention Framework State Incentive Grant (SPF SIG) Program. The program is a major national initiative designed to: (1) Prevent the onset and reduce the progression of substance abuse, including childhood and underage drinking; (2) reduce substance abuse-related problems in communities; and, (3) build prevention capacity and infrastructure at the State/territory and community levels.

Five steps comprise the SPF:

- Step 1: Profile population needs, resources, and readiness to address needs and gaps.
- Step 2: Mobilize and/or build capacity to address needs.
- Step 3: Develop a comprehensive strategic plan.
- Step 4: Implement evidence-based prevention programs, policies, and practices.
- Step 5: Monitor, evaluate, sustain, and improve or replace those that fail.

Under a contract with CSAP, an evaluation team will implement a multi-method quasi-experimental evaluation at national, State, and community levels. Evaluation data will be collected from 26 states receiving grants in 2004 and 2005 and as many as 32 non-grantee states that will serve as a comparison group. The primary evaluation objective is to determine the impact of SPF SIG on the SAMHSA National Outcome Measures (NOMs).

This notice invites comment on state-level and community-level data collection instruments. The instruments for assessing state-level change will be included in an OMB review package submitted immediately after the expiration of the comment period and are the main focus of this announcement. These instruments will be reviewed first by OMB to ensure that state-level data collection occurs as specified in the evaluation plan (on or before June 30, 2006). Because the states have not awarded community-level funding, the evaluators will not initiate community-level data collection until late in 2006. Thus, the community-level survey will be submitted as an addendum approximately one month after the comment period expires. However, the instrument is described in this notice and comments on the instrument are invited.

State-Level Data Collection

Two instruments were developed for assessing state-level effects. Both instruments are guides for telephone interviews that will be conducted by trained interviewers three to four times over the life of the SPF SIG award. The *Strategic Prevention Framework Index* will be used to assess the relationship between SPF implementation and change in the national outcome measures. The *State Infrastructure Index* will capture data to assess infrastructure change and to test the relationship of this change to outcomes. Prevention infrastructure refers to the organizational features of the system that delivers prevention services, including all procedures related to planning, data management systems, workforce development, intervention implementation, evaluation and monitoring, financial management, and sustainability. The estimated annual burden for state-level data collection is displayed below in the table.

STATE LEVEL BURDEN ESTIMATE

Interview guide	Content description	Number of respondents	Number of responses	Hourly burden per response	Total hourly burden
Year 1					
SPF Implementation Index	SEW activities, indicators for each SPF step, including cultural competence throughout all five steps.	26	1	3	78
State Infrastructure Index	Assessment of a state's progress over time toward the implementation of these best practices.	26	1	6	156
Total State Level Year 1 Burden			2	9	234
Year 2					
SPF Implementation Index	SEW activities, indicators for each SPF step, including cultural competence throughout all five steps.	26	1	3	78
State Infrastructure Index	Assessment of a state's progress over time toward the implementation of these best practices.	26	1	6	156
Total State Level Year 2 Burden			2	9	234
Year 3					
SPF Implementation Index	SEW activities, indicators for each SPF step, including cultural competence throughout all five steps.	26	1	3	78
State Infrastructure Index	Assessment of a state's progress over time toward the implementation of these best practices.	26	1	6	156
Total State Level Year 3 Burden			2	9	234

STATE LEVEL BURDEN ESTIMATE—Continued

Interview guide	Content description	Number of respondents	Number of responses	Hourly burden per response	Total hourly burden
Average Annual State Burden.	.....	.....	2	9	234

Community-level Data Collection

The Community Level Index is a two-part, web-based survey for capturing information about SPF SIG implementation at the community level. Part 1 of the survey focuses on the five SPF SIG steps and efforts to ensure cultural competency throughout the SPF SIG process. Part 2 will capture data on the specific intervention(s) implemented at the community level including both individual-focused and environmental prevention strategies. Community partners receiving SPF SIG awards will be required to complete the survey every six months, using a secure password system. The survey data will be analyzed in conjunction with state and community outcome data to determine the relationship, if any, between the SPF process and substance use outcomes. This survey will be submitted as an addendum to the forthcoming OMB package approximately one month after the expiration of the comment period. The estimated annual burden for community-level data collection is displayed below. Note that the total burden assumes an average of 15 community-level sub-grantees per state (a total of 390 respondents) and two survey administrations per year. Note also that some questions will be addressed only once and the responses will be used to pre-fill subsequent surveys. In addition, as community partners work through the SPF steps, they will report only on step-related activities. For example, needs assessment activities will likely precede monitoring and evaluation activities. Thus, respondents will answer questions related to needs assessment in the first few reports but will not need to address monitoring and evaluation items until later in the implementation process.

COMMUNITY LEVEL SURVEY BURDEN ESTIMATE

Survey section	Content description	Number of respondents	Number of responses	Hourly burden/ response	Total hourly burden
Year 1					
Part I, 1–10	Contact Information and Reporting Period.	390	1	0.2	78
11–19	Organization Type and Funding	390	1	0.2	78
20–26	Cultural Competence, Sustainability and Framework Progress.	390	2	0.1	78
27–47	Needs and Resources Assessments	390	1	0.5	195
48–137	Capacity Building Activities	390	2	1.7	1,326
138–155	Strategic Plan Development	390	1	1.0	390
172–178	Contextual Factors and Closing Questions.	390	2	1.0	780
Sub-form 179–191	Coalition Organizational Information	390	1	1.0	390
Part II 1–52	Intervention Specific Information and Adaptations.	390	3	2.0	2,340
Review of past responses	.....	390	2	1.0	780
Total Community Level Year 1 Burden.	.....	.....	16	8.6	6,435
Year 2					
Part I, 20–26	Cultural Competence, Sustainability and Framework Progress.	390	2	0.1	78
48–137	Capacity Building Activities	390	2	1.7	1,326
172–178	Contextual Factors and Closing Questions.	390	2	1.0	780
Part II 1–52	Intervention Specific Information and Adaptations.	390	3	2.0	2,340
53–60	Intervention Outcomes	390	6	1.0	2,340
Sub-forms	Intervention Component Information	390	6	1.0	2,340
Review of past responses	.....	390	2	1.0	780
Total Community Level Year 2 Burden.	.....	.....	23	7.8	9,984
Year 3					
Part I, 20–26	Cultural Competence, Sustainability and Framework Progress.	390	2	0.1	78
48–137	Capacity Building Activities	390	1	1.7	1,326
156–160	Intervention Implementation	390	2	0.1	78

COMMUNITY LEVEL SURVEY BURDEN ESTIMATE—Continued

Survey section	Content description	Number of respondents	Number of responses	Hourly burden/ response	Total hourly burden
172–178	Contextual Factors and Closing Questions.	390	2	1.0	780
Part II, 1–52	Intervention Specific Information and Adaptations.	390	3	2.0	2,340
53–60	Intervention Outcomes	390	6	1.0	2,340
Sub-forms	Intervention Component Information	390	6	1.0	2,340
Review of past responses		390	2	1.0	780
Total Community Level Year 3 Burden.			24	7.9	10,062
Average Annual Community Burden.			21	8.1	8,827

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 71–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 30, 2005.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–95 Filed 1–9–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227. 414–328–7840/800–877–7016. (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624. 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118. 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210. 615–255–2400.

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299. 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802. 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913. 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602. 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974. 215–674–9310.

Dynacare Kasper Medical Laboratories,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2. 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655. 662–236–2609.

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302. 319–377–0500.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare, Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4. 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715. 608–267–6225.

Kroll Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236. 804–378–9130. (Formerly: Scientific Testing Laboratories, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040. 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869. 908–526–2400/800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709. 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group.)

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121. 800–882–7272. (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122. 206–923–7020/800–898–0180. (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671. 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center.)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449. 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.,* 6740 Campobello Road, Mississauga, ONT, Canada L5N 2L8. 905–817–5700. (Formerly: NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232. 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417. 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304. 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504. 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory.)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972. 541–687–2134.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311. 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory.)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204. 509–755–8991/800–541–7897x7.

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210. 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340. 770–452–1590/800–729–6432. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063. 800–824–6152. (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412. 702–733–7866/800–433–2750. (Formerly: Associated Pathologists Laboratories, Inc.)

Quest Diagnostics Incorporated, 10101 Renner Blvd., Lenexa, KS 66219. 913–888–3927/800–873–8845. (Formerly: LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403. 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173. 800–669–6995/847–885–2010. (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405. 818–989–2520/800–877–2520. (Formerly: SmithKline Beecham Clinical Laboratories).

Quest Diagnostics Incorporated, 2282 South Presidents Drive, Suite C, West Valley City, UT 84120. 801–606–6301/800–322–3361. (Formerly: Northwest Toxicology, a LabOne Company; LabOne, Inc., dba Northwest Toxicology; NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.)

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601. 574–234–4176 x276.

Southwest Laboratories. 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040. 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915. 517–364–7400. (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101. 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203. 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166. 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235. 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR

19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anna Marsh,

Director, Office Program Services, SAMHSA.

[FR Doc. E6–96 Filed 1–9–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of a permit application.

SUMMARY: The following applicant has applied for an enhancement of propagation or survival permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act. 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 request.

DATES: Comments on this permit application must be received on or before February 9, 2006.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the permit number 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: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to the address above (telephone: 503–231–2063). Please refer to the permit number when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–114934

Applicant: Idaho Department of Fish and Game, Boise, Idaho.

The applicant requests a permit to take (harass by survey, capture, handle, collar, take blood samples, relocate, sacrifice, and release) the gray wolf (*Canis lupus*) in conjunction with wolf management activities in the State of Idaho north of Interstate 90, for the purpose of enhancing its survival.

The applicant proposes to: (a) Conduct monitoring of wolf populations; and (b) coordinate non-lethal and lethal control actions to reduce wolf conflicts with livestock and dogs. These actions are currently coordinated by the U.S. Fish and Wildlife Service (Service). If the permit is issued, the applicant would take on responsibility for managing wolves in northern Idaho. Wolf management activities would be in accordance with the requirements of the State of Idaho Wolf Conservation and Management Plan (March 2002) and the Service's Interim Wolf Control Plan for Northwestern Montana and the Panhandle of Northern Idaho (Control Plan) (September 1999).

If issued, the permit would not affect ongoing wolf management in the remainder of the State of Idaho conducted in accordance with the non-essential experimental population regulations found at 50 CFR 17.84(n).

We have determined that a practical, responsive management program is essential to enhancing survival of the wolf in the wild (Service 1987; Service 1994; Service 1999). The program must respond to wolf-livestock conflicts, while promoting wolf recovery objectives. The Control Plan provides guidelines for: (a) Determining problem wolf status (including investigative procedures and criteria), (b) conducting wolf control actions, and (c) disposition of problem wolves.

We have made a preliminary determination that issuance of this permit would be categorically excluded from further consideration under the National Environmental Policy Act of 1969 (NEPA). If issued, the permit would authorize Idaho Department of Fish and Game to manage wolves in the same manner that the Service has in the 6 years since the Control Plan was adopted for northern Idaho. No additional environmental impacts would be expected beyond those analyzed in the Service's 1988 Environmental Assessment, the Service's 1999 Environmental Action Memorandum, and the Control Plan. The effect of the permit would be to allow continuation of previously analyzed and authorized activities; therefore, its issuance would be an administrative action.

Our preliminary NEPA categorical exclusion determination, the two wolf plans noted above, and the Idaho Department of Fish and Game permit application, can be found at: *http://www.fws.gov/pacific/ecoservices/endangered/recovery/default.htm.*

Additional information about wolf recovery and conservation in the northwestern United States, including control of problem wolves, can be found in various reports at: *http://westerngraywolf.fws.gov/.*

All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Protection Act regulations [40 CFR 1506.6(f)]. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, but this must be stated prominently at the beginning of their comments. We will honor these requests to the extent allowable by law.

We solicit public review and comment on this recovery permit application.

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 13, 2005.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E6–93 Filed 1–9–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1610–DU]

Notice of Intent To Prepare an Amendment to the Carson City Field Office Consolidated Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare a Resource Management Plan (RMP) amendment to address Lands and Land Tenure Issues, and Recreation and Travel Management. The appropriate state, tribal and local governments will

be invited to participate as cooperating agencies.

DATES: All relevant public meetings will be announced through the local news media, newsletters, and the BLM Web site at *http://www.nv.blm.gov/carson/* at least 15 days prior to the event. The minutes and list of attendees from each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

ADDRESSES: Comments should be addressed to Donald T. Hicks, Manager, Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Desna Young, Environmental Planner at the Carson City Field Office, 775–885–6000. Documents pertinent to this proposal may be examined at the Carson City Field Office.

SUPPLEMENTARY INFORMATION: The proposed RMP amendment involves approximately 19,000 acres of public land in Alpine County, California. As part of the RMP amendment, an EA will be prepared to analyze designation of public lands suitable for retention, disposal by sale or exchange, or conveyance for community expansion purposes. Public lands needing access will be identified as well as lands with existing access that could be improved to permit easier access to the public. The EA will also analyze travel and management by designating road and trail routes on public land. Comments will be accepted throughout the RMP amendment and EA process. The plan amendment will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. Comments, including names and street addresses of respondents, will be available for public review at the Carson City Field Office during regular business hours 7:30 a.m. to 5 p.m. Monday through Friday, except holidays, and may be published as part of the EA. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Dated: November 21, 2005.

Donald T. Hicks,

Manager, Carson City Field Office.

[FR Doc. E6–88 Filed 1–9–06; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–200–1610–DO–081D]

Notice of Intent To Prepare a Resource Management Plan for the Jarbidge Field Office, Idaho and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) Jarbidge Field Office, Twin Falls, Idaho intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for the Jarbidge Field Office and by this notice is announcing public scoping meetings. The RMP will replace the existing 1987 Jarbidge RMP.

DATES: The BLM will announce public scoping meetings to identify relevant issues through local news media, newsletters, and the BLM Web site *http://www.blm.gov/rmp/id/jarbidge* at least 15 days prior to the first meeting. We will provide formal opportunities for public participation upon publication of the Draft RMP/EIS.

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

- Web site: *http://www.blm.gov/rmp/id/jarbidge* (subject to change).
- E-mail: *ID_Jarbidge_RMP@blm.gov.*
- Fax: (208) 736–2375 or (208) 735–2076.
- Mail: Project Manager, Jarbidge Field Office, 2536 Kimberly Road, Twin Falls, Idaho 83301.

Documents pertinent to this proposal may be examined at the Jarbidge Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Rick Vandervoet, Acting Field Manager, Jarbidge Field Office, Telephone 208–735–2060; e-mail *richard_vandervoet@blm.gov* or Howard Hedrick, District Manager, Twin Falls District, Telephone 208–735–2060; e-mail *howard_hedrick@blm.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Jarbidge Field Office, Twin Falls, Idaho, intends to prepare a RMP with an associated EIS for the Jarbidge Field Office and announces public scoping meetings.

The planning area is located in Twin Falls, Owyhee and Elmore Counties, Idaho and Elko County, Nevada. This planning activity encompasses approximately 1,366,000 acres of public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. Preparation of an RMP for the Jarbidge Field Office is necessary to respond to a Stipulated Settlement Agreement under the jurisdiction of the District Court, for the District of Idaho; respond to changing resource conditions; respond to new issues; and prepare a comprehensive framework for managing public lands administered by the field office into the future. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. These issues will also guide the planning process. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. The BLM will honor such requests to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

To be most helpful, scoping comments should be received within 60 days following the publication of this notice in the **Federal Register;** however, coordination with the public will continue throughout the planning process.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date regarding the existing issues and concerns with current land

management. The major issues that will be addressed in this planning effort include: Tribal treaty rights and trust responsibilities; availability and management of public lands for commercial uses (e.g., livestock grazing, minerals development); vegetation management (including invasive species, noxious weeds, riparian areas and wetlands); fire and fuels management; management of habitat for wildlife and special status species; management of transportation, public access, and recreational opportunities; land tenure adjustments, rights of way including wind energy and utility corridors; wild horses; and management of areas with special values.

After gathering public comments as to what issues the plan should address, they will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the plan for placing an issue in either category two or three. In addition to these major issues, the plan will address a number of management questions and concerns. BLM encourages the public to help identify these questions and concerns during the scoping phase.

Preliminary planning criteria include the following:

1. The plan will comply with all applicable laws, regulations, and current policies. This includes local, state, Tribal, and Federal air quality standards; as well as water quality standards from the Idaho Non-Point Source Management Program Plans.
2. The RMP planning effort will be collaborative in nature. The BLM will strive to ensure that its management decisions are complementary to other planning jurisdictions and adjoining properties, within the limits described by law and Federal Regulations.
3. The BLM will continue to manage all previously established Wilderness Study Areas for wilderness values and character until Congress either designates them as wilderness areas or releases them for other types of multiple use management.
4. The RMP will recognize all valid existing rights.
5. As part of this RMP process, BLM will analyze areas for potential designation as Areas of Critical Environmental Concern (ACEC) in accordance with 43 CFR 1610.7–2, and river corridors for designation under the Wild and Scenic Rivers Act.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, botany, noxious weeds, minerals and geology, fire use, outdoor recreation and wilderness, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology and economics, public affairs, and geographic information.

Dated: November 23, 2005.

K Lynn Bennett,

Idaho State Director, Bureau of Land Management.

[FR Doc. E6–85 Filed 1–9–06; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0128).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart O, ''Well Control & Production Safety Training.''

DATES: Submit written comments by March 13, 2006.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1010–0128 as an identifier in your message.

- Public Connect on-line commenting system, *https://ocsconnect.mms.gov.* Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov.* Identify with Information Collection Number 1010–0128 in the subject line.
- Fax: 703–787–1093. Identify with Information Collection Number 1010–0128.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Process Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0128'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team at (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart O, Well Control & Production Safety Training.

OMB Control Number: 1010–0128.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.'' This authority and responsibility are among those delegated to the Minerals Management Service (MMS). To carry out these responsibilities, MMS issues regulations governing oil and gas or sulphur operations in the OCS.

Regulations at 30 CFR part 250, subpart O, implement these safe operation requirements. The MMS uses the information collected under subpart O to ensure that workers in the OCS are properly trained with the necessary skills to perform their jobs in a safe and pollution-free manner. In some instances, MMS will conduct oral interviews of offshore employees to evaluate the effectiveness of a company's training program. The information collected is necessary to

verify personnel training compliance with the requirements.

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 parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

Frequency: Primarily on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal oil and gas OCS lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 2,067 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart O	Reporting and recordkeeping requirement	Hour burden
1503(b), (c)	Develop training plans	60.
1503(c)	Maintain copies of training plan and employee training documentation for 5 years	plan = 15 min.; employee record = 5 min.
1503(c)	Upon request, provide MMS copies of employee training documentation or provide copy of training plan.	5.
1507(b)	Employee oral interview conducted by MMS	10 min.
1507(c), (d); 1508; 1509	Written testing conducted by MMS or authorized representative. [Exempt under 5 CFR 1320.3(h)(7).].	
1510(b)	Revise training plan and submit to MMS	4.
1500–1510	General departure or alternative compliance requests not specifically covered elsewhere in subpart O.	2.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor 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) 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.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: December 20, 2005.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E6–107 Filed 1–9–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m. to 4:30 p.m. on Monday, January 23, 2006. 8:30 a.m. to 4:30 p.m. on Tuesday, January 24, 2006.

Place: The Holiday Inn, 625 First Street, Alexandria, Virginia 22314.

Status: Open.

Matters To Be Considered: Reports; Gangs; NIC Balance Scored Card update; Faith-based Recommendations; PREA Regional Workshops; Mental Health Hearing; Quarterly Report by Office of Justice Programs.

Contact for Further Information: Larry Solomon, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 06–178 Filed 1–9–06; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,507]

JC Penney Catalog Distribution Center, Wauwatosa, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 16, 2005 in response to a worker petition filed on behalf of workers at JC Penney, Catalog Distribution Center, Wauwatosa, Wisconsin.

The petition regarding the investigation has been deemed invalid. The petitioners were separated from the subject firm more than one year before the date of the petition. Section 223(b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year prior to the date of the petition.

Signed at Washington, DC, this 27th day of December 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–116 Filed 1–9–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 20, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 20, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 3rd day of January 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 12/12/05 and 12/23/05]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58491	Hanes Dye and Finishing Co. (Comp)	Winston-Salem, NC	12/12/05	12/09/05
58492	Ormet Aluminum Mill Products (USWA)	Hannibal, OH	12/12/05	12/09/05
58493	River City Plastic (Wkrs)	Three Rivers, MI	12/12/05	12/09/05
58494	Lear Corporation (UAW)	Covington, VA	12/12/05	12/08/05
58495	Hoover Company (The) (IBEW)	North Canton, OH	12/12/05	12/09/05
58496	Bosch Fuel Systems (State)	Kentwood, MI	12/12/05	12/07/05
58497	Furniture Makers Supply Company (Comp)	Hudson, NC	12/12/05	12/08/05
58498	McLaughlin Company (UAW)	Petosky, MI	12/12/05	12/09/05
58499	Metaldyne (UE)	Edon, OH	12/13/05	12/01/05
58500	American Greetings (Comp)	Lafayette, TN	12/13/05	12/08/05
58501	Tinnerman Palnut (Comp)	Flemingsburg, KY	12/13/05	12/12/05
58502	Wella Manufacturing of Virginia (Comp)	Richmond, VA	12/13/05	11/28/05
58503	Kentucky Derby Hosiery (Wkrs)	Hillsvill, VA	12/13/05	12/12/05
58504	Yankee Plastics, Inc. (State)	Easthampton, MA	12/14/05	12/14/05
58505	Rock Tenn Company (State)	Piedmont, SC	12/14/05	12/06/05
58506	Alpha Sintered Metals, Inc. (Comp)	Ridgway, PA	12/14/05	12/14/05
58507	J.C. Penney (Wkrs)	Wauwatosa, WI	12/16/05	12/15/05
58508	Occidental Chemica Corp. (OxyChem) (State)	New Castle, DE	12/16/05	12/15/05
58509	Advance Tool (State)	Blaine, MN	12/16/05	12/16/05
58510	Cooper Tools (Wkrs)	York, PA	12/19/05	12/16/05
58511	Kessler Industries, Inc. (Comp)	El Paso, TX	12/19/05	12/14/05
58512	Tri-State Hospital Supply Corp. (Comp)	Salisbury, NC	12/19/05	12/16/05
58513	Apricot, Inc. (State)	Hartford, NC	12/19/05	12/07/05
58514	Liberty Screenprint (Comp)	Madison, NC	12/19/05	11/29/05
58515	Wellington Leisure Products (State)	Granite Quarry, NC	12/19/05	11/28/05
58516	Hurley International, LLC (State)	Costa Mesa, CA	12/19/05	12/19/05
58517	Mittal Steel (Comp)	Weirton, WV	12/19/05	12/12/05
58518	Wyeth Pharmaceutcials (Comp)	Chazy, NY	12/20/05	12/19/05
58519	Tri-Mountain Machining (State)	Idledale, CO	12/20/05	12/19/05
58520	Calley and Currier Company (Comp)	Bristol, NH	12/20/05	12/12/05
58521	Dan River, Inc. (Comp)	Brookneal, VA	12/20/05	12/19/05
58522	DMB Hosiery, Inc. (Comp)	Fort Payne, AL	12/20/05	12/13/05

APPENDIX—Continued

[TAA petitions instituted between 12/12/05 and 12/23/05]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
58523	Jasco Knitting Corp. (Wkrs)	Linden, NJ	12/20/05	12/06/05
58524	Hi-Tech Plastics (Comp)	Cambridge, MD	12/20/05	12/15/05
58525	Gelita USA (Union)	Seargant Bluff, IA	12/20/05	12/20/05
58526	IPF Management Corp. (State)	Paterson, NJ	12/21/05	12/20/05
58527	Techpack America Cosmetic Packaging, LP (Comp)	Morristown, TN	12/21/05	12/20/05
58528	Tyco Electronics—GADAN (Comp)	Franklin, KY	12/21/05	12/13/05
58529	Collins and Aikman (Wkrs)	Oklahoma City, OK	12/21/05	12/20/05
58530	Fiskars Brands, Inc. (Comp)	Wausau, WI	12/21/05	12/05/05
58531	Feeneys/Knafe and Vogt (Wkrs)	Muncie, IN	12/21/05	12/13/05
58532	Imenco Corp. (Comp)	Boy City, MI	12/21/05	12/07/05
58533	Selco, Inc. (Comp)	Austin, TX	12/21/05	12/21/05
58534	Robert Warren, LLC (State)	North Haven, CT	12/22/05	12/21/05
58535	RWC, Inc. (State)	Bay City, MI	12/22/05	12/14/05
58536	Leggett and Platt Automotive (Comp)	Archbold, OH	12/22/05	12/21/05
58537	Federal Signal Corporation (Comp)	Appleton, WI	12/22/05	12/22/05
58538	W.E. Wrights Co. (State)	W. Warren, MA	12/22/05	12/17/05
58539	Foamex International, Inc. (Comp)	Stocktown, PA	12/22/05	12/15/05
58540	Cytech Hardwoods, Inc. (Wkrs)	Amsterdam, NY	12/22/05	12/22/05
58541	TFL USA/Canada, Inc. (Comp)	Greensboro, NC	12/22/05	12/19/05
58542	River City Plastic (State)	Vicksburg, MI	12/23/05	12/09/05
58543	Procon Products (Comp)	Murfreesboro, TN	12/23/05	12/09/05
58544	Wickers Sportswear, Inc. (Comp)	Wolfeboro, NH	12/23/05	12/21/05
58545	Garner Automotive Electrical, Inc. (Comp)	Lexington, TN	12/23/05	12/23/05
58546	Hamilton Sundstrand (UAW)	Rockford, IL	12/23/05	12/22/05

[FR Doc. E6–109 Filed 1–9–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of December 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed

importantly to the workers' separation or threat of separation.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–58,314; Jessica Trimmings, Hialeah, FL, November 10, 2004.

TA–W–58,334; Armstrong World Industries, Inc., Lancaster Floor Plant Sheet Division, Lancaster, PA, November 11, 2004.

TA–W–58,384; Bekaert Corporation, Dyersburg, TN, November 18, 2004.

TA–W–58,418; Nicoles & Stone Company, Div. Brady Furniture Co., Rural Hall, NC, November 23, 2004.

TA–W–58,146; Wabash Alloys, LLC, Cleveland, OH, October 17, 2004.

TA–W–58,304; Viking Polymer Solutions, LLC, Albion, NY, November 9, 2004.

TA–W–58,308; Fordyce Picture Frames Co., Fordyce, AR, November 9, 2004.

TA–W–58,347; Dry Branch Operations, Dry Branch, GA, November 7, 2004.

TA–W–58,369; Agere Systems, Inc., Orlando, FL, November 4, 2004.

TA–W–58,379; SPX Contech, Including Leased Workers of Peoplelink, Mishawaka, IN, November 1, 2004.

TA–W–58,432; R.J. Reynolds Tobacco Company, Macon, GA, January 8, 2006.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–58,296; Kimberly-Clarke, Ballard Medical Products, Leased Workers of SOS Staffing and Express, Personnel, Pocatello, ID, November 3, 2004.

TA–W–58,380; Dan Post Boot Co., Waverly, TN, December 19, 2005.

TA–W–58,409; Shelby Automobiles, Inc., Las Vegas, NV, November 15, 2004.

TA–W–58,416; Gold Toe Brands, Inc., Burlington, NC, November 23, 2004.

TA–W–58,476; Orban CRL Systems, San Leandro, CA, November 18, 2004.

TA–W–58,489; Tricon Industries, Inc., Electromechanical Division, Downers Grove, IL, September 13, 2004.

TA–W–58,282; Kone, Inc., Escalator Manufacturing Plant, A Subsidiary of Kone OY, Coal Valley, IL, November 4, 2004.

TA–W–58,370; S. Lichtenberg and Co., Inc., Samsons Mfg. Co. Div., Waynesboro, GA, December 5, 2005.

The following certification has been issued. The requirement of supplier to a trade certified firm has been met.

None.

The following certification has been issued. The requirement of downstream producer to a trade certified firm has been met.

None.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–58,348; General Electric Appliances Production Operation, LLC, General Electric Consumer and Industrial Division, Bloomington, IN.

TA–W–58,461; Jaderloon Co., Inc., Burleson, TX.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,330; Tenneco Automotive Walker, Inc., A Subsidiary of Tenneco, On-Site Leased Workers of Westaff and Sundance Staffi, Salinas, CA.

TA–W–58,331; Smucker Fruit Processing Co., Salinas, CA.

TA–W–58,335; Powder Processing and Technology, LLC, Valparaiso, IN.

TA–W–58,457; Sonoco Products Company, Flexibles Packaging Division, Charlotte, NC.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,171; Cooper Standard Automotive, Noise, Vibration and Harshness Division, Auburn, IN.

TA–W–58,175; TI Group Automotive Systems, LLC, A Subsidiary of TI Automotive, LTD, Fuel Systems Div., Meriden, CT.

TA–W–58,263; Parkdale Mills, Inc., Plant #8, Belmont, NC.

TA–W–58,311; Abbott Laboratories, Diagnostics Division, Abbott Park, IL.

TA–W–58,362; Stora Enso North America, Kimberly Paper Mill, Kimberly, WI.

TA–W–58,362A; Stora Enso North America, Stevens Point Paper Mill, Kimberly, WI.

TA–W–58,364; Mine Safety Appliances Co., Saftey Products Division, On-Site Leased Workers, Evans City, PA.

TA–W–58,343; Michaels of Oregon, Corporate Office, Oregon City, OR.

The investigation revealed that criteria (a)(2)(A)(I.C). Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–58,245; Agilent Technologies, Assurance Solutions, Roseville, CA.

TA–W–58,245A; Agilent Technologies, Assurance Solutions, Colorado Springs, CO.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–58,250; Independence Airlines, Dulles International Airport, Dulles, VA.

TA–W–58,250A; Independence Airlines, Detroit Wayne County Airport, Detroit, MI.

TA–W–58,250B; Independence Airlines, Port Columbus International Airport, Columbus, OH.

TA–W–58,250C; Independence Airlines, Orlando International Airport, Orlando, FL.

TA–W–58,250D; Independence Airlines, Jacksonville International Airport, Jacksonville, FL.

TA–W–58,250E; Independence Airlines, Logan International Airport, Boston, MA.

TA–W–58,250F; Independence Airlines, West Palm Beach International Airport, West Palm Beach, FL,

TA–W–58,250G; Independence Airlines, Newark International Airport, Newark, NJ.

TA–W–58,250H; Independence Airlines, Allegheny County Airport, Pittsburgh, PA,

TA–W–58,250I; Independence Airlines, Chicago O'Hare International Airport, Chicago, IL.

TA–W–58,250J; Independence Airlines, Tampa International Airport, Tampa, FL.

TA–W–58,250K; Independence Airlines, Hopkins International Airport, Cleveland, OH.

TA–W–58,338; Passion Parties, Inc., Brisbane, CA,

TA–W–58,351; Air Control Science, Inc., Boulder, CO,

TA–W–58,355; ExxonMobil Fuels Marketing Co., Customer Support Center, Exton, PA.

TA–W–58,366; Teradyne, Inc., Semiconductor Test Division, North Reading, MA.
TA–W–58,373; Irving Oil, Insurance Department, Brewer, ME.
TA–W–58,381; DSM Pharma Chemicals, A Division of DSM Pharmaceuticals, Inc., Greenville, NC.
TA–W–58,382; ICT Group, Inc., Skokane Valley, WA.
TA–W–58,392; InFocus Corporation, Wilsonville, OR.
TA–W–58,414; Quantum Corporation, San Jose, CA.
TA–W–58,414A; Quantum Corporation, Irvine, CA.
TA–W–58,414B; Quantum Corporation, Boulder, CO.
TA–W–58,414C; Quantum Corporation, Colorado Springs, CO.
TA–W–58,430; Ford Motor Company, Sales and Marketing Division, Philadelphia Regional Sales Office, Mt. Laurel, NJ.
TA–W–58,414D; Quantum Corporation, Costa Mesa, CA.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–58,333; Sonoco Products Company, Chester, VA.

Affirmative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–58,314; Jessica Trimmings, Hialeah, FL, November 10, 2004.
TA–W–58,334; Armstrong World Industries, Inc., Lancaster Floor Plant Sheet Division, Lancaster, PA, November 11, 2004.
TA–W–58,418; Nicoles & Stone Company, Div. Brady Furniture Co., Rural Hall, NC, November 23, 2004.
TA–W–58,146; Wabash Alloys, LLC, Cleveland, OH, October 17, 2004.
TA–W–58,304; Viking Polymer Solutions, LLC, Albion, NY, November 9, 2004.
TA–W–58,308; Fordyce Picture Frames Co., Fordyce, AR, November 9, 2004.
TA–W–58,347; Dry Branch Operations, Dry Branch, GA, November 7, 2004.
TA–W–58,379; SPX Contech, Including Leased Workers of Peoplelink, Mishawaka, IN, November 1, 2004.
TA–W–58,432; R.J. Reynolds Tobacco Company, Macon, GA, January 8, 2006.
TA–W–58,296; Kimberly-Clarke, Ballard Medical Products, Leased Workers of SOS Staffing and Express, Personnel, Pocatello, ID, November 3, 2004.
TA–W–58,380; Dan Post Boot Co., Waverly, TN, December 19, 2005.
TA–W–58,409; Shelby Automobiles, Inc., Las Vegas, NV, November 15, 2004.
TA–W–58,416; Gold Toe Brands, Inc., Burlington, NC, November 23, 2004.
TA–W–58,476; Orban CRL Systems, San Leandro, CA, November 18, 2004.
TA–W–58,370; S. Lichtenberg and Co., Inc., Samsons Mfg. Co. Div., Waynesboro, GA, December 5, 2005.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–58,348; General Electric Appliances Production Operation, LLC, General Electric Consumer and Industrial Division, Bloomington, IN.
TA–W–58,461; Jaderloon Co., Inc., Burleson, TX.
TA–W–58,330; Tenneco Automotive Walker, Inc., A Subsidiary of Tenneco, On-Site Leased Workers of Westaff and Sundance Staffi, Salinas, CA.
TA–W–58,331; Smucker Fruit Processing Co., Salinas, CA.
TA–W–58,335; Powder Processing and Technology, LLC, Valparaiso, IN.
TA–W–58,457; Sonoco Products Company, Flexibles Packaging Division, Charlotte, NC.
TA–W–58,171; Cooper Standard Automotive, Noise, Vibration and Harshness Division, Auburn, IN.
TA–W–58,175; TI Group Automotive Systems, LLC, A Subsidiary of TI Automotive, LTD, Fuel Systems Div., Meriden, CT.
TA–W–58,263; Parkdale Mills, Inc., Plant #8, Belmont, NC.
TA–W–58,311; Abbott Laboratories, Diagnostics Division, Abbott Park, IL.
TA–W–58,362; Stora Enso North America, Kimberly Paper Mill, Kimberly, WI.
TA–W–58,362A; Stora Enso North America, Stevens Point Paper Mill, Kimberly, WI.
TA–W–58,364; Mine Safety Appliances Co., Saftey Products Division, On-Site Leased Wkrs, Evans City, PA.
TA–W–58,245; Agilent Technologies, Assurance Solutions, Roseville, CA.
TA–W–58,245A; Agilent Technologies, Assurance Solutions, Colorado Springs, CO.
TA–W–58,343; Michaels of Oregon, Corporate Office, Oregon City, OR.
TA–W–58,250; Independence Airlines, Dulles International Airport, Dulles, VA.
TA–W–58,250A; Independence Airlines, Detroit Wayne County Airport, Detroit, MI.
TA–W–58,250B; Independence Airlines, Port Columbus International Airport, Columbus, OH.
TA–W–58,250C; Independence Airlines, Orlando International Airport, Orlando, FL.
TA–W–58,250D; Independence Airlines, Jacksonville International Airport, Jacksonville, FL.
TA–W–58,250E; Independence Airlines, Logan International Airport, Boston, MA.
TA–W–58,250F; Independence Airlines, West Palm Beach International Airport, West Palm Beach, FL.
TA–W–58,250G; Independence Airlines, Newark International Airport, Newark, NJ.
TA–W–58,250H; Independence Airlines, Allegheny County Airport, Pittsburgh, PA.
TA–W–58,250I; Independence Airlines, Chicago O'Hare International Airport, Chicago, IL.
TA–W–58,250J; Independence Airlines, Tampa International Airport, Tampa, FL.
TA–W–58,250K; Independence Airlines, Hopkins International Airport, Cleveland, OH.

TA–W–58,338; Passion Parties, Inc., Brisbane, CA.

TA–W–58,351; Air Control Science, Inc., Boulder, CO.

TA–W–58,355; ExxonMobil Fuels Marketing Co., Customer Support Center, Exton, PA.

TA–W–58,366; Teradyne, Inc., Semiconductor Test Division, North Reading, MA.

TA–W–58,373; Irving Oil, Insurance Department, Brewer, ME.

TA–W–58,381; DSM Pharma Chemicals, A Division of DSM Pharmaceuticals, Inc., Greenville, NC.

TA–W–58,382; ICT Group, Inc., Skokane Valley, WA.

TA–W–58,392; InFocus Corporation, Wilsonville, OR.

TA–W–58,414; Quantum Corporation, San Jose, CA.

TA–W–58,414A; Quantum Corporation, Irvine, CA.

TA–W–58,414B; Quantum Corporation, Boulder, CO.

TA–W–58,414C; Quantum Corporation, Colorado Springs, CO.

TA–W–58,430; Ford Motor Company, Sales and Marketing Division, Philadelphia Regional Sales Office, Mt. Laurel, NJ.

TA–W–58,333; Sonoco Products Company, Chester, VA.

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–58,384; Bekaert Corporation, Dyersburg, TN.

TA–W–58,489; Tricon Industries, Inc., Electromechanical Division, Downers Grove, IL.

TA–W–58,282; Kone, Inc., Escalator Manufacturing Plant, A Subsidiary of Kone OY, Coal Valley, IL.

The Department as determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

I hereby certify that the aforementioned determinations were issued during the month of December 2005. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 3, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–111 Filed 1–9–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,298]

Messier Services, Inc.; a Subsidiary of Safran Group; Sterling, VA; Notice of Revised Determination on Reconsideration

On November 30, 2005, the Department of Labor issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to the subject firm. The Notice will soon be published in the **Federal Register**.

During the initial investigation, the Department found that workers are engaged in the repair and overhaul of landing gear and hydraulics components and the predominant cause of worker separations is the shift of landing gear and hydraulics repair services to an affiliated facility in Mexico.

During the reconsideration investigation, it was found that bushings were manufactured at the Sterling, Virginia, facility during the relevant period. The investigation also revealed that the subject company is shifting half of the Sterling, Virginia, production to Europe and will shift the remaining half to Mexico in 2006. The investigation also revealed that the subject company will send the finished product from Europe and Mexico to its customers in the United States.

The investigation also revealed that all criteria have been met in regard to alternative trade adjustment assistance. A significant number or proportion of the worker group are age fifty years or over and workers possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that a shift of production to Europe and Mexico followed by increased imports of bushings contributed importantly to worker separations at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Messier Services, Inc., A Subsidiary of the Safran Group, Sterling, Virginia, who became totally or partially separated from employment on or after October 31, 2003, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 27th day of December 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–119 Filed 1–9–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,398]

The Operations Centre, Rockford, IL; Notice of Termination of Investigation

Pursuant to section 221 of the November 23, 2005 in response to a worker petition filed by a company official on behalf of workers at The Operations Centre, Rockford, Illinois.

A company official has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of December 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–118 Filed 1–9–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,374]

Pacific MDF Products, Inc., of South Carolina; Clio, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 18, 2005 in response to a petition filed by a company official on behalf of workers at Pacific MDF Products, Inc., of South Carolina, Clio, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of December, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–114 Filed 1–9–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,075]

Paxar Americas, Inc.; a Subsidiary of Paxar Corporation; Sayer, PA; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated December 9, 2005, a company official requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA) applicable to workers of the subject firm. The negative determination was signed on November 10, 2005, and was published in the **Federal Register** on December 6, 2005 (70 FR 72654).

The workers of Paxar Americas, Inc., a subsidiary of Paxar Corporation, Sayer, Pennsylvania, were certified eligible to apply for Trade Adjustment Assistance (TAA) on November 10, 2005.

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

In the request for reconsideration, the company official provided new information confirming that the skills of the workers at the subject firm are not easily transferable in the local commuting area.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Paxar Americas, Inc., a subsidiary of Paxar Corporation, Sayer, Pennsylvania, who became totally or partially separated from employment on or after October 4, 2004 through November 10, 2007, are eligible to apply for trade adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 30th day of December 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–106 Filed 1–9–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Roof Control Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)[44 U.S.C. 3506 (c)(2)(A)]. The program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections:

75.215—Longwall mining systems;

75.220—Roof control plan;

75.221—Roof control plan information;

75.222—Roof control plan-approval criteria; and

75.223—Evaluation and revision of roof control plan.

DATES: Interested parties should submit comments on or before March 13, 2006.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via E-mail to *Rowlett.John@dol.gov,* along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile). Because of potential delays in receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Section 302(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 846, requires that a roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine be first approved by the Secretary of Labor (Secretary) before implementation by the operator. The plan must show the type of support and spacing approved by the Secretary, and the plan must be reviewed at least every 6 months by the Secretary.

Under 30 CFR 75.221, the information required to be submitted and approved in the roof control plan includes the following: (1) The name and address of the company; (2) the name, address, mine identification number, and location of the mine; (3) the name and title of the company official responsible for the plan; (4) a description of the mine strata; (5) a description and drawings of the sequence of installation and spacing of supports for each method of mining used; (6) the maximum distance that an ATRS system is to be set beyond the last row of permanent support (if appropriate); (7) specifications and installation procedures for liners or arches (if appropriate); (8) drawings indicating the planned width of openings, size of pillars, method of pillar recovery, and the sequence of mining pillars; (9) a list of all support materials required to be used in the roof, face and rib control system; (10) the intervals at which test holes will be drilled (if appropriate); and (11) a description of the methods to be used for the protection of persons. Under 30 CFR 75.215, the roof control plan for each longwall mining section is required to specify the methods that will be used to maintain a safe travelway out of the section through the tailgate side of the longwall and the procedures that will be followed if a ground failure prevents travel out of the section through the tailgate side of the longwall.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to Roof Control Plans. MSHA is particularly interested in comments that:

* Evaluate whether the proposed collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;

* Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

* Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submissions of responses) to minimize the burden of the collection of information on those who are to respond.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Compliance Assistance'', ''Compliance Information'' and the ''Paperwork Reduction Act Submissions.''

II. Current Actions

Falls of roof, face and rib continue to be a cause of injuries and death in underground coal mines. All underground coal mine operators are required to develop and submit roof control plans to MSHA for evaluation and approval. These plans provide the means to instruct miners, who install roof supports, and the minimum requirements and placement of roof supports. The plan also provides a reference for mine supervisors to assist them in compliance with the plan requirements. In that regard the plan is a working document for the miners.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Roof Control Plan.

OMB Number: 1219–0004.

Recordkeeping: Indefinite.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Total Number of Responses: 2,465.

Total Burden Hours: 6,919.

Total Burden Cost (operating/maintaining): $4,630.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 3rd day of January, 2006.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E6–97 Filed 1–9–06; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL COUNCIL ON DISABILITY (NCD)

Sunshine Act Meetings

Type: Quarterly Meeting (Teleconference).

DATES AND TIMES: January 30–31, 2006, Noon–2 p.m. EST.

LOCATION: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

STATUS: This meeting (teleconference) will be open to the public.

AGENDA: Reports from the Chairperson and the Executive Director, Team Reports, Unfinished Business, New Business, Announcements, Adjournment.

SUNSHINE ACT MEETING CONTACT: Mark S. Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *mquigley@ncd.gov* (e-mail).

AGENCY MISSION: NCD is an independent Federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families. NCD is composed of 15 members appointed by the President and confirmed by the U.S. Senate.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD at least two weeks before this meeting (teleconference).

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for these meetings should notify NCD at least two weeks before this meeting.

Dated: January 3, 2006.

Ethel D. Briggs,

Executive Director.

[FR Doc. 06–243 Filed 1–6–06; 1:28 pm]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Prepare a Programmatic Environmental Impact Statement for the National Science Foundation To Address Potential Impacts on the Marine Environment Related to the United States Implementing Organization's Participation in the Integrated Ocean Drilling Program

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) announces its intent to prepare a Programmatic Environmental Impact Statement (EIS) to evaluate the potential environmental impacts associated with the NSF funding of the United States Implementing Organization's (USIO) participation in the Integrated Ocean Drilling Program (IODP). This EIS is being prepared and considered in accordance with requirements of the National Environmental Policy Act (NEPA) of 1969, regulations of the President's Council on Environmental Quality (40 CFR parts 1500 through 1508), and NSF's National Environmental Policy Act Implementing Procedures (45 CFR 640.1–640.5). The National Marine Fisheries Service (NMFS), a part of the National Oceanic and Atmospheric Administration (NOAA), is being invited to be a cooperating agency in the preparation of the Programmatic EIS.

Publication of this notice begins the official scoping process that will help identify alternatives and determine the scope of environmental issues to be addressed in the Programmatic EIS/OEIS. This notice requests public participation in the scoping process and provides information on how to participate.

Addresses and Dates

The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until March 6, 2006. NSF will consider all comments received or postmarked by that date in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable. Public scoping meetings will provide the public with an opportunity to present comments,

ask questions, and discuss concerns regarding the EIS with NSF officials. The locations, dates, and times for the public scoping meetings are as follows:

1. Wednesday, February 15, 5–9 p.m., 100 Vaughn Hall, Discovery Way, Scripps Institution of Oceanography, La Jolla, CA;

2. Friday, February 17, 2006, 5–9 p.m., Room C126, 1000 Discovery Drive, Texas A&M University, College Station, TX; and

3. Thursday, February 23, 2006, 2:30–6:30 p.m., Silver Spring Metro Center Building 4, Science Center, 1301 East-West Highway, Silver Spring, MD.

Written comments will be accepted at these meetings as well as during the scoping period, and can be mailed to NSF by March 6, 2006.

FOR FURTHER INFORMATION CONTACT: Written statements and questions regarding the scoping process should be mailed to Dr. James Allan, Program Director, Ocean Drilling Program, Division of Ocean Sciences, National Science Foundation, 4201 Wilson Boulevard, Suite 725, Arlington, VA 22230; voice (703) 292–8581 or e-mail at *jallan@nsf.gov.*

SUPPLEMENTARY INFORMATION: In 1975, the National Science Foundation (NSF) prepared an Environmental Impact Statement (EIS) on the International Phase of Ocean Drilling (IPOD) of the Deep Sea Drilling Project (DSDP). The 1975 EIS addressed scientific ocean drilling carried out globally in major and minor ocean basins.

In 1985, the NSF prepared an EIS for the new Ocean Drilling Program (ODP) to address the more complicated aspects of proposed drilling techniques and of drilling in high latitudes and Antarctic seas that were not previously addressed in the DSDP/IPOD EIS. Drilling modes that were analyzed in the DSDP/IPOD EIS were reviewed in the 1985 EIS including the use of the research vessel (RV) JOIDES *Resolution.* Additionally, aspects of drilling in deep-ocean trenches, on active spreading centers, and in or near environmentally sensitive regions were considered in the 1985 environmental review. Drilling in both DSDP/IPOD and ODP was riserless, where drill cuttings were typically removed from the borehole by pumped seawater without return circulation to the drillship via an external pipe or riser.

The ODP was formally completed September 30, 2003. In order to facilitate the seamless continuation of research during the transition from the ODP to the Integrated Ocean Drilling Program (IODP), the JOIDES *Resolution* was selected as the platform to continue to conduct riserless drilling activities during Phase 1 of the USIO participation in the IODP. Environmental Assessments (EAs) were prepared in 2004 and 2005 to supplement the 1985 EIS and address the environmental and operating conditions that were specific to the IODP–USIO Phase 1 expeditions that would be performed during 2004 and 2005.

The IODP is an international research program that explores the history and structure of the earth as recorded in seafloor sediments, fluids, and rocks. IODP builds upon the earlier successes of the DSDP and the ODP, which revolutionized our view of Earth history and global processes through ocean basin exploration. IODP represents the latest generation of these highly successful scientific ocean-drilling initiatives and seeks to greatly expand the reach of these previous programs by forming a collaborative union between the United States, Japan, and the European Union, each of whom will be responsible for providing drilling platforms appropriate for achieving the scientific objectives outlines in the IODP Initial Science Plan. China has joined as an additional member. Based on international agreements, the United States is responsible for providing and operating a riserless drilling vessel, Japan will provide and operate a riser drilling vessel, and a European-led consortium will provide and operate Mission Specific Platforms capable of drilling in environments unsuitable for either the riserless or riser vessels.

Joint Oceanographic Institutions, Incorporated (JOI) and its partners, the Lamont-Doherty Earth Observatory of Columbia University (LDEO) and Texas A&M University (TAMU) through the Texas A&M Research Foundation (TAMRF), have been selected by NSF to be the IODP USIO for the riserless vessel and related activities. These three partners comprise the JOI Alliance. JOI is responsible to NSF for the overall program leadership, technical, operational, and financial management, and delivery of services. TAMU is responsible for providing a full array of science services, ranging from vessel and drilling operations to ship- and shore-based science laboratories, core repositories, and publication. LDEO is responsible for logging-related shipboard and shore-based science services and for leading an international logging consortium to participate in scientific ocean drilling operations. The objectives of the USIO are to provide leadership regarding the U.S. interests in IODP as the challenges and demands of a multiplatform drilling program present themselves. The USIO also seeks to ensure that services for the riserless vessel and other program aspects are provided in a cost-effective, holistic, and responsive manner to facilitate comprehensive, integrated, and flexible management that involves a broad array of stakeholders.

Currently, the JOI Alliance is completing IODP Phase 1 operations using the RV JOIDES *Resolution*, which is the same vessel used for two decades during ODP (1985–2003). Concurrent with Phase 1 activities (2003–2006), the JOI Alliance is planning for Phase 2 operations, which require procuring and converting an appropriate ship into a Scientific Ocean Drilling Vessel (SODV). This Programmatic EIS will address the use of the SODV and the USIO's participation in IODP Phase 2 riserless drilling operations for at least the next 20 years.

Depending upon the specific research objectives of each IODP USIO Phase 2 expedition, typical aspects of the proposed action that have the potential to affect the surrounding environment and will be subject to review in the proposed Programmatic EIS include:

Site Selection and Expedition Planning

- Review and evaluate research proposals (multi-phase, international process).
- Logistically prepare for expedition and schedule.

Vessel Deployment and Maximum Days at Sea per Expedition

- Transit from port call to expedition site; may require days or weeks of travel at a nominal speed of 10 knots (depending on sea conditions).
- Remain at sea for 60 days.

Number of Drill Sites and Boreholes

- One or more drill sites may be selected in a specific area for each expedition as needed to meet research objectives.
- One or more boreholes may be advanced at each drill site as needed to meet specific objectives.

Typical Extent of Operations

- Water Depth (m) 75–7,000.
- Seafloor Penetration (m) 1–2,500.

Drilling and Casing Deployment

- Depending upon the specific application, drill bits will be advanced into the seafloor to produce nominally-sized boreholdes 37.5, 44.5, 50.8, or 61 cm (14⅝, 17⅜, 20, 24 in) in diameter (alternate sized boreholes may be drilled as needed).
- Depending on the specific application, boreholes may be lined

with 27.3, 34, 40, and 50.8 cm (10⅝, 13⅜, 16, 20 in) casings (alternate size casting may be installed as needed).

Core Sampling

- Advanced Piston Corer (APC): used in soft ooze and sediments.
- Rotary Core Barrel (RCB): used in medium to hard crystalline sediments.
- Sonic Core Monitor (SCM).
- Extended Core Barrel (XCB): used in firm sediments.
- Advanced Diamond Core Barrel (ADCB): used in hard sedimentary or igneous formations.
- Motor Driven Core Barrel (MDCB): Used in interbedded materials and hard fractured rock.
- Pressure Core Sample (PCS): used in sediments while maintaining in situ pressure.
- Botton-Hole Assembly (BHA).
- Tricone Retractable Bit (TRB).
- Other coring and sampling capability as developed.

Deployment of Reentry Hardware and Observatories

- Drill-In-Casing (DIC) System: used to drill in a short casing string simultaneously with the bit to support an unstable sediment zone.
- Free Fall Funnel (FFF): used to reenter a hole.
- Hard Rock Base (HRB): Used to focus the direction of the drill bit into hard irregular seafloor surfaces.
- Hard Rock Reentry System (HRRS): used to install casing with reentry capability on a sloping or rough hard rock seafloor.
- Reentry Cone and Casing (RECC): used as a permanent seafloor installation (or legacy hole) able to support nested casing strings.
- Database query of sites with reentry cones.
- Underreamers, Bi-Center Reamers, and Mud Motors.
- Vibration Isolated Television Frame (VIT).
- Circulation Obviation Retrofit Kit (CORK) Borehole Observatory.
- Advanced CORK (ACORK) Borehole Observatory.

In Situ Sampling and Testing

- Temperature, pore pressure, gas and fluid compositions, permeability, microbial with instruments such as:
- Advanced Piston Corer Temperature (APCT), used to obtain formation temperatures to determine the heat flow gradient.
- Davis-Villinger Temperature Probe (DVTP), used to take heat-flow measurements in semi consolidated sediments that are too stiff for the APCT.
- Water Sampling Temperature Probe (WSTP).

Downhole Logging

- Natural gamma ray measurement.
- Compressional- and shear-wave sonic velocity (Vp and Vs).
- Caliper to measure borehole rugosity.
- Formation density, porosity, temperature, resistivity and resistivity images, magnetic susceptibility/reversals.
- Borehole camera.
- Borehole seismic tool for check shots or vertical seismic profiles (VSP).
- Fluid sampling.
- Measurement while Drilling (MWD), including Logging While Drilling (LWD, formation resistivity images and density/porosity).
- Geochemical logging (inference of formation chemical composition).

Geophysical Surveying

- Occasional use of geophysical techniques to characterize seafloor.

The Programmatic EIS will address U.S. laws and regulations, as appropriate, including but not necessarily limited to NEPA; the Marine Mammal Protection Act of 1972 (MMPA); the Endangered Species Act of 1973 (ESA); and Executive Order (EO) 12114 (1979), Environmental Effects Abroad of Major Federal Actions. In addition, the assessment will address foreign regulations especially where research will be carried out entirely or partially within territorial waters or Exclusive Economic Zone waters surrounding a foreign nation or in international waters subject to the United Nations Law of the Sea or other international agreements.

The Programmatic EIS will take a view of the planned USIO drilling program as a whole and thereby assemble and analyze the broadest range of direct, indirect, and cumulative impacts associated with the entire program rather than assessing individual cruises separately. This approach will also address possible concerns that NSF is analyzing regarding each expedition's contribution to the cumulative impacts of the entire program. Further, the Programmatic EIS will provide a broad analytical baseline within which NSF, using tiered documents, will be able to analyze and decide upon various cruise-specific issues. This process will enable the NSF to streamline the preparation of subsequent environmental documents for the individual cruises, if needed, and enable NSF to identify any prudent conservation practices and mitigation measures that may be applied across the entire program. The application of the Programmatic EIS to future cruises will be determined during the development of the EIS and will be specified within the EIS.

Major environmental issues that will be addressed in the Programmatic EIS include marine biological resources including Essential Fish Habitat (EFH), acoustic impacts to marine mammals, fish, sea turtles, invertebrates, and threatened and endangered species; releases of any substances from the ship during vessel transit, drilling, and research operations; cultural resources; human health and safety; socioeconomic and land use (i.e., commercial, private, and recreational uses of the marine environment); and water quality.

At present, NSF has identified two alternatives for evaluation in the EIS: (1) The proposed action as described above; and (2) the no action alternative. NSF welcomes discussion on these and other possible alternatives that may be identified during the scoping process. NSF also welcomes discussion on mitigation measures to be considered, separate from features of the proposed action that could avoid or substantially reduce the environmental consequences of the proposed action.

NSF is initiating this scoping process for the purpose of determining the extent of issues to be addressed, identifying the significant issues related to this action, and identifying possible alternatives to the proposed action. NSF will hold public scoping meetings as identified in the Dates and Addresses section of this notice. These meetings will also be advertised in area newspapers. NSF and NMFS representatives will be available at these meetings to receive comments from the public regarding issues of concern to the public. Federal, state, and local agencies and interested individuals are encouraged to take this opportunity to identify environmental concerns that should be addressed during the preparation of the Programmatic EIS. Agencies and the public are also invited and encouraged to provide written comments on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe issues or topics that the commenter believes the Programmatic EIS should address.

We invite you to learn about NSF's funding of the USIO's role in the Integrated Ocean Drilling Program at an informational open house, and to assist NSF in defining the alternatives and the scoping environmental issues related to the drilling research program. All our

public meeting locations are wheelchair-accessible. If you plan to attend a scoping meeting/open house, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify NSF (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

We request public comments or other relevant information on environmental issues related to the NSF drilling program. The public meetings are not the only opportunity you have to comment. In addition to or in place of attending a meeting, you can submit comments to Dr. James Allan by March 6, 2006 (see **FOR FURTHER INFORMATION CONTACT**). We will consider all comments received during the comment period. We request that you include in your comments:

- Your name and address (especially if you would like to receive a copy of the Draft Programmatic EIS/OEIS upon completion);
- An explanation for each comment; and
- Include any background materials to support your comments, as you feel necessary.

You may mail, e-mail, or hand deliver your comments to NSF (see **FOR FURTHER INFORMATION CONTACT**). All comment submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and elctronic scanning. Please note that regardless of the method used for submitting comments or material, all submissions will be publicly available and, therefore, any personal information you provide in your comments will be open for public review. In addition, if you wish to receive a copy of the Draft Programmatic EIS/OEIS, please indicate this in your comment. No decision will be made to implement any alternative until the NEPA prcoess is completed.

Dated: January 5, 2006.

James Allan,

Program Director, Ocean Drilling Program, Division of Ocean Sciences, National Science Foundation.

[FR Doc. 06–198 Filed 1–9–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the Subcommittees on Regulatory Policies and Practices and on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittees on Regulatory Policies and Practices and on Thermal-Hydraulic Phenomena will hold a joint meeting on January 25, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 25, 2006—1:30 p.m. until 5:30 p.m.

The Subcommittees will review the staff's draft proposed Regulatory Guide in support of risk-informed changes to loss-of-coolant accident technical requirements. The Subcommittees will hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael R. Snodderly (telephone 301/415–6927), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: January 4, 2006.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. E6–122 Filed 1–9–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATES: Weeks of January 9, 16, 23, 30, February 6, 13, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of January 9, 2006

Tuesday, January 10, 2006

9:30 a.m.: Briefing on International Research and Bilateral Agreements (Public Meeting). (Contact: Roman Shaffer, 301–415–7606). This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Wednesday, January 11, 2006

1:55 p.m.: Affirmation Session (Public Meeting) (Tentative) a. Hydro Resources, Inc. (Crownpoint, New Mexico) Petition for Review of LBP–05–17 (Groundwater Issues) (Tentative)

2 p.m.: Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360) This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Thursday, January 12, 2006

9:30 a.m.: Discussion of Security Issues (Closed—Ex. 2 & 3).

Week of January 16, 2006—Tentative

Tuesday, January 17, 2006

1:30 p.m.: Discussion of Security Issues (Closed—Ex. 1 & 3).

Week of January 23, 2006—Tentative

There are no meetings scheduled for the Week of January 23, 2006.

Week of January 30, 2006—Tentative

Tuesday, January 31, 2006

9:30 a.m.: Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2).

Wednesday, February 1, 2006

9:30 a.m.: Discussion of Security Issues (Closed—Ex. 1 & 3)

Week of February 6, 2006—Tentative

Monday, February 6, 2006

9:30 a.m.: Briefing on Materials Degradation Issues and Fuel Reliability (Public Meeting). (Contact: Jennifer Uhle, 301–415–6200). This meeting will be webcast live at the Web address— *http://www.nrc.gov*

2 p.m.: Discussion of Security Issues (Closed—Ex. 1 & 3).

Wednesday, February 8, 2006

9:30 a.m.: Briefing on Office of Nuclear Materials Safety and Safeguards (NMSS). Programs, Performance, and

Plans—Materials Safety (Public Meeting). (Contact: Teresa Mixon, 301–415–7474; Derek Widmayer, 301–415–6677). This meeting will be webcast live at the Web address—*http://www.nrc.gov*

1:30 p.m.: Briefing on Office of Research (RES) Programs, Performance and Plans (Public Meeting). (Contact: Gene Carpenter, 301–415–7333). This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of February 13, 2006—Tentative

Tuesday, February 14, 2006

2 p.m.: Briefing on Office of Nuclear Materials Safety and Safeguards (NMSS). Programs, Performance, and Plans—Waste Safety (Public Meeting). (Contact: Teresa Mixon, 301–415–7474; Derek Widmayer, 301–415–6677). This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Wednesday, February 15, 2006

9:30 a.m.: Briefing on Status of OCFO Programs, Performance, and Plans (Public Meeting). (Contact: Edward New, 301–415–5646). 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/what-we-do/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, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@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 sent an electronic message to *dkw@nrc.gov*.

January 5, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–239 Filed 1–6–06; 11:53 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

January 19, 2006 Board of Directors Meeting; Sunshine Act Meeting

TIME AND DATE: Thursday, January 19, 2006, 10 a.m. (Open Portion) 10:15 a.m. (Close Portion)

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting Open to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Tribute.
3. Tribute.
4. Confirmation of Vice President.
5. Approval of October 27, 2005 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 10:15 a.m.)

1. Auditors Report.
2. Finance Project—Global.
3. Finance Project—Ukraine, Moldova.
4. Finance Project—Ukraine, Bulgaria, Romania.
5. Approval of October 27, 2005 Minutes (Closed Portion).
6. Pending Major Projects.
7. Reports.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: January 6, 2006.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 06–230 Filed 1–6–06; 10:22 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27201; 812–13050]

Thrivent Mutual Funds, et al.; Notice of Application

January 3, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Thrivent Mutual Funds (formerly known as The AAL Mutual Funds), Thrivent Series Fund, Inc. (formerly known as LB Series Fund, Inc.), Thrivent Financial Securities Lending Trust (collectively, the ''Thrivent Investment Companies''), Thrivent Financial for Lutherans (''Thrivent Financial''), Thrivent Investment Management, Inc. (''Thrivent Investment Management''), any other person controlling, controlled by or under common control (within the meaning of section 2(a)(9) of the Act) with Thrivent Financial (together with Thrivent Financial and Thrivent Investment Management, a ''Thrivent Adviser''), and any other open-end management investment company registered under the Act that in the future is advised by a Thrivent Adviser (''Future Investment Companies'', and together with the Thrivent Investment Companies, the ''Investment Companies'').

FILING DATES: The application was filed on December 11, 2003, and amended on December 23, 2005.

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 January 30, 2006, and should be accompanied by proof of service on 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicants, James M. Odland, Esq., Thrivent Financial for Lutherans, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

FOR FURTHER INFORMATION CONTACT: Shannon Conaty, Senior Counsel, at (202) 551–6827 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (tel. (202) 551–5850).

Applicants' Representations

1. Each Thrivent Investment Company is registered under the Act as an open-end management investment company. Each of Thrivent Mutual Funds and Thrivent Financial Securities Lending Trust is organized as a Massachusetts business trust. Thrivent Series Fund, Inc. is organized as a Minnesota corporation. The Thrivent Investment Companies are comprised of multiple series; each series has separate investment objectives, policies and assets.[1] Thrivent Financial, a fraternal benefit society organized under the laws of Wisconsin, Thrivent Investment Management, a corporation organized under the laws of Delaware, and any other Thrivent Adviser are each registered as an investment adviser under the Investment Advisers Act of 1940. Each Fund has entered into an investment advisory agreement with a Thrivent Adviser.

2. Existing Commission orders permit the Funds that are not money market Funds to invest uninvested cash balances in one or more series that are money market Funds that comply with rule 2a–7 under the Act (''Money Market Funds'').[2]

3. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term investments. Other Funds may borrow money from the same or similar banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a Fund has been delayed. Currently, the Funds have credit arrangements with their custodian banks (*i.e.*, overdraft protection) under which the custodians may, but are not obligated to, lend money to the Funds to meet the Funds' temporary cash needs.

4. If the Funds were to borrow money from their custodians under their current arrangements or under other credit facility arrangements with a bank, the Funds would pay interest on the borrowed cash at a rate which would be higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants state that this differential represents the profit the bank would earn for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, require the Funds to pay commitment fees in addition to the interest rate to be paid by the borrowing Fund.

5. Applicants request an order that would permit the Funds to enter into interfund lending agreements (''Interfund Lending Agreements'') under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan''). Applicants believe that the proposed credit facility would reduce the Funds' borrowing costs and enhance their ability to earn higher interest rates on short-term investments. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain the overdraft protection currently provided by their custodians.

6. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and certain Funds have insufficient cash on hand to satisfy such redemptions. When a Fund liquidates portfolio securities to meet redemption requests which normally are effected immediately, it often does not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. Applicants also propose using the credit facility when a sale of securities ''fails'' due to circumstances such as a delay in the delivery of cash to a Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if a Fund has undertaken to purchase securities using the proceeds from the securities sold. When a Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

8. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

9. The interest rate charged to a Fund on any Interfund Loan (''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate on any day would be the highest rate available to the Funds from investing in overnight repurchase agreements. The Bank Loan Rate on any day would be calculated by the Cash Management Team, defined below, each day an Interfund Loan is made according to a formula established by a Fund's board of trustees or directors (each, a ''Board'') intended to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal funds plus 25 basis points) and would

[1] All Investment Companies that currently intend to rely on the order have been named as applicants. Any other existing or Future Investment Company that subsequently relies on the order will comply with the terms and conditions of the application. (An Investment Company, if it has no series, and each series of an Investment Company are referred to as a ''Fund''.)

[2] The AAL Mutual Funds, *et al.*, Investment Company Act Release Nos. 25254 (Nov. 6, 2001) (notice) and 25309 (Dec. 4, 2001) (order); AAL Variable Product Series Fund, Inc. *et al.*, Investment Company Act Release Nos. 25253 (Nov. 6, 2001) (notice) and 25307 (Dec. 4, 2001) (order); *The AAL Mutual Funds*, SEC Staff No-Action Letter (Dec. 12, 2002).

vary with this rate so as to reflect changing bank loan rates. The Board of each Fund would periodically review the continuing appropriateness of using the publicly available rate to determine the Bank Loan Rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

10. The credit facility would be administered by Thrivent Financial's and Thrivent Investment Management's money market portfolio managers and members of investment operations together with staff of Thrivent Financial's mutual fund accounting department (collectively, the ''Cash Management Team'').[3] Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. The Cash Management Team on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. Once it determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Funds without any further communication from portfolio managers other than the Money Market Fund portfolio managers on the Cash Management Team. Applicants expect far more available uninvested cash each day than borrowing demand. All allocations will require the approval of at least one member of the Cash Management Team who is not a Money Market Fund portfolio manager. After the Cash Management Team has allocated cash for Interfund Loans, the Cash Management Team would invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts to the Funds. The Money Market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

11. The Cash Management Team would allocate borrowing demand and cash available for lending among the Funds on what the Cash Management Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each Interfund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of Board members who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Trustees/Directors''), to ensure both borrowing and lending Funds participate on an equitable basis.

12. The Cash Management Team and the Thrivent Adviser would (a) Monitor the Interfund Loan Rates and the other terms and conditions of the loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) make quarterly reports to the Board of each Fund concerning any transactions by the Fund under the credit facility and the Interfund Loan Rate charged.

13. The Thrivent Adviser, through the Cash Management Team, would administer the credit facility under its existing management or advisory agreement with each Fund and would receive no additional compensation for its services. Thrivent Financial or companies affiliated with it may collect fees in connection with repurchase and lending transactions generally, including transactions through the credit facility, for pricing and record keeping, bookkeeping and accounting services. These fees would be no higher than those applicable for comparable loan transactions.

14. No Fund may participate in the credit facility unless: (a) The Fund has obtained shareholder approval for its participation, if such approval is required by law; (b) the Fund has fully disclosed all material facts concerning the credit facility in its statement of additional information (''SAI''); and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations and organizational documents.

15. In connection with the credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) under section 17(d) and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having a Thrivent Adviser as their common investment adviser and having a common Board and officers.

2. Section 6(c) provides that an exemptive order may be granted where an 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. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) The Thrivent Adviser, through the Cash Management Team, would administer the program as a disinterested fiduciary;

[3] All Funds currently are advised by either Thrivent Financial or Thrivent Investment Management. In the event that any other Thrivent Adviser serves as investment adviser to any Fund in the future, appropriate contractual arrangements will be made to assure that members of the Cash Management Team will have the authority to administer the credit facility on behalf of such Fund.

(b) all Interfund Loans would consist only of uninvested cash reserves that the Funds otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through a Money Market Fund; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there will be no duplicative costs or fees to the Funds or shareholders, and that the Thrivent Adviser will receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds and their shareholders.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; provided, that immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated persons of an affiliated person, when acting as principal, from effecting any joint transactions in which the company participates unless the transaction is approved by the Commission. Rule 17d–1(b) provides that in passing upon applications filed under the rule, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies, and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Cash Management Team will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate, and, if applicable, the yield of any Money Market Funds in which the lending Fund could otherwise invest, and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be made at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit

facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would exceed the limits imposed by section 18 of the Act.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause the lending Fund's aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds (except any portfolio manager of the Money Market Funds acting in her or his capacity as a member of the Cash Management Team). All allocations will require the approval of at least one member of the Cash Management Team who is not a Money Market Fund portfolio manager. The Cash Management Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the portfolio managers of the Money Market Funds on the Cash Management Team have access to loan demand data). The Cash Management Team will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

13. The Cash Management Team and the Thrivent Adviser will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board(s) concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit under the credit facility.

14. The Board of each Fund, including a majority of the Independent Trustees/Directors: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Cash Management Team will promptly refer the loan for arbitration to an independent arbitrator selected by the Board(s) of any Funds involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[4] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, the yield on any Money Market Fund in which the lending Fund could invest, and such other information presented to the Board in connection with the review required by conditions (13) and (14).

17. The Cash Management Team and the Thrivent Adviser will prepare and submit to the Board of each Fund for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Cash Management Team and the Thrivent Adviser will report on the operations of the credit facility at each Board's quarterly meetings. In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates the respective Thrivent Adviser's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements

[4] If the dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

No. 10 and it shall be filed pursuant to Item 77Q3 of Form N–SAR, as such Statements or Form may be revised, amended, or superseded from time to time. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate and, if applicable, the yield of the Money Market Funds, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board(s); and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

19. The Board of any Fund will satisfy the fund governance standards as defined in rule 0–1(a)(7) under the Act by the compliance date for the rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–83 Filed 1–9–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28079]

Filing Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

December 30, 2005.

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application-declaration for complete statements of the proposed transactions summarized below. The application-declaration and any amendments are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application-declaration should submit their views in writing by January 23, 2006, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on Applicants at the addresses specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After January 23, 2006, the application-declaration, as filed or as amended, may be granted and/or permitted to become effective.

Exelon Corporation et al. (70–10294)

Exelon Corporation (''Exelon''), a registered holding company; Exelon's public utility subsidiaries Commonwealth Edison (''ComEd''); Exelon Generation Company, LLC (''Exelon Generation''), 300 Exelon Way, Kennet Square, PA 19348; PECO Energy Company (''PECO'') 2301 Market Street, Philadelphia, PA; Commonwealth Edison Company of Indiana, Inc. (''Indiana Company''); Exelon's nonutility registered holding company subsidiaries Exelon Energy Delivery Company, LLC (''Delivery'') and Exelon Ventures Company, LLC (''Ventures''); and Exelon's nonutility subsidiaries (''Nonutility Subsidiaries''), each located at 10 South Dearborn Street, Chicago, Illinois 60603; Public Service Enterprise Group Incorporated (''PSEG''), an exempt public utility holding company, Public Service Electric and Gas Company (''PSE&G''), a public utility company subsidiary of PSEG, and its nonutility subsidiaries, each located at 80 Park Plaza, Newark, New Jersey 07102 (collectively ''Applicants'') have filed an application-declaration (''Application'') with the Commission under sections 6(a), 7, 9(a), 10, 11, 12, 13(b), 32, 33 and 34 of the Act and rules 42, 43, 44, 45, 46, 53, and 54 under the Act.[1]

[1] The Applicants are Exelon and its Subsidiaries and PSEG and its Subsidiaries and such other direct and indirect subsidiary companies that Exelon may form or acquire in accordance with a Commission order or otherwise in accordance with the Act or a rule promulgated under the Act.

I. Overview of the Merger

On December 20, 2004, Exelon and PSEG, an electric and gas utility holding company that claims exemption from registration pursuant to Rule 2 under section 3(a)(1) of the Act, entered into an Agreement and Plan of Merger (the ''Merger Agreement''). Under the terms of the Merger Agreement, PSEG would merge into Exelon (the ''Merger''). Each PSEG shareholder would be entitled to receive 1.225 shares of Exelon common stock for each PSEG share held and cash in lieu of any fraction of an Exelon share that a PSEG shareholder would have otherwise been entitled to receive. Exelon common stock would be unaffected by the Merger, with each issued and outstanding share remaining outstanding following the Merger as a share in the surviving company. Upon completion of the Merger, Exelon would change its name to Exelon Electric & Gas Corporation.

As the surviving company in the Merger, Exelon would remain the ultimate corporate parent of PECO and ComEd and the other Exelon subsidiaries and become the ultimate corporate parent of PSE&G and the other PSEG subsidiaries.

Exelon would continue to be a registered public utility holding company under the Act until the six months after August 8, 2005, the date of enactment of the Energy Policy Act of 2005, and ComEd, PECO and PSE&G would continue to be public utility subsidiary companies. Exelon would remain headquartered in Chicago but would also have energy trading and nuclear headquarters in southeastern Pennsylvania and generation headquarters in Newark, New Jersey. PSE&G would remain headquartered in Newark. PECO would remain headquartered in Philadelphia and ComEd would remain headquartered in Chicago.

The Merger is subject to a number of conditions precedent, including receipt by the parties of required state and federal regulatory approvals and filing of pre-merger notification statements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (''HSR Act''), and the expiration or termination of the statutory waiting period under that act. Applicants state that, the boards of directors of Exelon and PSEG and the shareholders of PSEG have approved the proposed Merger. Also, the shareholders of Exelon have approved the issuance of shares of common stock by Exelon.

In addition to the changes resulting from the Merger Agreement, the Applicants intend to revise their

corporate structure (the ''Exelon Generation Restructuring''). Applicants state that, although their plans are not yet completely finalized, they currently propose to implement the following changes, subject to approval, as required, by the Commission. After obtaining necessary approvals and third party consents, PSEG Power LLC (''PSEG Power'') and its direct subsidiaries PSEG Nuclear LLC (''PSEG Nuclear''), PSEG Fossil LLC (''PSEG Fossil'') and PSEG Energy Resources & Trade LLC (''PSEG ER&T'') would all cease to exist as separate entities and would become part of Exelon Generation. The business functions of each of these former PSEG entities would become a part of the respective Exelon Generation business unit. The Applicants anticipate retaining the subsidiaries owned by these PSEG entities as direct subsidiaries of Exelon Generation.

Also in connection with the Merger, PSE&G would become a direct subsidiary of Delivery.[2] The current subsidiaries of PSE&G would remain intact. PSEG Holdings would become a subsidiary of Exelon, as the successor to PSEG. The current subsidiaries of PSEG Holdings would remain intact. PSEG Service Corporation (''PSEG Services'') would sell all of its assets to Exelon Businesses Services Company (''Exelon BSC''), change its name, and remain as a non-energy subsidiary. Exelon BSC would be the sole ''service company'' of Exelon.

Applicants' Mitigation Plan was approved by the Federal Energy Regulatory Commission (''FERC'') in its ''Order Authorizing Merger under section 203 of the Federal Power Act'' issued July 1, 2005 (''Merger Order'') based on, among other things, acceptance of a proposal to divest, through the sale of plant or through the sale of long-term firm energy rights, 6,600 MW of generation capacity (''Mitigation Plan'') to mitigate any generation market concentration concerns resulting from the Merger. The Mitigation Plan, according to Applicants, calls for the divestiture by sale of 4000 MW of generation capacity.[3] The sale would occur within twelve (12) months following close of the Merger. Applicants request Commission approval for the disposition of this generating capacity because, as a result of the Exelon Generation Restructuring, the subject generation capacity would be owned by Exelon Generation, a public utility company under the Act. The disposition of generation capacity owned by Exelon Generation, as finally approved by FERC pursuant to post-Merger compliance filings required to be made by Exelon under the FERC Merger Order (the ''Post-Merger FERC Compliance Filings''), is referred to as the Generation Divestiture.

In connection with consummation of the Generation Divestiture, subsequent to the Exelon Generation Restructuring, the Applicants state they would make further revisions to their corporate structure (the ''Divestiture Generation Restructurings'') in respect of the particular electric generating units, or interests, being sold. The Post-Merger FERC Compliance Filings would address the particular facts of the Divestiture Generating Restructurings. The Exelon Generation Restructuring, the Divestiture Generation Restructuring and the Generation Divestiture are collectively called the ''Generation Transactions.''

In addition to authorization of the Merger, the Exelon Generation Restructuring, the Divestiture Generation Restructuring, and the Generation Divestiture, Applicants request certain related approvals, including:

1. Authorizations related to service company and other affiliate transactions;

2. Issuance by Exelon of common stock in connection with the Merger and employee and director compensation plans as described below;

3. Authorization of the consolidation (or replacement in lieu of consolidation) of existing indebtedness and obligations of PSEG and its subsidiaries as obligations of Exelon or its subsidiaries as a result of the Merger;

4. Modifications to Exelon's existing omnibus financing authority Holding Company Act Release No. 27830 (April 1, 2004) (the ''2004 Financing Order''); and

5. Approval of a section 11(e) plan in respect of the Generation Transactions and related approvals as necessary or appropriate in respect of the tax treatment afforded by section 1081 of the Internal Revenue Code.

II. Description of Exelon and Its Subsidiaries

A. Exelon

Exelon was incorporated in Pennsylvania in February 1999. On October 20, 2000, Exelon became the ultimate parent corporation for PECO and ComEd, and registered pursuant to section 5 of the Act.

Exelon, through its subsidiaries, operates in two business segments—Delivery and Generation—as described below. In addition to Exelon's two business segments, Exelon BSC, a subsidiary of Exelon, provides Exelon and its subsidiaries with financial, human resources, legal, information technology, supply management and corporate governance services, as well as direction and management of shared functions for Delivery.

Delivery. Exelon's energy delivery business consists of the purchase and sale of electricity and distribution and transmission services by ComEd in northern Illinois and by PECO in southeastern Pennsylvania and the purchase and sale of natural gas and distribution services by PECO in the Pennsylvania counties surrounding the City of Philadelphia.

Generation. Exelon's generation business consists of electric generating facilities and energy marketing operations of Exelon Generation, a 49.5% interest in two power stations in Mexico, and the competitive retail sales business of Exelon Energy Company.

B. The Exelon Utility Subsidiaries

Exelon indirectly owns all of the issued and outstanding membership interests of Exelon Generation, all the issued and outstanding common stock of PECO and substantially all of the issued and outstanding common stock of ComEd,[4] and ComEd owns all the issued and outstanding common stock of Commonwealth Edison Company of Indiana, Inc. (the ''Indiana Company'') (together, the ''Exelon Utility Subsidiaries'').

PECO is engaged principally in the purchase, transmission, distribution and sale of electricity to residential, commercial and industrial customers in southeastern Pennsylvania and in the purchase, distribution and sale of natural gas to residential, commercial and industrial customers in the Pennsylvania counties surrounding the City of Philadelphia. PECO is subject to regulation by the Pennsylvania Public Utility Commission (''PAPUC'') as to electric and gas rates, the issuances of certain securities and certain other aspects of PECO's operations. PECO is

[2] This would be accomplished through a contribution of the common stock of PSE&G held by Exelon contemporaneously with the Merger to Delivery or other appropriate corporate transaction.

[3] As explained more fully below, on July 1, 2005, FERC accepted a Mitigation Plan including the Generation Divestiture.

[4] In connection with the conversion of warrants and convertible preferred stock that were outstanding prior to the 2000 merger of Unicom Corporation with PECO Energy Corp., a small number of shares of common stock of ComEd (about 0.1% of the total outstanding) are not owned by Exelon but are held by third parties. *See Exelon Corporation,* Holding Co. Act Release No. 27256, note 4 (Oct. 19, 2000) (the ''2000 Merger Order'').

also subject to regulation by FERC as to transmission rates, gas pipelines and certain other aspects of its business.

PECO's retail service territory covers approximately 2,100 square miles in southeastern Pennsylvania. PECO provides electric delivery service in an area of approximately 2,000 square miles, with a population of approximately 3.8 million, including 1.5 million in the City of Philadelphia. Natural gas service is supplied in an approximately 1,900 square mile area in southeastern Pennsylvania adjacent to Philadelphia, with a population of approximately 2.3 million. PECO delivers electricity to approximately 1.5 million customers and natural gas to approximately 460,000 customers.

ComEd is engaged principally in the purchase, transmission, distribution and sale of electricity to a diverse base of residential, commercial, industrial and wholesale customers in northern Illinois. ComEd is subject to regulation by the Illinois Commerce Commission (''ICC'') as to rates, the issuance of certain securities, and certain other aspects of ComEd's operations. ComEd is also subject to regulation by the FERC as to transmission rates and certain other aspects of its business.

ComEd's retail service territory has an area of approximately 11,300 square miles and an estimated population of eight million. The service territory includes the City of Chicago, an area of about 225 square miles with an estimated population of three million. ComEd has approximately 3.7 million customers.

Electric utility restructuring legislation was adopted in Pennsylvania in December 1996 and in Illinois in December 1997. Both Illinois and Pennsylvania permit competition by alternative generation suppliers for retail generation supply while transmission and distribution services remain fully regulated. Both states, through their regulatory agencies, established a phased approach for allowing customers to choose an alternative electric generation supplier, required rate reductions and imposed caps on rates during a transition period, and allowed the collection of competitive transition charges from customers to recover costs that might not otherwise be recovered in a competitive market.

Effective as of January 1, 2001, Exelon effected a restructuring that involved the transfer of the electric generating assets of ComEd and PECO to Exelon Generation, a Pennsylvania limited liability company and a public utility company engaged in the generation, sale and purchase of electricity in Pennsylvania, Illinois and elsewhere and also engaged in the trading of other energy and energy-related commodities and development and ownership of exempt wholesale generators (''EWGs'').

PJM Interconnection, L.L.C. (''PJM'') is the independent system operator and the FERC-approved Regional Transmission Organization (''RTO'') for the Mid-Atlantic and a portion of the Midwest. PJM is the transmission provider under, and the administrator of, the PJM Open Access Transmission Tariff, operates the PJM Interchange Energy Market and Capacity Credit Markets, and conducts the day-to-day operations of the bulk power system of the PJM region. ComEd's and PECO's transmission systems are currently under the control of PJM and, by order dated October 28, 2004 (Holding Co. Act Release No. 27904) (the ''PJM Order''), the Commission found that the electric utility properties of the Exelon system satisfy the interconnection requirement of section 2(a)(29)(A) of the Act by reason of PJM's operational control of the transmission assets of ComEd and PECO.[5]

Both ComEd and PECO are public utility companies. ComEd is also a holding company exempt from registration pursuant to section 3(a)(1) of the Act, by reason of its ownership of the Indiana Company. Delivery is an intermediate registered holding company and a first-tier subsidiary of Exelon. Delivery owns all of the issued and outstanding common stock of PECO and substantially all of the issued and outstanding common stock of ComEd.

Exelon Generation is also an electric utility company. Exelon Generation is a wholly owned subsidiary of Ventures, which is an intermediate registered holding company and a first tier subsidiary of Exelon. Ventures and Delivery are referred to as the ''Other Registered Holding Companies.'' None of the Other Registered Holding Companies has securities outstanding in the hands of the public.

C. Direct Non-Utility Subsidiaries of Exelon

Exelon has direct wholly owned non-utility subsidiaries as follows:

Exelon BSC, a service company, provides administrative, management and technical services to Exelon and its associate companies;

Exelon Investment Holdings, LLC, an Illinois limited liability company, is a holding company for tax-advantaged housing transactions;

UII, LLC, an Illinois limited liability company, is engaged in a like-kind exchange transaction pursuant to which a portion of the proceeds from the sale of ComEd's fossil generating stations was invested in passive generating station leases with entities unrelated to Exelon. The generating stations were leased back to such entities as part of the transaction.[6]

Exelon has the following additional direct subsidiaries: Unicom Assurance Company, Ltd., an inactive captive insurance company, Exelon Capital Trust I, an inactive finance company, Exelon Capital Trust II, an inactive finance company and Exelon Capital Trust III, an inactive finance company.

D. Capitalization of Exelon

The total authorized shares of capital stock of Exelon consist of (i) 1,200,000,000 shares of common stock, no par value and (ii) 100,000,000 shares of preferred stock, no par value. At the close of business on December 31, 2004, 664,187,996 shares of Exelon common stock were outstanding, and no shares of Exelon preferred stock were issued and outstanding. In addition, at that date (i) 2,499,865 shares of common stock were held by Exelon in its treasury, (ii) 25,205,285 shares of common stock were reserved for issuance pursuant to outstanding options to purchase common stock granted under Exelon's Long-Term Incentive Plan, Exelon's Amended and Restated Long-Term Incentive Plan, as amended, and Exelon's 1998 Stock Option Plan (together with Exelon's Directors' Stock Unit Plan, the ''Exelon Stock Incentive Plans''), (iii) 14,777,078 shares of common stock were reserved for the grant of additional awards under the Exelon Stock Incentive Plans, (iv) 7,000,000 shares of common stock were reserved for issuance pursuant to the Dividend Reinvestment and Stock Purchase Plan, (v) 624,495 shares of common stock were reserved for issuance pursuant to outstanding performance shares, (vi) 216,000 shares of common stock were reserved for issuance pursuant to outstanding units under Exelon's Directors' Stock Unit Plan, (vii) 5,357,745 shares of common stock were reserved for issuance under Exelon's Employee Stock Purchase Plan, (viii) 1,060,053 shares of common stock were reserved for issuance pursuant to

[5] In the 2000 Merger Order the Commission found that the electric utility operations of Exelon constituted a single, integrated electric utility system, and that the gas utility operations of Exelon constituted a single, integrated gas utility system that was a permissible ''additional'' system under the standards of section 2(a)(11) of the Act.

[6] Unicom Investment, Inc., an Illinois corporation, was reorganized as an Illinois limited liability company, UII, LLC on November 10, 2004.

outstanding restricted shares (shares of common stock subject to forfeiture) and (ix) 1,336,516 shares of common stock were reserved for issuance pursuant to outstanding deferred shares (shares of common stock the issuance of which has been deferred pursuant to Exelon's Deferred Compensation Plan).

As of December 31, 2004, Exelon's capitalization on a consolidated basis was as follows: Common Equity (includes Retained Earnings) 40.79%; Minority Interest 0.18%; Preferred and Preference Stock 2.74%; Securitization Obligations 20.76%; Long-Term Debt 31.56%; Current Maturities of Long-Term Debt 1.85%; Total Long-Term Debt 33.41%; Short-Term Debt 2.12%.

III. Description of PSEG and Its Subsidiaries

A. PSEG

PSEG was incorporated under the laws of the State of New Jersey in 1985 and is a section 3(a)(1) exempt public utility holding company. PSEG, through its subsidiaries, operates in three business segments—Delivery, Generation and Enterprises, as described below. In addition to PSEG's three business segments, PSEG Services, a subsidiary of PSEG, provides PSEG and its subsidiaries with financial, human resources, legal, information technology, supply management and corporate governance services.

Delivery—PSEG's domestic energy delivery business consists of the transmission and distribution of electric energy and gas in New Jersey through PSE&G.

Generation—PSEG's generation businesses consist of the owned and contracted for electric generation facilities and energy marketing operations of the PSEG Power subsidiaries and the PSEG Global LLC (''PSEG Global'') subsidiaries. PSEG Power has three principal direct wholly owned subsidiaries: PSEG Nuclear, PSEG Fossil and PSEG ER&T. The PSEG Power generation portfolio consists of approximately 14,607 MW of generation in the Northeast and Midwest. PSEG Global has equity ownership interests in approximately 2,404 MW of generation in North America. All the generation assets in the PSEG system are held by PSEG subsidiaries with EWG or foreign utility company (''FUCO'') status under the Act or qualifying facility (''QF'') status under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA'').

Enterprises—PSEG's enterprise businesses consist primarily of (1) investments in energy-related financial transactions, leveraged leases, operating leases, leveraged buyout funds, marketable securities and a demand-side management business and (2) investments in international generation and delivery businesses qualified as EWGs and foreign utility companies through PSEG Resources LLC (''PSEG Resources'') and through PSEG Global.

B. The PSEG Utility Subsidiary

PSE&G is a public utility company subsidiary of PSEG. PSE&G is an electric and gas utility company engaged principally in the transmission and distribution of electric energy and gas in New Jersey. PSE&G is subject to extensive regulation by the New Jersey Board of Public Utilities (''NJBPU'') as to electric and gas rates, the issuance of securities and certain other aspects of PSE&G's operations. PSE&G is also subject to regulation by the FERC as to electric transmission rates and certain other aspects of its business.

PSE&G's retail service territory covers a corridor of approximately 2,600 square miles running diagonally across New Jersey from Bergen County in the northeast to an area below the city of Camden in the southwest with a population of approximately 5.5 million. PSE&G provides service to approximately 2.0 million electric customers and approximately 1.6 million gas customers.

PSE&G does not own or operate any electric generation facilities. PSE&G, as a result of an order of the NJBPU issued under the provisions of the New Jersey Electric Discount and Energy Competition Act (''EDECA''), transferred all of its electric generation facilities, plant, equipment and wholesale power trading contracts to its affiliate PSEG ER&T in August 2000. Also, under an NJBPU order, PSE&G transferred its gas supply business, including its inventories and supply contracts, to PSEG ER&T in May 2002. PSE&G continues to own and operate its electric transmission and electric and gas distribution business. PSE&G has transferred functional control over its electric transmission facilities to PJM.

All electric and gas customers in New Jersey have the ability to choose an electric energy and/or gas supplier. For those retail electric customers located in New Jersey who do not choose a competitive electric supplier, New Jersey's Electric Distribution Companies (''EDCs''), including PSE&G, provide basic generation service (''BGS'') or provider of last resort service (''POLR''). The EDCs satisfy their BGS obligations through a competitive state-wide annual auction. PSE&G's affiliate PSEG ER&T, has historically been a successful participant in these auctions and serves several EDCs including PSE&G.

For those retail gas customers located in New Jersey who do not choose a competitive natural gas supplier, New Jersey's gas distribution companies, including PSE&G, provide basic gas supply service (''BGSS'') or POLR. PSE&G has entered into a full requirements contract through 2007 with PSEG ER&T to meet the supply requirements of PSE&G's gas customers.[7] PSEG ER&T charges PSE&G for the gas commodity costs, which PSE&G recovers from its customers. Any difference between rates charged by PSEG ER&T under the BGSS contract and rates charged to PSE&G's customers are deferred and collected or refunded through future adjustments in retail rates.

PSE&G's natural gas facilities consist entirely of local gas distribution facilities in the State of New Jersey and neither PSE&G nor any other PSEG company owns any interstate natural gas facilities subject to the Natural Gas Act.

C. Direct Non-Utility Subsidiaries of PSEG

PSEG has three direct wholly owned non-utility subsidiaries, PSEG Power, PSEG Holdings and PSEG Services.

PSEG Power has three principal direct wholly owned subsidiaries: PSEG Nuclear, which owns and operates nuclear generating stations; PSEG Fossil, which develops, owns and operates domestic fossil generating stations and other non-nuclear generating stations; and PSEG ER&T, which markets the capacity and production of PSEG Fossil's and PSEG Nuclear's stations, manages the commodity price risks and market risks related to generation and markets electricity, capacity, ancillary services and natural gas products on a wholesale basis. PSEG Power also provides specialized maintenance, repair and plant engineering services on energy-related electro-mechanical equipment to its affiliates. PSEG Nuclear and PSEG Fossil are both EWGs.

PSEG ER&T conducts energy trading operations and does not own any utility assets. PSEG ER&T is subject to regulation by FERC as to its wholesale electric sales and certain other aspects of its business. As explained below, it is contemplated that PSEG ER&T will be merged into Exelon Generation.

PSEG Holdings has two principal subsidiaries: PSEG Resources, which

[7] The BGSS contract continues year to year thereafter unless terminated by either party consistent with its terms.

invests primarily in energy-related, financial transactions, and PSEG Global, which invests in international generation and delivery businesses qualified as EWGs and FUCOs and domestic generation qualified as EWGs and QFs.[8]

PSEG Resources has investments in energy-related financial transactions and assets including leveraged leases, operating leases, leveraged buyout funds, limited partnerships and marketable securities. PSEG Resources also engages in demand side management services in New Jersey through its subsidiaries.

PSEG Global, through various subsidiaries qualified as FUCOs and EWGs, has investments in electric generation, transmission and distribution facilities in selected international markets and through various subsidiaries qualified as EWGS and QFs, has investments in electric generation in selected domestic markets. PSEG Global's domestic generation assets are located in California, Pennsylvania, Texas, New Hampshire and Hawaii.

PSEG Services is a non-utility service company. As explained below, it is contemplated that PSEG Services will sell all of its assets to Exelon BSC, change its name, and remain as a subsidiary.

As of December 31, 2004, PSEG's consolidated capitalization was as follows: Common Equity (includes Retained Earnings) 29.03%; Preferred and Preference Stock 6.48%; Securitization Obligations 10.55%; Long-Term Debt 49.50%; Current Maturities of Long-Term Debt 1.21%; Total Long-Term Debt 50.71%; Short-Term Debt 3.23%.

IV. Principal Terms of the Merger Agreement

A. Generally

The Merger Agreement provides for a business combination whereby PSEG will be merged with and into Exelon, with Exelon surviving. At the effective time of and as a result of the Merger, (i) each outstanding share of PSEG common stock will be converted into the right to receive 1.225 shares of Exelon common stock (the ''Exchange Ratio'') and (ii) each share of Exelon common stock will remain outstanding. All outstanding PSEG stock options will be converted into options to purchase the number of shares of Exelon common stock determined by multiplying (a) the number of shares of PSEG common stock subject to such stock option immediately prior to the effective time by (b) the Exchange Ratio, at an exercise price per share of Exelon common stock equal to the exercise price per share of PSEG common stock under such stock option immediately prior to the effective time divided by the Exchange Ratio.

Following the effective time of the Merger, the surviving corporation, which will be renamed Exelon Electric & Gas Corporation, will have an eighteen-member board of directors, which will include twelve Exelon directors and six new members nominated by PSEG.

Applicants state that Exelon and PSEG have made customary representations, warranties and covenants in the Merger Agreement, including, among others, covenants (i) by PSEG not to (a) solicit proposals relating to alternative business combination transactions or (b) subject to certain exceptions, enter into discussions concerning alternative business combination transactions, (ii) by Exelon and PSEG to cause shareholder meetings to be held to consider approval of the Merger and related transactions, (iii) subject to PSEG's right to terminate the Merger Agreement to accept a superior proposal (as described in the Merger Agreement), for the board of directors of PSEG to recommend adoption and approval by PSEG's shareholders of the Merger Agreement and related transactions and (iv) for the board of directors of Exelon to recommend approval by Exelon's shareholders of the issuance of shares of Exelon contemplated by the Merger Agreement subject to Exelon's board of directors' right to change its recommendation as required by its fiduciary duties.

Consummation of the Merger is subject to various conditions, including the requisite approval by the shareholders of Exelon and PSEG, respectively, no legal impediment to the Merger, the receipt of required regulatory approvals, the absence of a material adverse effect on Exelon, PSEG or, prospectively, the surviving corporation and the absence of certain specified burdensome actions as a condition to the regulatory approvals for the Merger. The Merger Agreement contains certain termination rights for both Exelon and PSEG, and further provides that, upon termination of the Merger Agreement, a termination fee may be payable under specified circumstances including (i) if Exelon enters into a definitive agreement to be acquired, it must pay PSEG a termination fee of $400 million plus PSEG's transaction expenses up to $40 million, (ii) if Exelon's board of directors changes its recommendation, it must pay PSEG's transactions expenses up to $40 million and (iii) if PSEG's board of directors changes its recommendation or if PSEG enters into a definitive agreement for a superior proposal to be acquired it must pay Exelon a termination fee of $400 million plus Exelon's transaction expenses up to $40 million.

B. Accounting Treatment for the Merger

Applicants state that the Merger would be accounted for under the purchase method of accounting, the assets and liabilities of PSEG would be recorded, as of completion of the Merger, at their respective fair values and added to those of Exelon. The reported financial condition and results of operations of Exelon issued after completion of the Merger would reflect PSEG's balances and results after completion of the Merger, but would not be restated retroactively to reflect the historical financial position or results of operations of PSEG. Following completion of the Merger, the earnings of the combined company would reflect purchase accounting adjustments, including changes to amortization and depreciation expense for acquired assets.

C. Operation of the Combined System Post-Merger

Following the Merger, ComEd, PECO and PSE&G (the ''Retail Utility Subsidiaries'') would all be subsidiaries of Delivery and would operate their respective electric distribution systems, and PECO and PSE&G would operate their respective gas distribution systems. The electric transmission systems of the Retail Utility Subsidiaries together with the Indiana Company would be interconnected through and subject to the functional control of a single operator, PJM. The Retail Utility Subsidiaries, the Indiana Company and Exelon Generation are referred to as the ''Utility Subsidiaries.''

Applicants assert that the combination of the electric utility operations of the Utility Subsidiaries would result in a single, integrated electric utility system. In addition, the combination of PSE&G's gas utility properties with those of PECO would comprise a single integrated gas utility system that may be retained by Exelon as an additional system under the standards of section 11. Applicants note that in the alternative, the Commission could find that each of the PECO and PSE&G gas systems is a separate

[8] Neither PSEG Holdings nor any of its subsidiaries is a public utility company for purposes of the 1935 Act. PSEG Holdings and its subsidiaries are more fully described in Exhibit G–7 attached to the Application.

integrated public utility system and that the PSE&G gas system is a retainable additional system under the standards of section 11.

V. Exelon Generation Restructuring

After obtaining necessary approvals and third party consents, Applicants state that PSEG Power and PSEG Fossil would cease to exist as separate entities and would become part of Exelon Generation. Applicants state that the Generation Transactions are predicated on the assumption that the Exelon Generation Restructuring would precede the Divestiture Generation Restructuring and the Generation Divestiture.

After obtaining any appropriate third-party consents, including consents of certain PSEG Power debt holders to certain amendments of PSEG Power debt agreements, the Applicants would undertake the Exelon Generation Restructuring such that PSEG Power and its direct subsidiaries PSEG Nuclear, PSEG Fossil and PSEG ER&T would all cease to exist as separate entities and would become part of Exelon Generation. The business functions of these former PSEG entities would become a part of their respective Exelon Generation business unit. The subsidiaries owned by these PSEG entities would be retained as direct subsidiaries of Exelon Generation, which would continue to be an electric utility company. It is contemplated that the Exelon Generation Restructuring would take place contemporaneously with the closing of the Merger.[9] Applicants seek approval for the Exelon Generation Restructuring.[10]

VI. Exelon Generation Divestiture

The Merger would increase the total capacity of generation resources owned or controlled by Exelon. To ensure that the combined company does not have market power in any relevant market, the Applicants state that Exelon and PSEG have proposed the Mitigation Plan designed to address in full FERC's requirements for competitive markets. As part of the plan, the companies have proposed the Generation Divestiture—to divest a number of coal, mid-merit, and peaking generating plants. The Mitigation Plan also provides for the transfer of control of the output of a portion of their baseload nuclear generating capacity.

Applicants state that Exelon Generation owns or controls all of the Exelon system's generating assets including the electric generating units that are subject to divestiture as part of the Generation Divestiture. Applicants propose to effect the Generation Divestiture pursuant to a voluntary plan under section 11(e) of the Act.

PSEG Fossil is an EWG and is a wholly-owned subsidiary of PSEG Power. PSEG Fossil owns directly the electric generating units that are subject to being divested as part of the Generation Divestiture.

The final divestiture proposal made by Applicants and approved by FERC in the Merger Order would result in Applicants divesting 6,600 MW of capacity. Of this, 4,000 MW would be physically divested fossil generation. Under the Merger Order, Applicants are required to make a compliance filing at FERC within 30 days of the completion of their physical divestiture, providing an analysis of the Merger's effect on competition in energy and capacity markets, given actual plants and assets divested and the actual acquirers of the divested assets. If the analysis shows that the Merger's harm to competition has not been sufficiently mitigated, Applicants must propose additional mitigation at that time. The divestiture of the 4,000 MW contemplated in the Merger Order plus any subsequent physical divestiture ordered by FERC as necessary additional mitigation is referred to as the Generation Divestiture.

Rather than divest their nuclear baseload units, Applicants have proposed, and FERC has accepted, a ''virtual divestiture'' whereby they would divest, through sales of long-term firm energy rights, 2,600 MW of nuclear generating capacity in PJM East. According to the Applicants, such ''virtual divestiture'' would take the form of FERC jurisdictional wholesale power transactions, would not constitute the disposition of ''utility assets'' within the meaning of the Act, and therefore, no approval by the Commission would be required for the virtual divestiture.

Exhibit G–4 to the Application is a listing of generation facilities subject to divestiture as initially proposed by Exelon and PSEG (1,000 MW of peaking capacity and a total of 1,900 MW of mid-merit capacity of which 550 MW would be coal-fired). Subsequent to filing the Application, the proposed Generation Divestiture was expanded by an additional 1,100 MW for the total divestiture as approved in the Merger Order of 6,600 MW as noted above and certain other generation facilities were added to the list subject to divestiture. *See* Exhibit G–4.1 for the final list of the facilities that may be subject to the Generation Divestiture.

The Merger Order requires Applicants to execute sales agreements and make appropriate filings at FERC within twelve (12) months of the Closing of the Merger in order to implement the Generation Divestiture. The Applicants state that they intend to commence the divestiture process more quickly, but that 12 months may be necessary to conduct a sales process, negotiate all necessary agreements and file for all necessary regulatory approvals.

Applicants state that FERC approved the Merger based upon, among other things, the Mitigation Plan. Applicants request that the Commission make the necessary findings to support relief pursuant to section 1081 of the Internal Revenue Code with respect to the Generation Transactions. The Applicants state that none of the proposed mitigation, including the Generation Divestiture, would adversely affect the integration of the combined electric utility operations for purposes of the Act.

VII. Divestiture Generation Restructuring

In order to maximize the amount a buyer would be willing to pay for the Subject Assets, defined below, the Applicants state that they are considering alternative options for effecting the disposition by sale of the electric generating assets listed in Exhibit G–10 to the Application (the ''Subject Assets''), as required by the Generation Divestiture. Subsequent to the Merger but prior to the implementation of any of the options set forth below, the Applicants state that Exelon would cause the assets listed in Exhibit G–11 to the Application to be transferred to Exelon Generation (''Consolidating Transfers''). Pursuant to Option 2 described below, an internal restructuring would occur immediately prior to the disposition of the Subject Assets to the buyer that would change the ownership structure of the Subject Assets. The particular tax characteristics

[9] Applicants anticipate that the current subsidiaries of PSEG Fossil that own and/or operate electric generation facilities would remain subsidiaries of Exelon Generation as EWGs. The Exelon Generation Restructuring would not result in any new ''public utility'' subsidiary of Exelon Generation.

[10] Applicants state that FERC has granted approvals related to the Exelon Generation Restructuring. The Applicants state that the New Jersey Department of Environmental Protection (''NJDEP'') has determined that the Industrial Site Recovery Act (''ISRA'') does not apply to the Merger and its related corporate reorganizations including the Generation Restructuring. Filings have also been made with the Connecticut Siting Council (the ''Siting Counsel'') and the Connecticut Department of Environmental Protection (''CDEP'') with respect to the implications of the Merger and the Generation Restructuring to the generating stations located in Connecticut and owned by a subsidiary of PSEG Fossil. The Siting Counsel has approved the Merger and CDEP approval will be sought closer to the expected time of the Merger (CDEP approvals are valid only for ninety days).

of the sale of a generating unit, including the buyer's desired business and tax structures, would determine which option would be utilized. Because there are likely to be multiple buyers of the Subject Assets (each buyer a ''Third Party''), the Applicants may utilize either of the disposition options described below to effectuate the sale of the Subject Assets to each Third Party (the disposition to each Third Party is referred to as a ''Divestiture Transaction''). Each of the Subject Assets would be acquired pursuant to each Divestiture Transaction in exchange for cash and/or notes (the ''Transfer Consideration'').

Option 1: Exelon Generation would sell each of the assets listed in Exhibit G–13 of the Application to a Third Party pursuant to the Divestiture Transaction in exchange for the Transfer Consideration. Exelon Generation may distribute to Exelon, through Ventures, the Transfer Consideration received.

Option 2: Exelon Generation would sell, in exchange for an amount of cash equal to the Transfer Consideration each of the assets listed in Exhibit G–14 to the Application to the corporation wholly-owned by Ventures that is listed as the ''Acquiring Sub'' next to that asset in Exhibit G–14. Exelon Generation may distribute to Exelon (via Ventures) the cash received. Ventures would then sell all of the interests in the Acquiring Sub to the Third Party in exchange for the Transfer Consideration.

The particulars of the option selected for each Divestiture Transaction would be specified in the applicable Post-Merger FERC Compliance Filing. Applicants state that each of the steps outlined in Option 2 could occur simultaneously.

VIII. Section 1081 Recitals

Applicants state that Internal Revenue Code section 1081(d) provides for the nonrecognition of gain or loss from certain intercompany transactions between members of the same system group if such transactions are made in obedience to a Commission order.

Applicants request that the order on this Application: (i) Recite that the sale or disposition of generating units as part of the Generation Transactions is necessary or appropriate to the integration or simplification of the post-Merger Exelon holding company system and to effectuate the provisions of section 11(b); and (ii) require post-Merger Exelon to take appropriate actions to cause its direct and indirect subsidiaries, as the case may be, to complete the Generation Divestiture as required in order to comply with the Merger Order.

IX. Affiliate Transactions

A. Service Company Transactions

Applicants state that, under the 2000 Merger Order, the Commission authorized Exelon to organize and capitalize Exelon BSC as a service company subsidiary, and authorized Exelon BSC to provide ComEd, PECO and other companies in the Exelon system with administrative, management, engineering, construction, environmental, and other support services pursuant to a General Services Agreement.

Further, Exelon filed a post-effective amendment in File No. 70–9645 describing its accounting systems and cost allocation methodologies and request a supplemental order of the Commission, as required by the 2000 Merger Order. On October 31, 2003, Exelon submitted a 60-day letter that, as supplemented, described certain proposed changes in allocation methods for ''corporate governance costs,'' and the reorganization of Energy Delivery Shared Services, a business unit of Exelon BSC that would begin to provide new services to ComEd and PECO effective January 1, 2004.[11]

In connection with the Merger, the Applicants state that PSEG Services would sell all of its assets to Exelon BSC, change its name and remain as a subsidiary. Post-Merger, Exelon BSC intends to add the former PSEG companies as client companies under the General Services Agreement and would provide to the new client companies the same administrative, management, and technical services that it now provides to Exelon system companies, utilizing the same work order procedures and the same methods of allocating costs that are specified in the General Services Agreement.[12] In connection with the Transaction, certain employees of PSEG Services may be transferred to and become employees of Exelon BSC, which would be the sole subsidiary service company for the Exelon system.

Exelon requests that the Commission find, that Exelon BSC would continue to be organized and conducted in accordance with section 13(b) of the Act. Applicants request authority to delay the full implementation of all services and systems relative to the new PSEG clients until after February 8, 2006.

B. Other Inter-Company Goods and Services At Cost

1. Incidental Services

The 2000 Merger Order recognized that ComEd, PECO and Exelon Generation may provide services incidental to their utility businesses, such as infrastructure services and storm outage emergency repairs, to one another and other associate companies in accordance with rules 87, 90 and 91. Accordingly, Applicants propose that, following the Merger, PSE&G also may provide these incidental services to, or receive these incidental services from, the other Exelon companies. PSE&G also may provide goods, through a leasing arrangement or otherwise, to one or more associate companies, and may use certain assets for the benefit of one or more associate companies.

2. Services Required for the Efficient Operation of Exelon Generation's Businesses

Under the 2000 Merger Order, the Commission authorized Exelon Generation and any future subsidiary of Exelon Generation and AmerGen Energy Company, LLC (''AmerGen'') to provide services at cost to each other as required for the efficient operation of the Exelon system generating facilities. Although Exelon Generation is an ''electric utility company'' under the Act, it is not subject to state rate regulation and has no ''captive'' customers. Following the Merger, as is the case now, Exelon Generation would own and operate generating facilities, engage in energy marketing and trading, and invest in and own exempt wholesale generators, intermediate companies and other permitted investments such as Rule 58 energy-related companies, all of which are operated as an integral part of its system generating facilities. Accordingly, Exelon Generation proposes that post-Merger it, and all of its current and future subsidiaries, including the former PSEG subsidiaries, provide services at cost to each other.

3. Services at the Interface Between Generation and Transmission and Distribution

Under the 2000 Merger Order, the Commission authorized Exelon Generation to render and receive services at cost from ComEd and PECO related to the interface—primarily switchyard facilities—between the generation function of Exelon Generation and the transmission and distribution functions of ComEd and

[11] Under the 2000 Merger Order, Exelon BSC is required to give written notice to the Commission at least 60 days prior to implementing any change in the type and character of the companies receiving services, the methods of allocating costs to associate companies, or the scope or character of services to be rendered.

[12] Exelon and PSE&G are seeking approval of the General Services Agreement from the NJBPU.

PECO. Applicants request authorization for ComEd, PECO, PSE&G, Exelon Generation and its subsidiaries to render and receive the same types of services at cost, among each other following the Merger.

4. Exelon Generation Services in Connection With Supply of Electricity and Natural Gas

a. *Scheduling Coordination Agreements.* Applicants state that PSE&G is obligated to purchase electricity from certain QFs, is obligated to purchase electricity from certain EWGs under restructured former PURPA contracts, and receives an allocation of hydroelectric power from the St. Lawrence Power Project. Further, that under a stipulation filed at the NJBPU, PSE&G is obligated to resell this power at wholesale into the PJM spot market. As PSE&G owns no generation and engages in no other wholesale energy transactions, it relies upon its affiliate PSEG ER&T to schedule these transactions on its behalf and to submit bids for capacity as directed by PSE&G. PSEG ER&T also fulfills certain billing and accounting functions with respect to such energy and capacity. These services are provided under two agreements (''Scheduling Coordination Agreements'') pursuant to which PSE&G receives the full PJM market value for the electricity. PSE&G either (i) pays PSEG ER&T a cost-based fee, or (ii) enables PSEG ER&T to receive a credit from PJM for capacity from the purchases described above against any emergency power it would otherwise have to pay for under the PJM Open Access Transmission Tariff. The Applicants represent that the Scheduling Coordination Agreements will be assumed by Exelon Generation by operation of law.

b. *BGSS Gas Contract.* The Applicants state that PSEG ER&T provides full-requirements gas supply service to PSE&G pursuant to a contract approved by the NJBPU for the purpose of satisfying all of PSE&G's retail gas service obligations (''BGSS Gas Contract''). As part of the transaction approved by the NJBPU, PSEG ER&T assumed the PSE&G entitlements under most of its gas transportation and storage contracts with interstate pipelines. In a few cases, the entitlements remained with PSE&G and PSEG ER&T administers the contracts as PSE&G's agent. The Applicants state that the BGSS Gas Contract will be assumed by Exelon Generation by operation of law.

Under the 2000 Merger Order, the Commission authorized Exelon Generation to provide, at cost, supply planning services and assistance to ComEd and PECO and to assist the utilities in obtaining energy supply resources from unaffiliated sellers, in each case in connection with the utility's unbundled retail sales and/or wholesale sales, to the extent that energy supply is not provided by Exelon Generation. Applicants state that the Retail Utility Subsidiaries might require assistance from Exelon Generation with respect to the procurement process for the procurement of energy for the utilities' bundled as well as unbundled retail sales. For this reason, and also to allow Exelon Generation to provide any jurisdictional services currently provided by PSEG ER&T pursuant to the Scheduling Coordination Agreements and the BGSS Gas Contract, the Applicants request that the authorization obtained in the 2000 Merger Order be modified not only to include PSE&G, but also to relate to the Retail Utility Subsidiaries' bundled retail sales, as well as unbundled retail sales and/or wholesale sales, of both electricity and natural gas. Thus, the Applicants request that the Commission authorize Exelon Generation to provide, at cost, supply planning services and assistance to the Retail Utility Subsidiaries and to assist the utilities in obtaining, or disposing of, energy supply resources from unaffiliated sellers, in each case in connection with the Retail Utility Subsidiaries' bundled and unbundled retail sales and/or wholesale sales, to the extent that energy supply is not provided by Exelon Generation.[13]

5. Modification of Intercompany Services Authorized by the 2000 Merger Order

Applicants state that ComEd currently provides to and receives from affiliates certain services in accordance with an Affiliated Interests Agreement (''ComEd AIA'') approved by the ICC. PECO's form of Mutual Services Agreement (''PECO MSA'') under which PECO provides and receives certain services from affiliates has been approved by the PAPUC. In connection with the Merger, Applicants state that PSE&G plans to enter into a Mutual Services Agreement (the ''PSE&G MSA'') to govern affiliated interest transactions between PSE&G and its affiliates at cost, consistent with Rules 90 and 91.[14]

Applicants state that the 2000 Merger Order approved individual contracts pursuant to which ComEd and PECO received or rendered services at other than cost. Further, that those arrangements or contracts have all either concluded, or are being conducted currently at cost. Exelon proposes to modify the service providers and recipients under the types of services so described in the 2000 Merger Order so that each of ComEd, PECO, PSE&G and Exelon Generation may provide, at cost, the listed services to associate companies in the new Exelon system under the same conditions as currently apply to the Exelon system companies.[15]

In addition to the services authorized by the 2000 Merger Order, Applicants request authorization for the following additional services to be provided at cost. These services would also be subject to the reporting requirements discussed above:

(a) PowerLabs Services to ComEd, PECO and PSE&G. Exelon Generation was authorized to provide Instrument Calibration services to PECO and, since the time of the 2000 Merger Order, has done so through Exelon PowerLabs, LLC (''PowerLabs''), a first-tier Rule 58 subsidiary of Exelon Generation. PowerLabs also provides Instrument Calibration and other technical services at cost, pursuant to Rule 87(b)(1), to Exelon BSC, which passes them through, at cost, to ComEd and PECO. Applicants request that PowerLabs be authorized to provide Instrument Calibration and other technical services, (including component testing and failure analysis) at cost, directly to ComEd, PECO and PSE&G, in addition to Exelon Generation.

(b) Energy Efficiency Audit Services by the Retail Utility Subsidiaries to Other Exelon Companies. ComEd Technical Services performs site efficiency assessments, which review current energy use profiles and identify cost-savings opportunities (''Energy Efficiency Audit Services''). ComEd has

[13] Applicants state that the described services will be provided at cost, with the exception of some services under the Scheduling Coordination Agreements, which provide, as an alternate mechanism for PSE&G to compensate PSEG ER&T (Exelon Generation after the Exelon Generation Restructuring) for scheduling coordination services, for PSEG ER&T to receive a credit from PJM for capacity.

[14] Exelon and PSE&G are seeking approval of the PSE&G MSA from the NJBPU.

[15] Such services include: services provided by the Retail Utility Subsidiaries: regulatory and legislative services, call center, central mail, fleet services, real estate and facilities, distribution technical services, telephone overflow coverage, strategic marketing and sourcing, installation and maintenance of substation equipment, purchase of materials and logistics, metering equipment and rubber goods, customer services rep emergency training, environmental and lab services, training for electrical and fire; and services provided by Exelon Generation: instrument calibration, operation of Richmond Frequency Converters and synchronous condenser maintenance.

provided a small volume of these services at cost to Exelon Generation and PECO under Rules 87, 90 and 91. Applicants request the Retail Utility Subsidiaries be authorized to provide Energy Efficiency Audit Services to other companies in the Exelon system at cost.

(c) Exelon Generation Maintenance, Repair and Plant Engineering Services. PSEG Power provides a range of specialized maintenance, repair and plant engineering services on energy-related electro-mechanical equipment. PSEG Power provides these services to PSEG Fossil and its EWG subsidiaries, as well as to PSEG Nuclear, PSE&G and PSEG Services. PSEG Power charges its affiliates a blended hourly rate that recovers the fully allocated cost of providing these services. PSEG Power charges PSE&G approximately $3.4 million on an annual basis for the services it provides to PSE&G. PSEG Power charges PSEG Fossil's EWG subsidiaries approximately $150,000 on an annual basis for the services it provides to these entities. After the Exelon Generation Restructuring, PSEG Power will be part of Exelon Generation. Thus, Applicants request authorization for Exelon Generation to provide these services, at cost, to other Exelon companies, including, PSE&G, Exelon BSC, ComEd and PECO.

(d) Peak Shaving Services. To facilitate PSEG ER&T's provision of BGSS to PSE&G, PSE&G provides a peaking natural gas supply to PSEG ER&T from three Liquefied Propane Air (''LPA'') Plants and one Liquefied Natural Gas (''LNG'') Plant. PSE&G charges PSEG ER&T for all labor, material and other costs that are required to operate and maintain the facilities along with a carrying cost for the return on and depreciation of the investment. Applicants request authorization for PSE&G to provide these peak shaving services to Exelon Generation, as successor to PSEG ER&T and for PECO to provide similar peak shaving services to Exelon Generation, in the event PECO enters into similar arrangements with Exelon Generation.

(e) All services required to manage and operate the facilities of the Indiana Company are provided by either Exelon BSC or ComEd. Exelon BSC has authority to provide the services it currently provides to the Indiana Company. To date, ComEd has provided, at cost, incidental services in connection with operation and maintenance of the Indiana Company's transmission assets, as well as various administrative and managerial services. Applicants request that ComEd be authorized to provide operation and maintenance services and administrative and managerial services, at cost, to the Indiana Company on an ongoing basis.

X. Issuance of Common Stock in the Merger

Exelon requests approval to issue that number of shares of its common stock necessary to comply with its obligations under the Merger Agreement. Exelon expects that it would issue approximately 341 million shares of common stock to the former holders of PSEG common stock in the Merger. This includes approximately 14 million shares of common stock, or options on its common stock, that Exelon would be required to issue at the consummation of the Merger to satisfy the obligations under various PSEG stock option and employee benefit plans.

Upon completion of the Merger, each outstanding option to purchase shares of PSEG common stock would be assumed by Exelon and substituted with an option to purchase shares of Exelon common stock, exercisable on generally the same terms and conditions that applied before the Merger. The number of shares of Exelon common stock subject to the substitute Exelon stock option would equal the number of shares of PSEG common stock subject to the PSEG stock option immediately prior to completion of the Merger, multiplied by the exchange ratio, rounded down to the nearest whole share. The per share exercise price of each substitute Exelon stock option would equal the exercise price of the PSEG stock option immediately prior to completion of the Merger divided by the exchange ratio, rounded up to the nearest whole cent. In addition, upon completion of the Merger, Exelon would assume all PSEG equity-based awards and substitute them with equity-based awards with respect to shares of Exelon common stock on generally the same terms and conditions that applied before completion of the Merger. The number of shares of Exelon common stock issuable under those awards, and the exercise prices for those awards, would be adjusted to take into account the exchange ratio (1.225) in the Merger.

XI. PSEG Indebtedness Assumed

As a consequence of the Merger and the Exelon Generation Restructuring, all the existing consolidated indebtedness of PSEG would become consolidated indebtedness of Exelon. As the surviving entity in the Merger, Exelon would become the successor obligor on all outstanding indebtedness directly issued by PSEG. Further, subject to receipt of the appropriate consents, upon the Exelon Generation Restructuring, indebtedness and obligations of PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T would become obligations of Exelon Generation. Prior to the closing of the Merger, PSEG Power's debt holders would be solicited for consent to amendments to certain of its existing debt instruments to reflect the changes in credit profile and other circumstances that would result from the assumption by Exelon Generation of PSEG Power indebtedness.

Applicants state that Exelon would not legally assume or become successor obligor on any outstanding indebtedness of PSEG system companies, except for PSEG indebtedness for which Exelon is successor obligor. Exelon may issue guaranties on behalf of former PSEG system companies subject to the limitations on guaranties contained in the 2004 Financing Order, modified as described below. Likewise, except for the obligations of PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T for which Exelon Generation becomes successor obligor in the Generation Restructuring, Exelon Generation would not legally assume any outstanding indebtedness of any PSEG system company. Exelon Generation may issue guaranties on behalf of former PSEG system companies subject to the limitations on guaranties contained in the 2004 Financing Order, modified as described below.

Applicants seek approval for the consolidation of indebtedness, or in the case of Exelon and Exelon Generation, becoming the successor obligor under the indebtedness, and continuation of inter-company guaranties, as described above. Applicants further request authority to continue existing financing arrangements, guarantees and hedging arrangements, as well as any transactions undertaken to extend the terms of or replace, refund or refinance existing obligations and the issuance of new obligations in exchange for existing obligations, provided in each case that the issuing entity's total capitalization is not increased as a result of such financing transaction except as permitted by the 2004 Financing Order modified as discussed below.

XII. Modifications to 2004 Financing Order

A. The 2004 Financing Order

The Commission issued the 2004 Financing Order which authorized, through April 15, 2007, certain financing transactions, including the issuance of common stock, preferred securities, equity-linked securities, long-

term debt and short-term debt in an aggregate amount not to exceed $8 billion above the amount outstanding for Exelon and Exelon Generation at December 31, 2003, with no separate sublimit for short-term debt. The 2004 Financing Order also authorized the use of up to $4 billion of the proceeds of financings for investments in EWGs and FUCOs, and reserved jurisdiction over a request to use an additional $3 billion of the proceeds of financings for investments in EWGs and FUCOs.

Because the 2004 Financing Order did not contemplate a transaction of the magnitude of the current Merger, Exelon requests approval for the issuance of its common stock in the Merger and related to stock options and employee plans. Except for the issuance of common stock in the Merger and the specific modifications listed below, however, Applicants state that Exelon does not seek any changes to the approvals granted in the 2004 Financing Order.

In particular, Exelon is not proposing to increase the authorized amount of new financing it will be permitted above the existing authorized $8 billion. Applicants, citing to the 2004 Financing Order, note: ''Applicants state that [the $8 billion External Limit] does not include the refunding or replacement of securities where capitalization is not increased from that in place at [a specified date]. Applicants state that any refunding or replacement of securities where capitalization is not increased from that in place at [the specified date] will be through the issuance of securities of the type authorized in [the 2004 Financing Order].'' Applicants request that the base level of capitalization, against which the authorized increase of $8 billion will be measured, will be adjusted to be the pro forma capitalization of Exelon or Exelon Generation, as the case may be, as of the date of consummation of the Merger and Exelon Generation Restructuring.

Exelon proposes that the 2004 Financing Order will remain in full force and effect, including all parameters, restrictions and conditions imposed in the 2004 Financing Order, except to the extent expressly modified by the Commission's order in this matter.

1. Requested Modifications of 2004 Financing Order [16]

Applicants seek the following modifications to the 2004 Financing Order:

i. The definition of ''Utility Subsidiaries'' under the 2004 Financing Order be amended to include PSE&G, and the definition of ''Nonutility Subsidiaries'' be amended to include all non-utility subsidiary companies of PSEG.

ii. The Utility Money Pool authority be amended to permit: (a) PSE&G to become a participant in the Utility Money Pool, with a participation limit for borrowing of $1 billion, and (b) Exelon Generation to borrow up to $1.5 billion (an increase from $1 billion) at any one time outstanding from the Utility Money Pool [17], and (c) PSEG Holdings to participate in the Utility Money Pool as a lender to, but not as a borrower from, the Utility Money Pool.

iii. To authorize the establishment of a Nonutility Money Pool.

iv. To add authority for PSE&G to enter into Hedge Instruments and Anticipatory Hedges of the same type and under the same conditions as authorized under the 2004 Financing Order.

v. To add authority for Exelon to enter into guarantees to or on behalf of the PSEG companies, and PSE&G to enter into Non-Exempt Utility Guarantees, all under the terms and conditions authorized under the 2004 Financing Order.

vi. To increase to $8 billion (from the current $6 billion) the aggregate authority for Exelon and Exelon Generation to issue guaranties.

vii. To add authority for PSE&G to pay dividends out of capital to the extent of PSE&G's retained earnings immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting.

viii. To add authority for Delivery to pay dividends out of capital to the extent of PSE&G's retained earnings immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting.

ix. To add authority for Exelon Generation to pay dividends out of capital to the extent of the retained earnings of PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting.

x. To add authority for Ventures to pay dividends out of capital to the extent of the retained earnings of (A) PSEG Power, PSEG Nuclear, PSEG Fossil and PSEG ER&T immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting and (B) PSEG Holdings immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting in the event PSEG Holdings becomes a subsidiary of Ventures rather than a direct subsidiary of Exelon.[18]

xi. To increase Exelon's authority to pay dividends out of capital by the amount of PSEG's retained earnings immediately prior to the Merger where such retained earnings are transferred to paid in capital in accordance with purchase accounting.[19]

xii. To add authority for Exelon, Exelon Generation, Ventures, Delivery and PSE&G to declare and pay dividends out of current earnings before any deduction resulting from impairment of goodwill or other intangibles recognized as a result of the Merger.[20]

xiii. To increase to 75 million shares (from 42 million shares approved by the 2004 Financing Order) the number of shares of Exelon common stock that may be issued, following the Merger, under Exelon's dividend reinvestment plan, employee stock ownership plan, certain incentive compensation plans and certain other employee benefit plans, including PSEG plans assumed as part of the Merger, as described below (collectively, the ''Plans'').

xiv. To increase the amount of financing proceeds that may be used for investments in EWGs and FUCOs such that ''aggregate investment'' does not exceed $8 billion (an increase from $4 billion currently authorized).

xv. To provide that the base capitalization against which the limit of additional financing of $8 billion authorized in the 2004 Financing Order is measured shall be the pro forma capitalization of Exelon or Exelon Generation as the case may be, as of the date of consummation of the Merger and the Exelon Generation Restructuring. As required under the 2004 Financing Order, all financing where capitalization

[16] Capitalized terms not otherwise defined herein shall have the meanings assigned to such terms in the 2004 Financing Order.

[17] Applicants state that the 2004 Financing Order authorized Unicom Investments, Inc. to participate in the Utility Money Pool as a lender only. Unicom Investments, Inc. has been reorganized and is now UII, LLC.

[18] Such dividend authority is requested in the event that Exelon were to do an internal restructuring to move PSEG Holdings, a non-utility subsidiary to be a subsidiary of Ventures rather than as a direct first tier subsidiary of Exelon as is contemplated following the Merger.

[19] This new approval would not affect the authority of ComEd and Exelon to pay dividends out of capital as approved in the 2004 Financing Order.

[20] Applicants ask the Commission to reserve jurisdiction over their request pending completion of the record.

is not increased from that in place at the Merger date will be through the issuance of securities of the type authorized in the 2004 Financing Order, modified as described herein, and subject to the Financing Parameters (as defined in the 2004 Financing Order).[21]

xvi. To add authority for Exelon Generation to engage in tax-exempt financing pursuant to sale or lease transactions of its utility assets as described below.

2. Parameters for Financing Authorization

The proposed financing transactions would be subject to the Financing Parameters, as set forth in the 2004 Financing Order. The 30% common equity condition shall apply to PSE&G as a ''Utility Subsidiary.'' The 30% Condition would be unchanged for Exelon, ComEd, PECO and Exelon Generation. Finally, the Investment Grade Condition (as defined in the 2004 Financing Order) would apply to PSE&G to the extent it requires Commission approval for any securities issuance.

3. Filing of Certificates of Notification

Exelon currently files quarterly reports in connection with the 2004 Financing Order. Applicants propose to continue to file Rule 24 certificates through February 8, 2006 containing the information required by the 2004 Financing Order for the post-Merger Exelon system, including equivalent information relating to former PSEG system subsidiaries.

4. Increase in Shares for Plans; New and Adopted Plans

The 2004 Financing Order authorized Exelon to issue and/or acquire in open market transactions, or by some other method which complies with applicable law and Commission interpretations then in effect, up to 42 million shares of Exelon common stock (adjusted for a stock split) under Exelon's dividend reinvestment plan, employee stock ownership plan, certain incentive compensation plans and certain other employee benefit plans. Such issuances are in addition to common stock that may be issued under the general financing authorization of $8 billion. Exelon proposes to increase the number of shares authorized for this purpose to 75 million to accommodate two new Exelon plans and the former PSEG plans that would become Exelon's responsibility following the Merger. Exelon stock would be used, following the Merger, to satisfy requirements under the PSEG plans to provide common stock.

5. Nonutility Money Pool

In the 2004 Financing Order, the Commission reserved jurisdiction over the formation of the Nonutility Money Pool. Applicants request that the Commission release jurisdiction over the formation of the Nonutility Money Pool. The Nonutility Money Pool is to be operated on the same terms and conditions as the Utility Money Pool, except that Exelon funds made available to the Money Pools would be made available to the Utility Money Pool first to the extent it is operated and needed and thereafter to the Nonutility Money Pool. None of the Utility Subsidiaries would be a participant in the Nonutility Money Pool, and no loans through the Nonutility Money Pool would be made to, and no borrowings through the Nonutility Money Pool would be made by, Exelon, Ventures or Delivery.

Furthermore, Applicants request authority for other Non-Utility Subsidiaries (*i.e.*, Non-Utility Subsidiaries that are not currently anticipated to participate in the Non-Utility Money Pool and such that are acquired or formed in the future, collectively, ''Other Non-Utility Subsidiaries'') may lend funds to and borrow from the Non-Utility Money Pool, when established, without the need for additional authority from the Commission.

6. Exelon Generation Tax-Exempt Financing

Applicants state that Exelon Generation may be able to incur lower financing costs by taking advantage of tax-exempt financing where a governmental entity, such as a county or a state authority or agency, issues securities and lends the proceeds to Exelon Generation or where Exelon Generation sells or leases an undivided interest in one or more of its generating facilities and related assets to the governmental entity and leases back or purchases the assets and operates such assets as before. In connection with such transactions, Exelon Generation seeks approval for the sale, lease or other transfer and lease back, purchase or other operating arrangement of generating and related assets that constitute utility assets under the Act. Such sale, lease or other transfer and lease back, purchase or other operation arrangement would be solely for financing purposes and would not affect the operation of the assets.

XIII. Retention of Nonutility Subsidiaries

Exhibit G–7 (attached to the Application) lists and describes those non-utility businesses conducted by PSEG and its subsidiary companies. As a result of the Merger, those non-utility businesses and interests would become businesses and interests of Exelon. Except as discussed (in Exhibit G–7), Applicants request authority to retain these non-utility interests.

Applicants ask the Commission to find that pre-existing investments by PSEG and its subsidiaries in ''energy-related companies'' prior to the effective date of Rule 58 will not count in the calculation of the 15% limitation for purposes of the safe harbor under Rule 58.

XIV. Post-Merger Corporate Structure: The Intermediate Holding Company

Post-Merger, there would be one instance of a ''great-grandfather'' holding company, the existence of which the Commission approved in the 2000 Merger Order. Exelon, through Delivery, owns substantially all of the outstanding common stock of ComEd which, in turn, is a holding company for the Indiana Company. The Indiana Company has no retail customers and owns only transmission facilities with a depreciated book value at December 31, 2004 of only $7.4 million. The operation of the Indiana Company's transmission facilities is subject to the control of PJM. Accordingly, the Indiana Company has virtually no business operations with outside third parties.

Applicants state that, PSE&G has pending an application with the NJBPU seeking approval in connection with the issuance of up to $150 million of securitization obligations under N.J.S.A. 48:3–57. If the application is approved, Applicants state that the NJBPU would authorize a transition bond charge which amounts would be sold by PSE&G to a special purpose Financing Subsidiary in connection with the securitization financing. Because PSE&G will be covered by the general

[21] The capitalization base for Exelon and Exelon Generation, respectively, would be measured according to the balance sheet prepared to reflect consummation of the Merger, by taking the post-Merger outstanding common stock or membership interests (excluding retained earnings), preferred and preference securities, long-term debt, short-term debt, current portion of long-term debt and securitization obligations, as applicable, of Exelon and Exelon Generation. Increases in capitalization through securities issuances of Exelon and Exelon Generation, as the case may be, would count towards the $8 billion limit; but increases in consolidated capitalization resulting from exempt securities issuances (such as issuances of state commission approved securities by the Retail Utility Subsidiaries) and increases to retained earnings will not reduce available financing. Retirement or redemption of securities or reductions in equity through stock buybacks by Exelon or Exelon Generation, as the case may be, in each case with available funds will correspondingly increase available financing.

authorizations applicable to the Exelon system approving formation and activities of Financing Subsidiaries and entering into servicing agreements at ''market rates'' in compliance with rating agency requirements, Applicants state that PSE&G will need no further approval from the Commission for the proposed $150 million securitization financing.

Exelon (70–10294) and the other Applicants state that they consent and agree that consummation by them of the Merger shall constitute their acceptance of the survival of the Implementation Order notwithstanding the effectiveness of the repeal of the Act.

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53050; File No. SR–Amex–2005–114]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Amex Initial Listing Standards

January 3, 2006.

I. Introduction

On November 2, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend section 102(b) of the Amex Company Guide (''Company Guide'') to require a minimum market price of $2 per share for issuers seeking to qualify for initial listing pursuant to Initial Listing Standard 3 (Section 101(c) of the Company Guide). On November 10, 2005, the Exchange filed Amendment No. 1 (''Amendment No. 1'') to the proposed rule change to amend section 101 of the Company Guide to include a reference to section 102(b) of the Company Guide in each of the four initial Amex listings standards to clarify that section 102(b) of the Company Guide applies to each standard.[3] The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on November 28, 2005.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description

In its filing, the Amex stated that an approval of an application for the listing of securities on the Exchange is based on an applicant's ability to satisfy a series of quantitative and qualitative listing standards as evaluated by the Listing Qualifications Department. The Amex represented that the quantitative standards currently provide four alternative approaches for a company to satisfy the Amex's initial listing standards.

For applicants to meet Initial Listing Standards 1, 2, and 4 (Company Guide Section 101(a), (b), and (d), respectively), in addition to specified minimum numerical standards, the Exchange requires a minimum market price of $3 per share. The Amex noted that although Listing Standard 3 currently requires an applicant to meet minimum specified numerical standards, it does not require the applicant to meet a minimum market price per share.

The Exchange proposed to enhance its initial listing quantitative standards to require applicants seeking to qualify under Initial Listing Standard 3 pursuant to section 101(c) of the Company Guide to have a minimum market price of $2 per share. In order to do so, the Exchange proposed to amend section 102(b) to incorporate this requirement. The Exchange also proposed to amend section 101 of the Company Guide to include a reference to section 102(b) of the Company Guide in each of the four initial listing standards to clarify that section 102(b) of the Company Guide applies to each of the four listing standards.[5]

In addition, the Exchange proposed to delete the last sentence of section 102(b) of the Company Guide. The Exchange noted that this provision, which has been in place for many years, gives the Exchange the discretion under certain circumstances to consider listing an issue that qualified under Initial Listing Standards 1, 2, or 4 even if the issue's share price is less than $3. The Exchange represented that this provision was meant to cover the situation in which an applicant issuer meets all of the initial listing standards but experiences a decline in share price to below $3 per share just before listing. In light of the current and proposed configuration of the initial listing standards, the Exchange stated that it believes that this provision is no longer necessary or appropriate.[6]

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[9]

The Commission believes that the proposed rule change will allow for the evaluation of an issuer's initial listing eligibility against more comprehensive criteria and strengthen the listing standards of the Amex. The Commission notes that the three other listing standards (*i.e.*, Listing Standards 1, 2, and 4) of the Amex already contain a $3 market price requirement.[10] The adoption of a $2 minimum market price for listing under section 101(c) of the Company Guide will help to ensure that all companies initially listing on Amex under section 101 must meet a minimum price requirement. The Commission notes that under section 101 of the Company Guide, the fact that an applicant may meet the Amex's numerical standards does not necessarily mean its application will be approved, and section 101 of the Company Guide sets forth other factors the Exchange may consider for listing, including the nature of the applicant's business and the reputation of management, among others. The Commission expects Amex to continue

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 clarified the purpose section of the filing and made proposed changes to section 101 of the Company Guide to reference section 102(b) of the Company Guide in the listing provisions.

[4] Securities Exchange Act Release No. 52804 (November 18, 2005), 70 FR 71342 (November 28, 2005) (SR–Amex–2005–114).

[5] *See* Amendment No. 1, *supra* note 3.

[6] *Id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] *See* Sections 101 and 102 of the Company Guide.

to review companies for listing under all the relevant factors. The new standard being adopted, as well as the elimination of the discretionary provision in section 102(b) of the Company Guide, will nevertheless ensure that a minimum price must be met at the outset to be considered for initial listing under section 101 of the Company Guide.[11]

Finally, the Commission notes that the rule proposal does not discriminate among different issuers because the new minimum price standard for listing under section 101(c) of the Company Guide will apply equally to all potential issuers for listing. Based on the above, the Commission believes that the proposal will help investors and the public interest by ensuring that securities that are listed on the Exchange, pursuant to Initial Listing Standard 3 of section 101(c) of the Company Guide, are traded initially at least with a $2 minimum market share requirement and must meet a minimum price listing standard at all times.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–2005–114), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–82 Filed 1–9–06; 8:45 am]

BILLING CODE 8010–01–P

[11] The Commission believes the adoption of the $2 minimum market price standard under section 101(c) of the Company Guide is a good, first step in strengthening Amex's listing standards and continues to encourage the Exchange to consider adopting a minimum market price continued listing standard.

[12] 15 U.S.C. 78f(b).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10180 and #10181]

Alabama Disaster Number AL–00003

AGENCY: Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1605–DR), dated 08/29/2005.

Incident: Hurricane Katrina.

Incident Period: 08/29/2005 through 09/26/2005.

DATES: *Effective Date:* 12/28/2005.

Physical Loan Application Deadline Date: 03/11/2006.

EIDL Loan Application Deadline Date: 05/29/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National 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 the State of Alabama, dated 08/29/2005, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 03/11/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–112 Filed 1–9–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10301 and #10302]

Indiana Disaster #IN–00003

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana dated January 4, 2006.

Incident: Severe Storms and Tornadoes.

Incident Period: November 15, 2005.

Effective Date: January 4, 2006.

Physical Loan Application Deadline Date: March 6, 2006.

Economic Injury (EIDL) Loan Application Deadline Date: October 4, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Daviess.

Contiguous Counties:

Indiana: Dubois, Greene, Knox, Martin, and Pike.

The Interest Rates Are:

	Percent
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.687
Businesses with Credit Available Elsewhere	6.557
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10301 C and for economic injury is 10302 0.

The States which received an EIDL Declaration # are Indiana.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Hector V. Barreto,

Administrator.

[FR Doc. E6–120 Filed 1–9–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10205 and #10206]

Louisiana Disaster Number LA–00004

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 10.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1607–DR), dated September 24, 2005.

Incident: Hurricane Rita.

Incident Period: September 23, 2005 through November 1, 2005.

Effective Date: December 28, 2005.

Physical Loan Application Deadline Date: March 11, 2006.

EIDL Loan Application Deadline Date: June 26, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National 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 the State of Louisiana, dated September 24, 2005, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to March 11, 2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–115 Filed 1–9–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10176 and #10177]

Louisiana Disaster Number LA–00002

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1603–DR), dated August 29, 2005.

Incident: Hurricane Katrina.

Incident Period: August 29, 2005 through November 1, 2005.

Effective Date: December 28, 2005.

Physical Loan Application Deadline Date: March 11, 2006.

EIDL Loan Application Deadline Date: May 29, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National 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 the State of Louisiana, dated August 29, 2005, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to March 11, 2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–117 Filed 1–9–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10178 and #10179]

Mississippi Disaster Number MS–00005

AGENCY: Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1604–DR), dated 08/29/2005.

Incident: Hurricane Katrina.

Incident Period: 08/29/2005 through 10/14/2005.

Effective Date: 12/28/2005.

Physical Loan Application Deadline Date: 03/11/2006.

EIDL Loan Application Deadline Date: 05/29/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National 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 the State of Mississippi, dated 08/29/2005, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 03/11/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–121 Filed 1–9–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10203 and #10204]

Texas Disaster Number TX–00066

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1606–DR), dated September 24, 2005.

Incident: Hurricane Rita.

Incident Period: September 23, 2005 through October 14, 2005.

Effective Date: December 28, 2005.

Physical Loan Application Deadline Date: March 11, 2006.

EIDL Loan Application Deadline Date: June 26, 2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National 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 the State of TEXAS, dated September 24, 2005, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to March 11, 2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–113 Filed 1–9–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. ANM–111–05–004]

Lightning Direct Effects Compliance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on Lightning Direct Effects Compliance. The proposed policy would accept SAE International Aerospace Recommended Practice 5577 as a means of compliance with the Lightning Direct Effects requirements.

DATES: Send your comments on or before February 9, 2006.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy memorandum is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you can obtain a copy of the proposed policy memorandum by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The FAA invites your comments on this proposed policy memorandum. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT**. Mark your comments, ''Comments to Policy Statement No. ANM–111–05–004.''

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The proposed policy would recognize Society of Automotive Engineers Aerospace Recommended Practice 5577, *Aircraft Lightning Direct Effects Certification,* as an acceptable method of compliance to the requirements of § 25.581 for part 25 transport category airplanes.

Issued in Renton, Washington, on December 19, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–201 Filed 1–9–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA–2006–23527]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before March 13, 2006.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, SW., 401, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dana Sade, Office of Chief Counsel, NCC–110, telephone (202) 366–1834, fax (202) 366–3820; NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: Designation of Agent for Service of Process.

OMB Control Number: 2127–0040.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Extension of previously approved collection.

Affected Public: Business or other for-profit.

Form Number: N/A.

Abstract: This collection of information applies to motor vehicle and motor vehicle equipment manufacturers located outside of the United States (''foreign manufacturers''). Section 110(e) of the National Traffic and Motor Vehicle Safety Act of 1966 (49 U.S.C. 30164) requires a foreign manufacturer offering a motor vehicle or motor vehicle equipment for importation into the United States to designate a permanent resident of the United States as its agent upon whom service of notices and processes may be made in administrative and judicial proceedings. These designations are required to be filed with NHTSA. NHTSA requires this information in case it needs to advise a foreign manufacturer of a safety related defect in its products so that the manufacturer can, in turn, notify purchasers and correct the defect. This information also enables NHTSA to serve a foreign manufacturer with all administrative and judicial processes, notices, orders, decisions and requirements.

NHTSA recently amended the regulation implementing that statutory requirement, codified at 49 CFR part 551, subpart D, rephrasing it in a plain language, question and answer format and inserting an appendix containing a suggested designation format for use by foreign manufacturers and their agents. The purpose of the suggested designation format was to simplify the information collection and submission process, and thereby reduce the burden imposed on each covered manufacturer by 49 CFR Part 551, subpart D. To further streamline the information collection process, NHTSA has set up a

customer Web site that may be accessed at *http://www.nhtsa.dot.gov/cars/rules/manufacture/agent/customer.html.*

Estimated Annual Burden: 120 hours.

Estimated Number of Respondents: 240 respondents.

The Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: January 4, 2006.

John Donaldson,

Assistant Chief Counsel for Legislation and General Law.

[FR Doc. E6–78 Filed 1–9–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34793]

New Mexico Department of Transportation—Acquisition Exemption—Certain Assets of the BNSF Railway Company

New Mexico Department of Transportation (NMDOT), an agency of the State of New Mexico and a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the BNSF Railway Company (BNSF) certain right-of-way and trackage, totaling approximately 297.1 miles in Valencia, Bernalillo, Sandoval, Santa Fe, San Miguel, Mora, and Colfax Counties, NM, and Las Animas County, CO. The rail line extends between milepost 932.1 in Belen, NM, on BNSF's El Paso Subdivision and milepost 635.0 in Trinidad, CO, on BNSF's Raton Subdivision.

NMDOT states that, pursuant to a purchase and sale agreement between the parties, BNSF will in three separate phases convey to NMDOT the right-of-way, track, and other real property and assets associated with the line, subject to BNSF's retention of a permanent, exclusive freight railroad operating easement. NMDOT indicates that it will not acquire the right or obligation to provide freight rail service on the line.[1] According to NMDOT, the parties plan to close on the first phase of the transaction on January 17, 2006.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34793, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Kirkpatrick & Lockhart Nicholson Graham LLP, 1800 Massachusetts Ave., NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 4, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–189 Filed 1–9–06; 8:45 am]

BILLING CODE 4915–01–P

[1] For these reasons, NMDOT has simultaneously filed a motion to dismiss the notice of exemption in this proceeding. The motion will be addressed in a subsequent Board decision.

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collection; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We invite comments on the continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before March 13, 2006.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed and continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following information collections:

Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.

OMB Number: 1513–0087.

TTB Recordkeeping Requirement Number: 5100/1.

Abstract: Bottlers and importers of alcohol beverages must adhere to numerous performance standards for statements made on labels and in advertisements of alcohol beverages. These performance standards include minimum mandatory labeling advertising statements.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 6,060.

Estimated Total Annual Burden Hours: One (1).

Title: Beer for Exportation.

OMB Number: 1513–0114.

TTB Form Number: 5130.12.

Abstract: Untaxpaid beer may be removed from a brewery for exportation without payment of the excise tax normally due on removal. In order to ensure that exportation took place as claimed and that untaxpaid beer does not reach the domestic market, TTB requires certification on Form 5130.12.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 392.

Estimated Total Annual Burden Hours: 38,808.

Title: Usual and Customary Business Records Relating to Wine.

OMB Number: 1513–0115.

TTB Recordkeeping Requirement Number: 5120/1.

Abstract: TTB routinely inspects wineries' usual and customary business records to ensure the proper payment of wine excise taxes due to the Federal government.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 3,131.

Estimated Total Annual Burden Hours: 313.

Title: Bond for Drawback Under 26 U.S.C. 5131.

OMB Number: 1513–0116.

TTB Form Number: 5154.3.

Abstract: Businesses that use taxpaid alcohol to manufacture nonbeverage products may file a claim for drawback (refund or remittance). Claims may be filed monthly or quarterly. Monthly claimants must file a bond on TTB F 5154.3 to protect the Government's interest.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden Hours: 12.

Dated: January 6, 2006.

Francis W. Foote,

Director, Regulations and Procedures Division.

[FR Doc. 06–208 Filed 1–9–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Fiduciary Activities of National Banks—12 CFR part 9.'' The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit written comments by February 9, 2006.

ADDRESSES: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0140, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0140, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting OMB approval for a revision to the following information collection:

Title: Fiduciary Activities of National Banks—12 CFR 9.

OMB Number: 1557–0140.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection. The OCC requests only that OMB approve its revised estimate of the burden and extend its approval of the information collection.

Under 12 U.S.C. 92a, the OCC regulates the fiduciary activities of national banks, including the administration of collective investment funds. The requirements in 12 CFR Part 9 enable the OCC to perform its responsibilities relating to the fiduciary activities of national banks and collective investment funds. The collections of information in Part 9 are found in §§ 9.8, 9.9(a) and (b), 9.17(a), 9.18(b)(1), 9.18(b)(6)(ii), 9.18(b)(6)(iv), and 9.18(c)(5) as follows:

Section 9.8 requires a national bank to maintain fiduciary records;

Section 9.9(a) and (b) require a national bank to note the results of a fiduciary audit in the minutes of the board of directors;

Section 9.17(a) requires a national bank that wants to surrender its fiduciary powers to file with the OCC a

certified copy of the resolution of its board of directors;

Section 9.18(b)(1) requires a national bank to establish and maintain each collective investment fund in accordance with a written plan;

Section 9.18(b)(1) also requires a national bank to make the plan available for public inspection and to provide a copy of the plan to any person who requests it;

Section 9.18(b)(6)(ii) requires a national bank to prepare a financial report of the fund;

Section 9.18(b)(6)(iv) requires a national bank to disclose the financial report to investors and other interested persons; and

Section 9.18(c)(5) requires a national bank to request OCC approval of special exemption funds.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 580.

Estimated Total Annual Responses: 1,177,492.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 309,825 hours.

On October 26, 2005, the OCC published in the **Federal Register** (70 FR 61880) a notice concerning the renewal of this information collection. The OCC received no public comments and is now submitting its request to OMB for approval. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 3, 2006.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 06–199 Filed 1–9–06; 8:45 am]

BILLING CODE 4810–33–P

Federal Register

Tuesday,
January 10, 2006

Part II

Environmental Protection Agency

40 CFR Part 745

Lead; Renovation, Repair, and Painting Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2005–0049; FRL–7755–5]

RIN 2070–AC83

Lead; Renovation, Repair, and Painting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing new requirements to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint. This action supports the attainment of the Federal government's goal of eliminating childhood lead poisoning by 2010. The proposal would establish requirements for training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and renovation firms; accrediting providers of renovation and dust sampling technician training; and for renovation work practices. These requirements would apply in ''target housing,'' defined in section 401 of the Toxic Substances Control Act (TSCA) 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. Initially the rule would apply to all renovations for compensation performed in target housing where a child with an increased blood lead level resides, rental target housing built before 1960 and owner-occupied target housing built before 1960, unless, with respect to owner-occupied target housing, the person performing the renovation obtains a statement signed by the owner-occupant that the renovation will occur in the owner's residence and that no child under age 6 resides there. EPA is proposing to phase in the applicability of this proposal to all rental target housing and owner-occupied target housing built in the years 1960 through 1977 where a child under age 6 resides. This proposal is issued under the authority of TSCA section 402(c)(3). EPA is also proposing 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.

DATES: Comments must be received on or before April 10, 2006. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by OMB on or before February 9, 2006.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OPPT–2005–0049, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. 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*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2005–0049. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2005–0049. EPA's policy is that all comments received will be included in the public docket without change and may be made available in the on-line docket at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, 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 docket index at *http://www.regulations.gov/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the online docket at *http://www.regulations.gov/* or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Rm. B102, 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 EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

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. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you perform renovations of target housing 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.

Potentially affected entities may include, but are not limited to:

- Building construction (NAICS 236), e.g., single family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS 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 531), e.g., lessors of residential buildings and dwellings, residential property managers.
- Other technical and trade schools (NAICS 611519), e.g., training providers.
- Engineering services (NAICS 541330) and building inspection services (NAICS 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 § 745.82 of the proposed rule. 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. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity, obscene language, or personal threats.

viii. Make sure to submit your comments by the comment period deadline.

II. Background

A. What Action is the Agency Taking?

EPA is proposing new requirements to reduce the exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint. This action supports the attainment of the Federal government's goal of eliminating childhood lead poisoning by 2010. The proposal would establish requirements for training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and renovation firms; accrediting providers of renovation and dust sampling technician training; and renovation work practices. These requirements would apply in ''target housing,'' 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. Initially the rule would apply to all renovations for compensation performed in target housing where a child with an increased blood lead level resides; rental target housing built before 1960; and owner-occupied target housing built before 1960, unless the person performing the renovation obtains a statement signed by the owner-occupant that the renovation will occur in the owner's residence and that no child under age 6 resides there. EPA is proposing to phase in the applicability of this proposal to all rental target housing and owner-occupied target housing built in the years 1960 through 1977 where a child under age 6 resides. This proposal is issued under the authority of TSCA section 402(c)(3). EPA is also proposing 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.

EPA is planning to incorporate the training, certification, and accreditation requirements in this proposal, along with the proposed work practice standards for renovations, into 40 CFR part 745, subpart E. Subpart E currently contains the Pre-Renovation Education Rule requirements. As discussed in Unit IV.B., the requirements in this proposal would apply to renovations currently regulated by the Pre-Renovation Education Rule. As a result, 40 CFR part 745, subpart E would be a logical place to codify these requirements. In order to do so, EPA is proposing to remove some existing sections from this subpart and replace them with new sections.

EPA is proposing to delete 40 CFR 745.84 because it is duplicative. This section provides 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. Therefore, 40 CFR 745.84 is superfluous. EPA is proposing to delete this section and redesignate existing § 745.85 as § 745.84. EPA is also proposing to amend newly designated § 745.84 so as to place the responsibility for carrying out the information distribution requirements on the firm conducting the renovation rather than the certified renovator.

EPA is also proposing to delete 40 CFR 745.88. This section provides sample pamphlet acknowledgment statements and sample attempted delivery certification statements. These statements may, but are not required to, be used by renovators for the purpose of complying with the recordkeeping requirements of the Pre-Renovation Education Rule. EPA is making available in the docket and on its Web page new sample statements to assist renovation firms in complying with the Pre-Renovation Education Rule as well

as the provisions of this proposal (Ref. 1). More information on the recordkeeping requirements of this proposal can be found in Units III.B. through III.D.

B. What is the Agency's Authority for Taking this Action?

These training, certification and accreditation requirements and work practice standards are being proposed pursuant to the authority of TSCA section 402(c)(3), 15 U.S.C. 2682(c)(3), as amended by 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'') (Ref. 2). The Model State Program and amendments to the regulations on the authorization of State and Tribal programs with respect to renovators and dust sampling technicians are being proposed pursuant to section 404 of TSCA, 15 U.S.C. 2684.

III. Introduction

A. Information on Lead, Health Effects, and History

Lead is a soft, bluish metallic 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.

According to the Centers for Disease Control, there is no known safe blood lead level (Ref. 3). Health effects associated with exposure to lead and lead compounds include, but are not limited to, neurotoxicity, developmental delays, hypertension, impaired hearing acuity, impaired hemoglobin synthesis, and male reproductive impairment (Refs. 3 and 4). Lead bioaccumulates, and it is difficult to remove from blood and bones. Lead exposure in young children is of particular concern because children absorb lead more readily than adults (Refs. 3 and 4). Children have a higher risk of exposure because of their more frequent hand-to-mouth behavior (Ref. 3). Low levels of lead in a child's bloodstream can interfere with growth and cause cognitive impairment, permanent hearing and visual impairment, and other damage to the brain and nervous system (Refs. 3 and 4). The effects of long-term lead exposure or poisoning in children are well-documented: Higher school failure rates and reductions in lifetime earnings due to permanent loss of intelligence and increased social pathologies (Ref. 3).

In large doses, lead can cause blindness, brain damage, convulsions, and even death. Lead exposure before or during pregnancy can affect fetal development and cause miscarriages, as lead can pass from a pregnant woman's bloodstream to the developing child. There is also some indication that lead exposure contributes to high blood pressure and reproductive and memory problems in adults (Ref. 5). According to EPA's Integrated Risk Information System (IRIS), by comparison to most other environmental toxicants, the degree of uncertainty about the health effects of lead is quite low and it appears that some effects, particularly changes in the levels of certain blood enzymes as well as changes in aspects of children's neurobehavioral development, may occur at blood levels so low as to be essentially without a threshold (Ref. 6).

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 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, may also ingest lead-based paint chips from flaking 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 paint-dust during hand-to-mouth activities.

In the last 3 decades of the 20th century, various agencies of the Federal government took independent actions to address lead exposure. In 1978, the Consumer Product Safety Commission (CPSC) banned the use of paint containing more than 0.06% lead by weight on toys, furniture, and interior and exterior surfaces in housing and other buildings and structures used by consumers (Ref. 7). Also in 1978, the Occupational Safety and Health Administration (OSHA) issued regulations to protect general industry workers from lead exposure (Ref. 8). OSHA issued regulations in 1993 to protect construction workers, including abatement workers, from lead exposure (Ref. 9). In 1973, EPA issued regulations designed to gradually reduce the amount of lead in leaded gasoline (Ref. 10). EPA lowered the maximum levels of lead permitted in public water systems in 1991 (Ref. 11). The Centers for Disease Control and Prevention (CDC) set and lowered blood lead ''levels of concern'' several times, as new studies showed the impact of lead levels on children's health (Ref. 12). (The level of concern is the level where medical and environmental case management activities should be implemented.) The Department of Housing and Urban Development (HUD) began to abate lead hazards in public housing that was being renovated or in structures occupied by a child with elevated blood lead levels. These efforts, and those of State and local agencies and the private sector, reduced the incidence of lead poisoning.

In 1991, the Secretary of the Department of Health and Human Services (HHS) characterized lead poisoning as the ''number one environmental threat to the health of children in the United States'' (Ref. 13, p. A-3). *Preventing Lead Poisoning in Young Children; A Statement By the Centers For Disease Control and Prevention*, identified lead-based paint as the major source of high-dose lead poisoning in the United States (Ref. 12, pp. 7–10). Although CPSC's ban on high lead levels in residential paint was an important and necessary step in reducing the number of lead-poisoned children, millions of houses still contained old leaded paint.

B. The Federal Lead-based Paint Program.

1. *Title X and the Federal goal.* Primarily in response to this persistent health threat, in 1992 Congress enacted Title X. 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 determined that the prior Federal response to this crisis was

insufficient and established, in Title X, a national goal of eliminating lead-based paint hazards in housing as expeditiously as possible. Congress decided that the Federal government would take a leadership role in building the infrastructure necessary to achieve this goal.

The stated purposes of Title X are:

- To develop a national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible.
- To reorient the national approach to the presence of lead-based paint in housing to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock.
- To encourage effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction and by ending the current confusion over reasonable standards of care.
- To ensure that the existence of lead-based paint hazards is taken into account in the development of Government housing policies and in the sale, rental, and renovation of homes and apartments.
- To mobilize national resources expeditiously, through a partnership among all levels of government and the private sector, to develop the most promising, cost-effective methods for evaluating and reducing lead-based paint hazards.
- To reduce the threat of childhood lead poisoning in housing owned, assisted, or transferred by the Federal Government.
- To educate the public concerning the hazards and sources of lead-based paint poisoning and steps to reduce and eliminate such hazards.

(Ref. 2). To accomplish this ambitious goal, a number of agencies were assigned specific responsibilities under Title X, including HUD, CDC, OSHA, the National Institute for Occupational Safety and Health (NIOSH), and EPA.

The elimination of lead-based paint hazards in the nation's housing remains an important goal for the Federal government. In 1997, President Clinton created the President's Task Force on Environmental Health Risks and Safety Risks to Children in response to increased awareness that children face disproportionate risks from environmental health and safety hazards. Co-chaired by the Secretary of HHS and the Administrator of the 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. This proposed rule is an important component of the Federal strategy for achieving this goal. In October 2001, President Bush extended the work of the Task Force for an additional 18 months beyond its original charter (Ref. 14). Reducing lead poisoning in children was the Task Force's top priority.

Childhood lead exposure continues to be a major public health problem among young children in the United States. Most children with blood lead levels in excess of CDC's current level of concern have been exposed to lead in non-intact paint, interior settled dust, and dust and soil in and around deteriorating older housing (Ref. 15). The nature and extent of the problems associated with residential lead-based paint have been thoroughly investigated. Approximately 40% of all U.S. housing units (about 38 million homes) have some lead-based paint. Use of lead-safe work practices during renovation can advance the goal of primary prevention of lead poisoning (Ref. 15).

2. *EPA's lead-based paint program.* Under Title X, EPA is directed to take actions that can be divided into 4 key categories:

- Establishing a training and certification program for persons engaged in lead-based paint activities, accrediting training providers, establishing work practice standards for the safe, reliable, and effective identification and elimination of lead-based paint hazards, and developing a program to address exposure to lead-based paint hazards from renovation and remodeling activities.
- Ensuring that, for most housing constructed before 1978, lead-based paint information flows from sellers to purchasers, from landlords to tenants, and from renovators to owners and occupants.
- Establishing standards for identifying dangerous levels of lead in paint, dust and soil.
- Providing information on lead hazards to the public, including steps that people can take to protect themselves and their families from lead-based paint hazards.

Each of these categories is discussed in more detail in the following sections.

a. *Training and certification, accreditation, and work practice standards.* Title X 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 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) governing lead-based paint inspections, lead hazard screens, risk assessments, and abatements in target housing (Ref. 16). 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. These regulations also apply to ''child-occupied facilities,'' which are defined at 40 CFR 745.223 as buildings constructed before 1978, or portions of such buildings, where children under age 6 are regularly present.

TSCA section 402 defines lead-based paint activities in target housing as inspections, risk assessments and abatements. The 1996 regulations cover lead-based paint activities in target housing and child-occupied facilities, along with limited screening activities called lead hazard screens. The regulations also established an accreditation program for training providers and a certification program for individuals and firms performing these activities.

Training providers who wish to provide lead-based paint training for the purposes of the Federal lead-based paint program must be accredited by EPA. Implementing regulations at 40 CFR 745.225 describe in detail the requirements for each course of study, how training programs must be operated, and the process for obtaining accreditation. Training programs must have 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. Training programs must also have adequate facilities and equipment for delivering the training. To become accredited, an application for accreditation must be submitted to EPA on behalf of the training program. The application must either include the course materials and syllabus, or a statement that EPA model

materials or materials approved by an authorized State or Tribe will be used. The application must also include 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, and the correct amount of fees. If EPA finds that the program meets the regulatory requirements, it will accredit the training program for 4 years. To maintain accreditation, the training program must submit an application and the correct amount of fees every 4 years.

Individuals and firms that perform inspections, lead hazard screens, risk assessments, or abatements in target housing or child-occupied facilities must be certified. Certification requirements and the process for becoming certified are described in 40 CFR 745.226. A firm that wishes to become certified must submit an application, along with the correct amount of fees, attesting that it will use only certified individuals to perform lead-based paint activities and that it will follow the work practice standards in 40 CFR 745.227. An individual who wishes to become certified must take an accredited training course in at least one of the certified disciplines: Inspector, risk assessor, project designer, abatement worker, and abatement supervisor. The risk assessor, project designer, and abatement supervisor disciplines have additional requirements for education or experience in a construction or environmental field. The inspector, risk assessor, and abatement supervisor disciplines also require the applicant to pass a certification examination administered by a third party.

The regulations at 40 CFR part 745, subpart L, also contain work practice standards for performing inspections, lead hazard screens, risk assessments and abatements in target housing and child-occupied facilities. The regulations contain specific requirements for conducting paint sampling during an inspection and specify information that must be gathered and samples that must be taken as part of a lead hazard screen or risk assessment. The requirements for abatements are also set forth in the regulations. When conducting abatements, an occupant protection plan must be prepared by a certified supervisor or project designer; certain work practices such as open-flame burning, machine sanding or abrasive blasting without high-efficiency exhaust control, dry scraping, and heat guns at high settings are prohibited; and a visual inspection and dust clearance sampling must be performed after the abatement is finished to ensure that the area is ready for re-occupancy. Any samples collected during any of these regulated lead-based paint activities must be analyzed by a laboratory recognized by EPA as being capable of analyzing paint chips, dust, and soil for lead. Requirements for inspection, lead hazard screen, risk assessment or abatement reports are also described in this section.

Recognizing the importance of States and Territories in achieving the goal of eliminating lead-based paint hazards in housing, Congress specifically directed EPA to establish a model State program and a process for authorizing States to operate such programs in lieu of the Federal program. Concurrently with the subpart L rulemaking in 1996, EPA codified, at 40 CFR part 745, subpart Q, a model training and certification program and a process for enabling States, Territories, and Tribes to apply for authorization to administer their own lead-based paint activity programs. Providing Indian Tribes with this opportunity is consistent with EPA's Policy for the Administration of Environmental Programs on Indian Reservations (Ref. 17). EPA also provides grants under TSCA section 404 to States, Territories, and Tribes to assist them in developing and administering these programs, as well as programs implementing TSCA section 406(b), discussed in this Unit.

On June 9, 1999, the subpart L regulations were amended to include a fee schedule for training programs seeking EPA accreditation and for individuals and firms seeking EPA certification (Ref. 18). 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 subpart L 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. 19).

As of December 2005, 44 programs comprised of 39 States, 3 Tribes, Puerto Rico, and the District of Columbia were authorized to administer lead-based paint activity programs. In the remaining jurisdictions, where EPA is responsible for administering the subpart L regulations, there were approximately 55 accredited training course providers, 1,300 certified firms, 500 certified inspectors, 1,400 certified risk assessors, 60 certified project designers, 1,000 certified abatement supervisors, and 2,800 certified abatement workers. EPA believes that, in most areas of the country, there is an adequate supply of accredited courses and certified firms and individuals available to meet the demand for lead-based paint services. This is a significant part of the national infrastructure necessary to achieve the goal of eliminating lead-based paint hazards in housing.

In addition, Congress directed EPA, in TSCA section 405, to establish protocols, criteria, and minimum performance standards for analysis of lead in paint, dust, and soil. TSCA section 405 further directed EPA, in consultation with HHS, to develop a program to certify qualified laboratories. The National Lead Laboratory Accreditation Program (NLLAP) provides the public with a list of laboratories that have met EPA requirements and demonstrated the capability to accurately analyze paint chip, dust, or soil samples for lead. All laboratories recognized by NLLAP must pass on-site audits conducted by one of the two accrediting organizations currently participating in NLLAP, the American Industrial Hygiene Association (AIHA), and the American Association for Laboratory Accreditation. Recognized laboratories must also perform successfully on a continuing basis in the Environmental Lead Proficiency Analytical Testing (ELPAT) Program established by NIOSH, AIHA, and EPA.

b. *Lead-based paint information for purchasers, renters, owners, and occupants of target housing.* 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), CPSC, HUD, and EPA, in consultation with CDC, jointly developed a lead hazard information pamphlet entitled ''Protect Your Family From Lead in Your Home'' (''PYF'') (Ref. 20). The availability of this pamphlet was announced on August 1, 1995 (Ref. 21). 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.

Pursuant to the authority provided in section 1018 of Title X, on March 6, 1996, HUD and EPA jointly promulgated regulations requiring persons who are selling or leasing target housing to provide the PYF pamphlet and information on known lead-based paint and lead-based paint hazards in the housing to purchasers and renters (Ref. 22). These joint regulations, codified at 24 CFR part 35, subpart A, and 40 CFR part 745, subpart F, describe in detail the information that must be provided before the contract or lease is signed and require that sellers, landlords, and agents document compliance with the disclosure requirements in the contract to sell or lease the property. Title X does not provide for these requirements to be administered by States or Tribes in lieu of the Federal regulations. Therefore, HUD and EPA are responsible for administering and enforcing these disclosure obligations.

TSCA section 406(b) directs EPA to promulgate regulations requiring persons who perform home renovations for compensation to provide a lead hazard information pamphlet to owners and occupants of target housing being renovated. These regulations, promulgated on June 1, 1998, are codified at 40 CFR part 745, subpart E (Ref. 23). The term ''renovation'' is defined, at 40 CFR 745.83, as the modification of any existing structure, or portion of a structure, that results in the disturbance of painted surfaces. Lead-based paint abatement projects are specifically excluded, as are small projects that disturb 2 square feet (ft^2) or less of painted surfaces, 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. Like the regulations regarding disclosure during sales or leases, these regulations require the renovation firm to document compliance with the requirement to provide the owner and the occupant with the PYF pamphlet. One important difference from the disclosure requirements in section 1018 of Title X is that TSCA section 404 allows States to apply for, and receive authorization to administer, the TSCA section 406(b) requirements. Two States are currently authorized to operate this program.

c. *Standards for lead in paint, dust, and soil.* Another responsibility assigned to EPA by Title X is the development of standards for identifying dangerous levels of lead in paint, dust and soil. These standards, promulgated pursuant to TSCA section 403 on January 5, 2001 and codified at 40 CFR part 745, subpart D, provide various Federal agencies, including HUD, and State, local and Tribal governments with uniform benchmarks on which to base decisions on remedial actions to safeguard children and the public from lead-based paint hazards (Ref. 24). These standards also allow certified inspectors and risk assessors to easily determine whether a particular situation presents a lead-based paint hazard and whether to recommend remedial actions such as lead-based paint abatement, cleaning of dust, or removal of soil. The 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 ($\mu g/ft^2$) on floors or 250 $\mu g/ft^2$ on interior window sills based on wipe samples. A soil-lead hazard is bare soil that contains total lead equal to or exceeding 400 parts per million ($\mu g/g$) in a play area or average of 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

d. *Public outreach and education.* Among other things, TSCA section 405(d) directs EPA, along with the Agency for Toxic Substances and Disease Registry (ATSDR) and HUD, to sponsor public education and outreach activities to increase public awareness of the health effects of lead, the potential for exposures, the importance of screening children for elevated blood lead levels, and measures that can be taken to reduce or eliminate lead-based paint hazards. Accordingly, EPA has worked to provide the public with information and increase public awareness of such matters. To date, these activities have included web site management, development of public outreach strategies, development of partnership agreements, distribution of materials, participation in national conferences and exhibits, and developing hazard information documents (and other media, such as videos), as necessary to implement Title X. EPA has collaborated closely with other Federal agencies and its State, Tribal, and local government partners in developing outreach campaigns targeted for the Women, Infants and Children (WIC) program, Little League Baseball, and Spanish-speaking populations. Recently, EPA worked with the National Head Start Association to develop a lead poisoning prevention campaign entitled ''Give Your Child a Chance of a Lifetime.'' The campaign consisted of a number of lead awareness documents, including a brochure for parents, fact sheets for Head Start staff, and a curriculum for Head Start teachers. Lead awareness outreach materials were provided to Head Start Centers in New York, Chicago, Philadelphia, Houston, and Los Angeles. The material was also distributed at the National Head Start Association Training Conferences. EPA has also been involved in developing model tool kits of various educational tools to provide to partners, such as slogans and graphic materials for public buses, trains, and mass transit stations.

EPA has used its authority under TSCA section 10 to award grants to Tribes to support Tribal educational outreach and to conduct baseline assessments of Tribal children's existing and potential exposure to lead. In fiscal year 2005, EPA began a new targeted grant program aimed at reducing the incidence of childhood lead poisoning in vulnerable populations (Ref. 25). These grants are providing funding for proven or innovative programs in areas with high rates of childhood lead poisoning, and in areas where rates are unknown but other conditions suggest high rates may exist.

TSCA section 405(e) further directs EPA to establish, in connection with HUD, CDC, other Federal agencies, and State and local governments, a clearinghouse for information on lead-based paint and a hotline for the public to use for questions and requests for information on lead-based paint. This clearinghouse, the National Lead Information Center, handles approximately 50,000 calls per year, and disseminates up to 500,000 documents per year to the public.

3. *Lead-based paint programs at other Federal agencies.* In addition to EPA, other Federal agencies have important roles in achieving the goals of reducing or eliminating lead-based paint hazards in housing, as well as the national goal of eliminating childhood lead poisoning by 2010. Other agencies specifically assigned tasks in Title X include HUD, CDC, and OSHA.

The Federal agencies have long realized that they must work together to develop and implement Federal strategies for addressing lead-based

paint hazards in order to be efficient and effective. In 1989, HUD and EPA formed an inter-agency task force to work through issues associated with lead-based paint abatement. The Federal Interagency Lead Based Paint Task Force has remained active throughout the years and continues to meet on a quarterly basis. Participating agencies include the Department of Defense, the Veterans Administration, the National Institute of Standards and Technology (NIST), the U.S. Public Health Service, the National Aeronautics and Space Administration (NASA), the United States Department of Agriculture (USDA), the Government Accountability Office (GAO), the National Institute for Environmental Health Sciences (NIEHS), ATSDR, CDC, CPSC, NIOSH, OSHA, HUD, and EPA. This Task Force serves as an important forum for coordinating the strategic plans of the Federal agencies who have responsibilities under Title X or who have responsibilities for maintaining and disposing of property that may contain lead-based paint.

Title X assigned certain responsibilities to HUD. One of HUD's functions is the administration of the Lead-Based Paint Hazard Control Grant Program established by the Act. This program provides grants of $1 million to $3 million to State and local governments for control of lead-based paint hazards in privately-owned, low-income owner-occupied and rental housing that is not receiving federal assistance. These grants are also designed to stimulate the development of a trained and certified hazard evaluation and control industry. Evaluation and hazard control work funded by the program must be conducted by either contractors who are certified by EPA or an EPA-approved State or Tribal program, or by contractors trained in lead-safe work practices, in the case of interim controls. Through these requirements, HUD hopes to create infrastructure that will last beyond the life of the grant. In awarding grants, HUD promotes the use of cost-effective approaches to hazard control that can be replicated across the nation. Since 1993, approximately $971 million has been awarded to over 200 local and State jurisdictions across the country. The work approved to date will lead to the control of lead-based paint hazards in more than 70,000 homes where young children reside or are expected to reside. Other HUD lead grant programs include the Lead Hazard Reduction Demonstration program, the Lead Elimination Action Program (LEAP), the Lead Outreach program and the Lead Technical Studies program.

HUD was also given regulatory authority over some aspects of lead-based paint hazard control. As noted previously, on March 6, 1996, HUD and EPA jointly promulgated regulations requiring the disclosure of lead-based paint information during sale or lease transactions involving target housing. The HUD disclosure regulations are codified at 24 CFR part 35, subpart A. Subparts B through R of 24 CFR part 35 are known as the ''Lead Safe Housing Rule,'' initially promulgated on September 15, 1999, and updated in June 2004 (Ref. 26). This rule was designed to protect young children from lead-based paint hazards in target housing that is being sold by the Federal government or receives financial assistance from the government. The requirements generally depend upon the level of assistance being provided, and may include such things as inspections, risk assessments, abatement, paint stabilization, or interim controls, which are temporary measures to reduce potential exposure to lead-based paint hazards. The emphasis is on reducing lead-based paint hazards, so, after paint is disturbed, a visual assessment for surface dust, debris, and residue and dust clearance testing is required to ensure that no dust lead hazards were created or left in the work area or, for rehabilitation projects of moderate or substantial scope, in the entire housing unit. More information on the Lead Safe Housing Rule is available on the HUD website at *http://www.hud.gov/offices/lead/leadsaferule/index.cfm* or by calling (202) 755–1785, extension 104.

Section 1017 of Title X required HUD to issue ''guidelines for the conduct of federally supported work involving risk assessments, inspections, interim controls, and abatement of lead-based paint hazards.'' In response to this directive, HUD completed the *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (Guidelines)*, in June 1995 (Ref. 27). The *Guidelines* provide detailed, comprehensive, technical information on how to identify lead-based paint hazards in housing and how to control such hazards safely and efficiently.

Other core activities of HUD's lead-based paint program include providing technical assistance to housing authorities, nonprofit housing providers, local and State agencies, other Federal agencies, housing developers, inspectors, real estate professionals, contractors and financiers, and public health authorities; evaluating the hazard reduction methods used in the grant program to measure their effectiveness, cost and safety; and maintaining a community outreach program in coordination with the other Federal agencies involved in lead-based paint hazard reduction.

CDC also provides significant funding for the prevention of childhood lead poisoning. CDC provides funding to support State, city and county programs in the areas of primary prevention, case management and screening, surveillance, strategic partnerships, and program evaluation. Since 2002, CDC has recommended that a blood lead level of 10 micrograms per deciliter (μg/dL) be used as a threshold for individual intervention (Ref. 28). Additional CDC recommendations address the type and intensity of individual intervention strategies that should be undertaken, depending upon the child's blood lead level. These strategies range from nutritional and educational interventions, along with more frequent testing, for a child with a blood lead level of 10–14 μg/dL, to medical and environmental interventions for children with blood lead levels above 45 μg/dL (Ref. 28). CDC has established a national surveillance system for children with elevated blood lead levels. In addition, CDC works with HUD and EPA to coordinate outreach and education campaigns.

OSHA is another agency with regulatory authority under Title X. As directed by the Act, OSHA promulgated an interim final standard on May 4, 1993, which regulates lead exposures in the construction industry (Ref. 9). This standard, codified at 29 CFR 1926.62, limits worker exposures to 50 micrograms of lead per cubic meter of air averaged over an 8–hour workday. Employers must use a combination of engineering controls and work practices to reduce employee exposure as much as possible, using appropriate respiratory protection where necessary to achieve the exposure limit. Employees must receive training on the health effects of lead and how to limit exposure through proper work practices and personal protective equipment. Exposure monitoring and medical monitoring, including blood lead testing, are also required. This standard remains in effect and OSHA retains the authority to protect workers from occupational exposure to lead.

Many Federal agencies have been working to reduce or eliminate lead-based paint hazards in housing and to end childhood lead poisoning. EPA, HUD, and other Federal agencies have been working for many years on the problem of lead-based paint hazards that can be created during renovation

and remodeling activities in housing. This rulemaking is an important component of the Federal strategy for eliminating childhood lead poisoning.

C. EPA Activities Related to This Rulemaking.

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) requires EPA to promulgate and disseminate guidelines for the conduct of such activities which 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. 29). 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 *www.epa.gov/lead/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. The terms ''renovation'' and ''remodeling'' are not defined by the statute. For assistance in selecting the activities to be studied, and in otherwise defining the scope of this study, EPA consulted with persons from national committees, major trade industries, Federal and State governmental agencies, academia, and medical institutions who were involved in lead research and policy making. After receiving individual input from these consultations and a meeting in April 1993, with a number of the contacted individuals, EPA identified the following 11 categories of renovation and remodeling activities with the potential for resulting in exposure to lead:

- Paint removal.
- Surface preparation.
- Removal of large structures (demolition).
- Window replacement.
- Enclosure of exterior painted surfaces (i.e., siding).
- Carpet or other floor covering removal.
- Wallpaper removal.
- HVAC (central heating system) repair or replacement including duct work.
- Repairs or additions resulting in isolated small surface disruptions.
- Exterior soil disruption.
- Major renovation projects involving multiple target activities.

1. *Renovation and remodeling study.* The study itself was conducted in 4 phases; each phase was peer reviewed and the results of the peer reviews are discussed in the study reports (Refs. 30, 31, 32, and 37). The approach and conclusions for each phase are summarized in this Unit.

a. *Phase I.* The approach taken for Phase I, *Environmental Field Sampling Study* (Ref. 30), involved a series of case studies and included data collection efforts for the following target 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.

Exterior siding, wallpaper removal, and exterior soil disruption were excluded because the study design team and the individuals consulted in the information-gathering phase generally considered these target activities to be of secondary importance. The last category, repairs resulting in isolated small surface disruptions, was represented by drilling holes and sawing into wood and plaster covered with lead-based paint.

After the completion of each activity, dust samples were collected within one foot of where the activity occurred and approximately 5 to 6 feet away from the location of the activity. Samples were collected in a manner that excluded any contribution of pre-existing leaded dust at the sample location (Ref. 30). With the exception of carpet removal and drilling into plaster, the results from the samples taken within one foot of the activity indicated that these activities produce lead loadings on the floor that exceed the TSCA section 403 hazard standards of 40 $\mu g/ft^2$ for lead in dust. EPA has already determined that loadings exceeding this level can cause adverse health effects. In the case of paint removal, the estimated average lead loading in a 6 foot by one foot area extending away from the activity was 42,900 $\mu g/ft^2$, or greater than 1,000 times the TSCA section 403 dust-lead hazard standard. For paint removal, window replacement, HVAC work, demolition of interior plaster walls, and sawing into wood, the samples taken 6 feet away from the activity also indicated lead loadings at levels well in excess of the TSCA section 403 standard.

This phase of the study also examined the effectiveness of two popular cleaning methods, broom sweeping and shop-vacuuming, for removing settled lead-dust. Although these data indicate that standard broom sweeping or shop-vacuuming can remove a high percentage of the dust (up to 99%), lead loadings nevertheless remained consistently above the TSCA section 403 standard. In addition, the data show that standard cleanup techniques sometimes disperse lead dust throughout the work area, thereby increasing lead levels in areas more distant from the work area. Accordingly, EPA has concluded that standard broom sweeping or shop-vacuuming are not reliable or effective methods for removing lead-based paint hazards created by typical renovation and remodeling activities.

Worker air-monitoring samples, indicating the degree of worker inhalation exposure, were also collected during this phase of the study. These data suggest that some renovation and remodeling activities could result in worker exposure that exceeds OSHA's permissible exposure limit (PEL) for lead of 50 $\mu g/m^3$. OSHA's PEL is based on an 8–hour time-weighted average (TWA), which is an average exposure over one 8–hour shift. This study measured only average exposures over the duration of a particular activity, which would be equivalent to an 8–hour TWA for a worker only if it is assumed that the monitored activity is performed for 8 hours in a day. However, the worker exposure data generated in this study indicate that some exposures are likely to be so high that conducting the activity for only a short time would result in an 8–hour TWA that exceeds the OSHA PEL. For example, worker exposures monitored during power sanding and sawing into wood were so high that it is estimated that 45 minutes of performing these activities would result in an exposure that exceeded the PEL.

b. *Phase II.* Phase II of the study, *Worker Characterization and Blood-Lead Study*, continued to address worker exposure (Ref. 31). This phase involved collecting data on blood samples and questionnaires from 585 renovation and remodeling workers from Philadelphia and St. Louis. The questionnaire focused on demographic and background information such as work history, work habits, and hobbies. Questionnaire data also indicated that few renovation and remodeling professionals were using respirators or high energy particulate air (HEPA) vacuums. Blood samples were collected from 581 of the 585 workers. Of these

samples, 9.1% were above 10 μg/dL, 1.2% were above 25 μg/dL, and one worker had a blood-lead concentration greater than 40 μg/dL. The geometric mean blood-lead concentration for all workers was 4.5 μg/dL. A statistical model was developed and fit to the data that included effects for variables potentially related to lead exposure, such as the age of a worker's home; type of work usually performed by the worker; and the amount of renovation and remodeling activity conducted recently and over the worker's career. There were significant differences among the worker groups. Drywall workers and painters had the highest predicted blood-lead concentrations, and floor layers had the lowest. In addition, there was a statistically significant correlation between the number of days worked in pre-1950 buildings in the past month and increases in blood-lead concentrations for general renovation and remodeling work, paint removal, and cleanup, although the estimated increase was very small, less than 1 μg/dL for all activities (Ref. 38).

c. *Phase III.* Phase III of the study, *Wisconsin Childhood Blood-Lead Study*, was a retrospective study focused on assessing the relationship between renovation and remodeling activities and children's blood-lead levels (Ref. 32). This study demonstrated that general residential renovation and remodeling is associated with an increased risk of elevated blood lead levels (EBLs) in children and that specific renovation and remodeling activities are also associated with an increase in the risk of EBLs 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 EBLs. Overall, these results agree with those from earlier phases of the renovation and remodeling study--renovation and remodeling activities that disturb lead-based paint increase the risk of exposure to occupants. Additionally, children living in a residence while renovation and remodeling was conducted were 30% more likely to have EBLs than children who did not live in a residence during the time renovation and remodeling was conducted.

During the Small Business Advocacy Review Panel process discussed in greater detail in Unit VIII.C.6., questions were raised in connection with this phase of the study (Ref. 33). Specifically, it was noted that the effect shown in this phase of the study was somewhat ambiguous in that several confounding factors may have contributed to the blood lead levels. In addition, this phase yielded several surprising results, including evidence of an increased risk of elevated blood lead levels in homes that were built after 1978, the date lead-based paint was banned, although the report did offer several explanations for this result. While the study identified a correlation between renovation and remodeling activities and elevated blood lead levels in children, the Panel report states that there was no statistically significant increased risk of elevated blood lead levels (possibly because of the small sample size) when the study focuses solely on work performed by apartment building owners, apartment building staff or professional contractors. The Panel recommended that EPA undertake additional analysis of the data from this phase of the study to determine if a child was more likely to have an elevated blood lead level if the renovation and remodeling was performed by a relative or friend than if performed by a professional contractor or building management staff (those subject to the rule). The results of EPA's additional analysis, which focused on the relationship between who performs renovation and remodeling activities and the odds of an elevated blood lead level occurring in a resident child, have been placed in the docket (Ref. 34). In homes where renovation and remodeling activities had been performed, the analysis 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 report from Phase III of the study, some possible confounders were investigated, including the surface preparation methods, and the size of the renovation jobs undertaken, but no obvious solution was discovered.

However, several studies corroborate the findings of the Phase III 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. 35). In addition, a case-control study assessed the association between elevated blood lead levels in children younger than 5 and renovation or repair activities in homes in New York City. A statistically significant correlation between renovation and repair work that involved preparing an interior surface for painting, and work that spreads dust and debris throughout the home, increased the risk of elevated blood lead levels for children in the study population. Researchers noted that the consistency of their results with EPA's Phase III study lends credibility to the conclusion that home renovation or repair work involving interior paint preparation constributes to a nontrivial proportion of elevated blood lead levels in children (Ref. 36, at 509).

d. *Phase IV.* Phase IV of the study, *Worker Characterization and Blood-Lead Study of R&R Workers Who Specialize in Renovations of Old or Historic Homes*, was an extension of Phase II (Ref. 37). Where Phase II examined lead exposure among a general population of renovation and remodeling professionals, Phase IV focused on individuals who worked primarily in old historic buildings. Phase IV explored lead exposure in 161 professional renovation and remodeling workers and 82 homeowners who worked extensively in old houses. Each study participant provided a blood sample for analysis and completed a detailed questionnaire identical to the one used in Phase II.

The results of Phase IV demonstrate that individuals who regularly work in potentially high lead exposure settings, i.e., old houses, do have a higher probability of an elevated blood-lead level than the general population of renovation and remodeling professionals measured in Phase II. Among these high-risk workers, 3 out of 161 had blood-lead concentrations above 40 μg/dL. Out of 82 homeowners who performed renovation and remodeling activities while residing in their own historic or pre-1940 home, 4 had blood-lead concentrations above 25 μg/dL. The geometric mean blood-lead level for professionals was significantly greater than for homeowners. Preparation for painting and/or sanding of painted surfaces were the activities most consistently associated with elevated blood-lead levels among study participants.

After evaluating the findings from all 4 phases of the study, EPA concluded that the long-term exposure faced by the occupants should be the most important consideration in determining the need for worker training and certification. EPA is particularly concerned with the

results from Phase I and Phase III. The Phase I results indicate that, where lead-based paint is present, activities that are routinely performed as part of renovation and remodeling activities can create significant amounts of leaded dust, which, if not effectively contained and cleaned up, could pose hazards to the occupants. Phase III corroborated this finding by identifying a statistically significant link between activities that are routinely performed as part of renovation and remodeling projects and an increased risk of an elevated blood lead level in children.

Finally, TSCA section 402(c)(3) directs EPA to revise the regulations under TSCA section 402(a) to apply the regulations to renovation or remodeling activities that create lead-based paint hazards. In determining which contractors are engaged in such activities, EPA must use the results of its renovation and remodeling study and consult with representatives of labor organizations, lead-based paint activities contractors, persons engaged in remodeling and renovation, and experts in lead health effects. If EPA determines that a particular category of contractors engaged in renovation or remodeling need not be certified, EPA must publish an explanation of the basis for that determination.

2. *Public consultation.* EPA began the consultation process required by TSCA section 402(c)(3) with two public meetings. Participants included representatives from renovation, remodeling and painting contractors, national contractor associations, apartment management companies, realtors, labor organizations, training providers, lead poisoning prevention advocacy groups, other Federal agencies and States. The meetings were held on December 7, 1998 and on March 8, 1999. EPA presented the results of its renovation and remodeling study at the first meeting. The remainder of that meeting and all of the second meeting involved discussion of various aspects of the existing abatement regulations and how they might fit into a renovation and remodeling rule. Topics discussed included applicability, accreditation of training providers, certification of individuals, and work practice standards (setup, occupant protection, clean-up, clearance, and restricted practices). Transcripts of these meetings have been placed in the public docket for this action (Refs. 39 and 40).

In addition, on November 23, 1999, EPA's Small Business Advocacy Chairperson convened a Small Business Advocacy Review Panel under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In addition to the chairperson, the Panel consisted of the Director of EPA's Office of Pollution Prevention and Toxics, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Before beginning pre-panel discussions with OMB and SBA, EPA held three conference calls with potential Small Entity Representatives (SERs) to obtain feedback on the options and alternatives for a renovation and remodeling regulation. The Review Panel held an outreach meeting with Small Entity Representatives (SERs) on December 3, 1999. Eleven SERs, representing small painting, decorating, finishing, remodeling and renovation contractors, as well as multi-family housing owners and training providers, and four trade association representatives participated in the meeting. The Panel solicited comments from the SERs on the options presented by EPA, as well as EPA's cost estimates for these options. Several SERs submitted written comments to EPA following this meeting. More information on the Review Panel Process, including the recommendations of the panel, can be found in Unit VIII.C. The Panel's report, along with background information provided to panel members and SERs, has been placed in the public docket for this action (Ref. 33).

EPA also held a 2–day meeting with its State partners to discuss lead-based paint program issues. Most of the time on the agenda for this meeting, held in September 2000, was devoted to discussing how the existing abatement regulations might be modified to apply to renovation and remodeling projects. A summary of this meeting has been placed in the public docket for this action (Ref. 41).

In May 2003, EPA hosted a series of conference calls to discuss additional issues related to renovation and remodeling. Two calls were held with State and local government agency representatives as well as a State legislator. Two separate calls included representatives from renovation and remodeling contractors and contractor associations, realtors and realtor associations, and apartment owner and manager associations. These calls focused on the relationship between lead-based paint hazard evaluation and control activities and renovations. Summaries of these calls have been placed in the public docket for this action (Refs. 42, 43, 44, and 45).

EPA has co-sponsored several national lead conferences, at which the Agency met with representatives of State and Tribal governments to discuss renovation issues, among other issues. Examples include:

- June 2000, EPA 4th National Lead Conference - Washington, DC.
- December 2000, National Lead Grantee Conference (HUD/CDC/EPA) - Atlanta, GA.
- May 2001, EPA 5th National Lead Conference - New Orleans, LA.
- June 2003, EPA 6th National Lead Conference - San Antonio, TX.
- June 2004, National Lead and Healthy Homes Grantee Conference (HUD/CDC/EPA) - Orlando, FL.

IV. Proposed Requirements for Renovation Activities

A. TSCA Section 402(c)(3) Determination

As discussed in Unit III.B., TSCA section 402(a) directs EPA to promulgate regulations to ensure that persons who perform lead-based paint activities are properly trained through accredited training programs and that contractors performing these activities are certified. The regulations must also contain work practice standards for lead-based paint activities, taking into account reliability, effectiveness, and safety. Regulations governing lead-based paint activities in target housing and child-occupied facilities were promulgated in 1996 and codified at 40 CFR part 745, subpart L. TSCA section 402(c)(3) directs EPA to revise these regulations to apply to renovation or remodeling activities that create lead-based paint hazards.

As discussed previously, the renovation and remodeling study conducted under TSCA section 402(c) found that the following renovation and remodeling activities, when conducted where lead-based paint is present, generated lead loadings on floors that exceeded the TSCA section 403 dust-lead hazard standard:

- Paint removal by abrasive sanding.
- Window replacement.
- HVAC duct work.
- Demolition of interior plaster walls.
- Drilling into wood.
- Sawing into wood.
- Sawing into plaster.

Because these activities cause lead dust to be deposited on floors in excess of the dust-lead hazard standard for floors, EPA proposes to conclude that these activities create lead-based paint hazards. In addition, based on the results of the Phase I study, EPA

proposes to conclude that drilling into plaster, where lead-based paint is present, can reasonably be anticipated to create lead-based paint hazards. Moreover, EPA believes that certain cleanup methods are not effective or reliable in reducing the lead levels below the hazard standard.

These proposed conclusions are supported by the results of other phases of the renovation and remodeling study. Phase III, *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 μg/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.

Based on the results of Phases I through IV of the renovation and remodeling study, EPA proposes to conclude that any renovation activity that disturbs lead-based paint can create significant amounts of leaded dust. EPA reaches this proposed conclusion because the study examined renovation activities on a variety of components using a variety of tools and methods, and discovered that each activity that disturbed lead-based paint caused lead dust in amounts that created or could reasonably be anticipated to create lead-based paint hazards. EPA believes that the activities studied are representative of the paint-disturbing activities that typically occur during renovations. EPA requests comment on its proposed conclusions drawn from the Phase I through IV studies, as well as on the studies themselves. EPA also invites commenters to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assess the results of exposure to renovation, repair and painting activities in housing or other facilities that may contain lead-based paint.

EPA is therefore proposing to revise existing regulations to extend training, certification, and work practice requirements to certain renovation and remodeling projects in target housing. It is not EPA's intention to 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 proposal that is practical for renovation and remodeling businesses and their customers, while taking into account reliability, effectiveness, and safety as directed by TSCA section 402(a).

In addition, EPA is considering whether some or all of these proposed provisions should be incorporated into the abatement regulations. In particular, the Agency is requesting comment about allowing the use of the workplace practices in this proposal in lieu of the prohibition of certain workplace practices in the abatement regulations. Also, the Agency is requesting comment about allowing cleaning verification in lieu of clearance testing in the abatement regulations. If the Agency were to change the abatement regulations, it could incorporate the regulatory language in this proposal (i.e., allow abatement firms the option of following the workplace practice standards in the proposed 40 CFR 745.85(a) in lieu of the workplace practice standards in the abatement rule, and allow abatement firms the option of following the cleaning verification procedure in the proposed 40 CFR 745.85(b) in lieu of the clearance testing requirements) in the abatement rule. Comments are invited on whether changes should be proposed to the abatement regulations and, if so, the nature of these changes.

EPA also requests comment on potential unintended consequences of this proposal. For example, the costs of this proposed rule, which renovation firms are likely to pass on to consumers in whole or in part, may cause some homeowners to perform some renovation projects themselves rather than hire a professional. More information on the costs and benefits of this proposal can be found in Unit VIII.A. EPA has made a concerted effort to keep the costs as low as possible, while still providing adequate protection against lead-based paint hazards created by renovation activities. Homeowners who choose to perform their own renovation projects are not likely to have taken formal training in lead-safe work practices, so they may not be familiar with the methods they should use to prevent lead exposures for themselves and their children. However, in the absence of this proposed regulation, EPA believes that most contractors and building management staff will not receive formal training in lead-safe work practices either. In addition, building owners may choose to defer maintenance as a result of the increased renovation costs attributable to this proposal. EPA requests comment on the likelihood that there will be more do-it-yourself renovation projects or deferred maintenance, and information or data on what that might mean in terms of health impacts, as well as other potential consequences of this proposal.

B. Scope of Proposed Regulation

1. *Housing units that would be covered.* EPA is proposing to amend the existing regulations at 40 CFR part 745, subpart E, that implement TSCA section 406(b) to add training and certification requirements, as well as work practice standards, for certain renovations performed for compensation in target housing. The proposed amendments would apply to renovations performed within housing units as well as renovations performed in common areas in multi-unit housing. The TSCA section 406(b) regulations, also referred to as the Pre-Renovation Education Rule, currently require persons performing renovations for compensation in all target housing to provide owners and occupants with a lead hazard information pamphlet that discusses lead-based paint and lead-based paint hazards. In delineating the scope of today's proposal, EPA is using many of the definitions and exemptions used in the Pre-Renovation Education Rule. For example, 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. EPA is not proposing to modify this definition in any way.

EPA is proposing to make the requirements contained in this proposal effective in two major stages. In the first stage, the proposed requirements would apply to renovation projects performed for compensation in:

- All target housing where the firm performing the renovation obtains information indicating that a child under age 6 resides there, if the child has a blood-lead level greater than or equal to 10 μg/dL or a State or local government level of concern, if lower, or the firm does not provide the owners and occupants with the opportunity to

inform the firm that a child under age 6 with such a blood-lead level resides there;

- All owner-occupied target housing built before 1960, unless the firm performing the renovation obtains a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides there; and
- All rental target housing built before 1960.

The second stage would extend the proposed requirements to:

- All owner-occupied target housing, unless the firm performing the renovation obtains a statement signed by the owner that the renovation will occur in the owner's residence and no child under age 6 resides there; and
- All rental target housing.

The second stage would take effect 1 year after the first stage takes effect.

For each stage, the requirements of the rule would only apply to those renovations that meet the proposed definition of renovation discussed in Unit IV.B.3. and do not qualify for the exceptions discussed in Unit IV.B.4.

The purpose of this regulation is to prevent the creation of new lead-based paint hazards from renovation activities in housing where children under age 6 reside. To achieve the goal of eliminating childhood lead poisoning by 2010, it is important to focus society's resources on the activities that have the greatest impact on the population at greatest risk.

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. 46). 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. EPA seeks comment on these facts and how these facts should affect the regulatory requirements under TSCA section 402(c)(3), which requires EPA to apply regulations issued under section 402(a) to renovations in target housing that create lead-based paint hazards.

Although most homes built between 1960 and 1978 do not contain lead-based paint, EPA remains concerned about the risks presented to those children under age 6 who reside in one of the homes that does. Therefore, EPA is proposing to phase in coverage of those homes after 1 year. As discussed in more detail in this Unit, EPA believes that during this phase in period it will be possible to develop test kits that are able to identify more accurately those homes that do not contain lead-based paint at regulated levels.

As discussed in Unit IV.B.4.a., EPA is proposing to exempt renovations that affect only components that have been determined to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. In addition to a determination by a certified inspector or risk assessor, EPA is also proposing to allow the use of EPA-recognized test kits to determine whether the components to be affected are free of regulated lead-based paint. Accurate test kits represent a relatively simple and inexpensive way to identify where lead-based paint is present and assist homeowners and renovation firms in determining where lead-safe work practices should be followed.

Research on the use of these kits for testing lead in paint has been published by NIST (Ref. 47). The research to date shows that, in general, there are test kits currently available which, when used by a trained professional, can reliably determine that regulated lead-based paint is not present by virtue of a negative result, but which cannot reliably determine that regulated lead-based paint is present. These kits typically 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 false positive rates range from 42% to 78%.

These false positive rates mean that the currently-available test 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. EPA believes 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/cm^2 and 0.5% by weight. EPA also believes that this can be accomplished in the near future and is planning to conduct research to further the development of test kits that accurately identify both the presence and absence of lead in paint at levels that exceed the Federal standards. EPA's goals for this research are to develop a kit that can reliably be used by a person with minimal training, is inexpensive (under $2 per test), 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/cm^2 or 0.5% by weight of less than 5%. This research effort is consistent with one of the stated purposes of Title X, ''to mobilize national resources expeditiously, through a partnership among all levels of government and the private sector, to develop the most promising, cost-effective methods for evaluating and reducing lead-based paint hazards.''

EPA is confident that improved test kits meeting EPA's research goals can be available within the next 3 years. Based on the proposed effective dates for the initial stage of this rule, discussed in greater detail in Unit VI., the improved test kits should be available within 1 year after the initial stage of the rule becomes effective in all jurisdictions. EPA is therefore proposing to extend the requirements of this proposal to rental housing built between 1960 and 1978, as well as owner-occupied homes built between 1960 and 1978 where a child under age 6 resides, 1 year after the requirements become effective for such homes built before 1960. This staged approach will 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 for the development of improved test kits before phasing in the applicability of the rule to newer rental target housing and newer owner-occupied target housing where children under age 6 reside.

It is EPA's expectation that the improved test kits will be available before the effective date of the requirements that apply to rental housing built between 1960 and 1978, as well as owner-occupied homes built between 1960 and 1978 where a child under age 6 resides. If it appears that these improved test kits will not be available by that effective date, EPA will consider delaying the effective date for the requirements that apply to rental housing built between 1960 and 1978, as well as owner-occupied homes built between 1960 and 1978 where a child under age 6 resides. EPA requests comment on whether EPA should wait to finalize the proposed second stage of this regulation until the new kits are commercially available nationwide. Waiting would ensure that the improved test kits are available before renovation firms must comply with the training, certification, and work practice requirements of this proposal for renovations in housing that is more likely than not to be free of regulated lead-based paint. The proposed rule, by allowing the use of test kits in pre-1960 housing to determine the absence of lead-based paint, provides an incentive

for improved test kits. In addition, an established deadline for coverage of homes built between 1960 and 1978 provides an even greater incentive for the private sector to pursue improved test kits.

Although EPA is proposing to extend the effective date for housing built between 1960 and 1978 for an additional year, EPA remains concerned about children under age 6 residing in these homes if the children have increased blood lead levels. In many cases where a blood level in excess of the applicable level of concern has been identified, intervention by State and local public health officials should ensure that further exposure to lead is minimized. However, to prevent the possibility that an unregulated renovation activity will contribute to continuing exposures to lead for children with increased blood lead levels, EPA is proposing to include in the first stage of this proposal all target housing built before 1978 where 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, resides. (As is discussed in Unit IV.B.4., renovations that only affected components that had been determined to be lead-based paint free would be exempt from the requirements of this proposal.)

The existing Pre-Renovation Education Rule requires renovators to inform owners and occupants of target housing of the potential risks from renovation projects by providing them with the PYF pamphlet. Persons performing renovations covered by the existing regulations must already either obtain a signed acknowledgment from the owner indicating that the pamphlet has been received, or a certificate of mailing indicating that the pamphlet was mailed at least 7 days before the renovation. EPA has developed a sample acknowledgment form that renovators could use not only to record the owner's receipt of the lead hazard information pamphlet, but to obtain additional information on the housing to be renovated and its residents (Ref. 1). This would enable renovation firms to satisfy their current obligations under the Pre-Renovation Education Rule and assist them in complying the requirements of this proposal. EPA seeks comment on this sample from, a copy of which is available in the docket for this proposed rule and on the Agency's Web page.

a. *Target housing constructed between 1960 and 1978 where a child under age 6 with an increased blood lead level resides.* As discussed in this Unit of the preamble, EPA is proposing that this rule take effect in two major stages. EPA is proposing that the first stage include renovations performed for compensation in target housing constructed between 1960 and 1978 where a child under age 6 with a blood lead level that equals or exceeds the CDC level of concern (10 μg/dL), or a lower State or local government level of concern, resides. For the purposes of this proposal, children reside in the primary residences of their custodial parents, foster parents, and legal guardians. In addition, this proposal considers housing where a child lives and sleeps most of the time as the child's residence, even if this housing is not the residence of the child's legal custodians. This means that a child may have more than one residence, but it will ensure that the primary residences of all children under age 6 are covered by either stage one or stage two of this proposal, if they reside in target housing.

EPA recognizes that the renovation firm is not likely to have access to information on the blood lead levels of resident children. Therefore, EPA is proposing to require only that the renovation firm offer the owners and occupants of target housing built between 1960 and 1978 the opportunity to inform the firm that a child under age 6 with a blood lead level that equals or exceeds 10 μg/dL, or any lower State or local government level of concern, resides in the housing to be renovated. This opportunity could be as simple as a statement on the form used to acknowledge receipt of the information pamphlet, or, if the pamphlet is mailed, a note included in the mailing asking the recipient to inform the renovation firm if a child under age 6 with a blood lead level that equals or exceeds 10 μg/dL, or any lower State or local government level of concern, is in residence. Tenant notifications required for renovations in common areas could include a similar note. EPA's sample acknowledgment form incorporates a statement to this effect (Ref. 1).

EPA will not require the renovation firm to presume that a child under age 6 with a blood lead level that equals or exceeds 10 μg/dL, or any lower State or local government level of concern, resides in housing to be renovated, if the renovation firm does not receive any information from the owner or occupant. EPA requests comment on how a renovation firm could obtain this information if it is unable to obtain a signed statement from the owner.

b. *Owner-occupied target housing where a child under age 6 resides.* EPA is also proposing to include, in the first stage of this rulemaking, renovation projects performed for compensation in all owner-occupied target housing built before 1960, unless the firm performing the renovation obtains a statement signed by the owner that the renovation will occur in the owner's residence and that the housing is not the primary residence of a child under age 6. The primary residences of children under age 6 living in target housing constructed between 1960 and 1978 would be covered in the second stage of this proposed regulation.

The sample acknowledgment form developed by EPA will assist renovation firms in obtaining a written statement from owner-occupants as to whether a child under age 6 resides in the housing to be renovated (Ref. 1). In many cases, EPA anticipates that the presence of this statement on the form will prompt a discussion between the homeowner and the renovation firm on the information in the lead hazard information pamphlet as well as the lead-safe work practices that would be required by this proposal. A homeowner without children under age 6 in residence who subsequently chooses not to have the renovation firm follow lead-safe work practices will be making an informed decision in these circumstances.

If the renovator is unable to obtain an acknowledgment form from the owner-occupant, and instead meets the requirements of the Pre-Renovation Education Rule by a certificate of mailing indicating that the pamphlet was mailed at least 7 days before the renovation, the renovator would have to assume that a child under age 6 resided in the housing to be renovated and would have to perform the renovation in accordance with the applicable work practice standards of this proposal.

Subsequent purchasers of the housing will also be able to make informed decisions as a result of the regulations promulgated under section 1018 of Title X and codified at 24 CFR part 35, subpart A, and 40 CFR part 745, subpart F. These regulations, briefly summarized in Unit III.B.2.b., would not ordinarily require a seller, in the absence of specific knowledge of lead-based paint or lead-based paint hazards, to disclose information about renovation projects to a purchaser. However, the informational pamphlet that the seller must provide includes information about potential lead-based paint hazards on residential property and recommends that purchasers obtain a lead-based paint inspection or risk assessment on property they are interested in buying. A risk assessment would identify any dust-lead hazards on the property, whether created by a

renovation performed without lead-safe work practices or some other activity.

c. *Rental target housing.* Also in the first stage of this rulemaking, the proposed requirements would apply to all rental target housing built before 1960, regardless of whether a child under age 6 resides there. The second stage would extend the requirements to all rental target housing.

The proposal would apply to target housing that is currently being rented, as well as target housing being offered for rent and target housing that the owner intends to offer for rent. Renovations to prepare target housing for the rental market would have to be performed in accordance with this proposal. Unlike in owner-occupied housing, occupants who are tenants have far less control over renovation projects in their housing than occupants who are owners. EPA believes that, in most cases, the owner of housing, or the owner's agent, enters into contracts for renovation services, not the tenant. The owner has control over who performs the project and how it is conducted. In addition, renovations in rental housing often occur between tenants, when the housing is vacant and it is not known whether the next tenants will include a child under age 6. Therefore, requiring proper training and work practices in rental housing is necessary to protect the tenant occupants. Finally, applying the requirements of this proposal only to rental housing where children under age 6 reside could foster discrimination in the rental market against families with children under age 6. Although it is not the preferred option, EPA requests comment on whether this proposal should apply only to rental target housing where children under age 6 reside.

This proposal avoids placing responsibility on the renovation firm for determining whether a child under age 6 resides in a particular housing unit; the renovation firm would be responsible, however, for determining whether the housing unit is rental target housing. EPA considered holding the renovation firm responsible for making both determinations. However, it may be very difficult in many situations for the renovation firm to find objective proof that a child under age 6 does or does not reside in a particular housing unit. Because this proposal does not cover, for example, the residences of relatives that provide occasional care for a child, the mere presence of toys or other signs indicating the presence of a child under age 6 would not be a sufficient basis for deciding that the requirements of this proposal apply.

In contrast, EPA does not believe that determining whether housing is rental target housing presents the same level of difficulty for renovators. Contractors are already responsible, under the TSCA section 402(a) regulations at 40 CFR part 745, subpart L, as well as under the Pre-Renovation Education Rule, for determining whether a unit of housing is target housing. This involves determining whether the housing was built before 1978 and whether it is housing for the elderly or housing for persons with disabilities. EPA believes that, in many cases, it is obvious to the renovation firm that housing is target housing, and it will be relatively easy to determine that the housing is rental housing. Multi-unit buildings or multi-building complexes are likely to be rental housing, unless the name of the property includes the words ''condominium'' or ''co-operative.'' In any event, the renovation firm remains ultimately responsible for making this determination. It should be noted that, during the first stage of this proposed rule, the renovation firm would be responsible for determining whether the housing was built before 1960.

EPA requests comment on whether renovation firms should be able to assume that no child under age 6 resides in owner-occupied housing. The identification of the residences of children under age 6 could be addressed in the same way that EPA is proposing to address children with increased blood lead levels during the first phase of the rule's applicability, discussed in Unit IV.B.1.a. If the renovation firm determined that the renovation activities would occur in owner-occupied housing, the firm could offer the owner-occupant the opportunity to inform the firm that a child under age 6 resides in the housing. If the owner-occupant did not provide the firm with any information on children in residence, the firm could assume that no child under age 6 resided in the housing, and the provisions of this proposal would not apply. EPA does not prefer this approach because children under age 6 could be put at risk unintentionally through mis-directed mail, or a misunderstanding on the part of the owner-occupant as to the information sought by the renovation firm.

d. *Owner-occupied multi-unit housing.* With respect to condominiums and cooperatives, EPA requests comment on whether to require that all renovations conducted in the common areas, such as hallways or stairways, of multi-unit buildings, as well as renovations conducted on the exteriors of such buildings, be conducted in accordance with the proposed training, certification and work practice requirements, regardless of whether the individual units are owner-occupied. Currently, the proposal would allow all the owners of such multi-unit owner-occupied buildings to certify that no children under age 6 reside in the individual units, in which case renovators would not be required to comply with the proposed work practice standards in common areas. However, it is likely to be very difficult, if not impossible, to secure the signatures of all of the owners of the individual units, attesting to the fact that no child under age 6 resides in any of the units of the building. If all of the owners do not so attest, renovations in common areas would have to be conducted in accordance with this proposal. The signatures of the building managers would not be sufficient, because there may be children in residence that are unknown to the building managers.

e. *Owner-occupied target housing where a pregnant woman resides.* EPA also requests comment on the appropriateness of applying the provisions of this rule to owner-occupied target housing where an expectant mother resides, in addition to owner-occupied housing where a child under age 6 resides. If this option were included in the rule, and no children under age 6 resided in the housing to be renovated, the renovation firm would not be required to use the work practices in this proposal unless the renovation firm collected a statement from the owner-occupant indicating that a woman residing in the housing was pregnant or thought she might be pregnant. Fetuses exposed to lead in the womb may be born prematurely and have lower birth weights. In addition, 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 (Ref. 4). Therefore, covering the residences of pregnant women under this regulation would provide additional protection for vulnerable populations. However, owner-occupants, including expectant mothers, will be receiving a lead hazard information pamphlet under the Pre-Renovation Education Rule that will enable them to make educated choices about renovation activities in their residences.

2. *Other options considered.* EPA considered a range of other alternatives to defining the universe of housing that would be covered by this regulation. The primary alternative EPA considered was a single-staged regulation that would cover all renovations in rental

target housing and owner-occupied target housing where a child under age 6 resides. This option is not preferred at this time. As discussed in this section, EPA is proposing to phase in coverage of housing built between 1960 and 1978 to allow time to develop an accurate, but simple and inexpensive, means for determining whether the affected components in a particular housing unit built within this time frame are free of regulated lead-based paint (the determination whether a component is lead-based paint free is discussed more fully in Unit IV.B.4.a.). EPA solicits comment on this option.

EPA also considered a single-staged regulation that would cover all renovations in rental target housing built before 1960 and owner-occupied target housing built before 1960 where a child under age 6 resides. This option is not preferred at this time because 24% of the target housing built between 1960 and 1978 contains lead-based paint. A regulation that excludes those homes would not cover the residents of those homes, particularly the children residing in those homes, from potential lead-based paint hazards created by renovation activities. It should be noted that the Phase I study, which demonstrated lead dust loadings from renovation activities in target housing, did not differentiate housing by age. The measured lead loadings in that study represent an average. In the *National Survey of Lead and Allergens in Housing* (Ref. 46), a paint lead loading exceeding 10 mg/cm^2 was detected in 3% of the homes constructed between 1960 and 1978, compared to 14% of the homes constructed between 1940 and 1959, and 55% of the homes constructed before 1940. Further analysis of the data found that, although there were fewer homes built between 1960 and 1978 that contained lead-based paint, the average lead concentration of paint on windows and on exterior walls, doors, and trim was higher in housing built between 1960 and 1978 than in housing built between 1950 and 1960 (Ref. 48). EPA's preferred option takes into account the fact that most target housing built between 1960 and 1978 does not contain lead-based paint by phasing in coverage of those homes after improved test kits are expected to be available. EPA requests comment on the option of limiting this proposal to housing built before 1960, and on other options tied to the age of the housing and the likelihood that the housing contains lead-based paint.

EPA also considered proposing a rule limited to the provision of information and certification, training, and accreditation requirements. The rationale for such a limited rule would be that individuals, if provided information on the health effects of lead exposure and renovation work practices that minimize leaded dust creation and release, would be able to choose whether or not to request that a firm performing a renovation use lead-safe work practices. Individuals wishing to employ a renovation firm that would use lead-safe work practices would be assured by the certification, training, and accreditation provisions that a firm certified by EPA would employ persons trained in the use of lead-safe work practices. This is not the preferred option because EPA believes that a voluntary program of lead-safe work practice compliance would not provide sufficient protection from lead-based paint hazards created by renovation activities. Nevertheless, the Agency invites comment on this option.

Finally, EPA considered covering all renovations in target housing without providing an exclusion for target housing where children under age 6 do not reside. A child under age 6 may spend a significant amount of time in housing that is not his or her primary residence, for example, in the home of a babysitter. In addition, a child that moved into housing shortly after a renovation performed without lead-safe work practices took place would be exposed to lead dust from the renovation. This is not the preferred option at this time because the proposed option provides a more focused targeting of resources on the population most at risk. EPA specifically requests comment on applying the requirements of this proposal without the exclusion for target housing where children under age 6 do not reside.

3. *Activities that would be covered.* This proposal, like the Pre- Renovation Education Rule, would only apply to persons who perform renovations for compensation. This includes owners of rental property and their employees, as well as paid employees of home improvement companies, residential property management companies, State and local government agencies, and non-profits. With regard to the renovation activities that would be covered by this regulation, EPA is proposing to cover the same universe of activities that is 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 would be covered, including projects performed as part of another Federal, State, or local program, if the projects meet the definition of ''renovation'' codified in 40 CFR 745.83. The regulated community has had years of experience in applying this definition, as well as the applicability provisions in 40 CFR 745.82.

EPA considered and requested public comment on various approaches to defining the term ''renovation'' for the Pre-Renovation Education Rule, including options modeled on a definition in the TSCA asbestos regulations, the construction tasks identified by OSHA in its Lead in Construction Standard, and by the use of Standard Industrial Codes (SIC codes) as a means of defining the subject universe (Ref. 49). The majority of the public comments EPA received in response to its proposal involved the definition of this term. In response to the public comments, EPA crafted a definition that borrows from other sources but focuses on the activities of greatest concern to EPA, activities that disturb lead-based paint (Ref. 23). This definition also covers virtually all of the activities in the renovation and remodeling study that created lead-based paint hazards. Conversely, EPA does not believe that this definition is overbroad, i.e., it does not capture a significant number of renovation activities that are not capable of creating lead-based paint hazards. All of the activities monitored in EPA's renovation and remodeling study which involved the disturbance of lead-based paint created or could reasonably be anticipated to create lead-based paint hazards. The study evaluated common renovation activities likely to disturb lead-based paint, including demolition of structures containing lead-based paint, removal of fixtures containing lead-based paint (window replacement), sawing and drilling into materials containing lead-based paint, and sanding lead-based paint. Because all of these activities are capable of creating lead-based paint hazards, a definition of ''renovation'' that is primarily based on the disturbance of lead-based paint is well-tailored to regulate the activities of concern.

As noted previously, the Phase I study excluded exterior siding installation, wallpaper removal, and exterior soil disruption because the study design team and the individuals consulted in the information-gathering phase generally considered these target activities to be of secondary importance. EPA has no quantitative information on the lead dust loadings generated during such activities in target housing. However, to the extent that these activities disturb paint, these activities would be covered by this proposal.

Conversely, the Phase I study did include HVAC duct work, but it is possible that, in some cases, this work would not involve the disturbance of paint, and would, therefore, not be covered by this proposal. EPA requests comment on whether exterior siding projects, wallpaper removal, and exterior soil disruption or other activities should be excluded from this proposal or whether HVAC duct work should be specifically included. EPA is particularly interested in any data regarding the lead loadings generated by these activities that would support their exclusion or inclusion, and other activities that should be considered in the same manner.

The panel convened by EPA pursuant to the Regulatory Flexibility Act recommended that the Agency consider exempting certain specialty contractors (e.g., plumbing, electrical) from the rule. More information on this panel and its recommendations can be found in Unit VIII.C.6.e. EPA is not proposing to exempt such work *per se*, but requests comment on whether any category of specialty contractor should be excluded from this proposal, along with data that would support the exclusion of a particular category of contractor.

In some circumstances, a renovation, as that term is defined in this proposal, may constitute only a portion of a larger residential renovation and remodeling project. The certification, training, and work practice elements of this proposal would only be applicable during the portion of a project that involves the disturbance of painted surfaces. For example, adding a room to an existing home may require the demolition of an existing wall to provide access to the room. In this case, the only portion of the project that involves disturbing painted surfaces may be the demolition of the existing wall. A certified firm and a certified individual would be needed to establish the required work area, demolish the wall, perform the required clean-up, and verify that the area has been properly cleaned. If the remainder of the project, the construction of the new room, does not involve the disturbance of existing painted surfaces, then the requirements of this proposal would not apply to that portion of the project. Painters who disturb a large area of painted surface with surface preparation activities, such as sanding, would be performing a regulated renovation under this proposal. Merely painting prepared surfaces does not generally disturb existing paint, so a painter who prepares surfaces by sanding and then paints the prepared surfaces would be able to choose whether to perform required cleaning and cleaning verification activities before or after the prepared surface is painted.

4. *Exceptions*—a. *Components free of regulated lead-based paint.* EPA is proposing to continue to exempt renovations that only affect painted components that have been determined, by a certified inspector or risk assessor, to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. This determination 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.

EPA is also proposing to exempt renovations that only affect painted components that have been demonstrated to be free of regulated lead-based paint through the use of an EPA-recognized test kit by a certified renovator. EPA intends to recognize those test kits that have a very low probability of false negative responses, because an incorrect negative result may lead to the creation of lead-based paint hazards through uncontrolled renovation activities. More specifically, for paint containing lead at or above the regulated level, 1.0 mg/cm^2 or 0.5% by weight, EPA intends to 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 discussed in Unit IV.B.1. are generally available, EPA intends to recognize only those test kits that have a demonstrated probability of a false positive response of no more than 10% to lead in paint at levels below the regulated level. EPA believes that limiting recognition to kits that result in a relatively-low rate 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. These performance parameters would have to 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. 50) or an equivalent validation method. The instructions for use of any particular kit would have to conform to the results of the validation, and the certified renovator must follow the manufacturer's instructions when using the kit. EPA requests comment on whether these standards are reasonably achievable and sufficiently protective. EPA is also soliciting suggestions on how to conduct the kit recognition process.

As required by the Pre-Renovation Education Rule, if the renovation firm relies on a determination by a certified inspector or risk assessor that affected components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight, the renovation firm must obtain a copy of the written determination before the renovation begins and keep it for no less than 3 years from the date the renovation is completed. If a test kit is used, the renovation firm must keep records documenting the use of the kit, including the name of the kit, who used the kit, and the results, for no less than 3 years from the completion date of the renovation.

To assist renovation firms in determining whether a particular project is eligible for this exception, EPA is proposing to incorporate, in 40 CFR 745.83, the definition of the term ''component or building component'' from 40 CFR 745.223.

b. *Minor maintenance.* This regulation would also retain the Pre- Renovation Education Rule exception in 40 CFR 745.82(a)(1) for minor maintenance activities that disturb 2 ft^2 or less of painted surface per component. As discussed in the preamble to the final Pre-Renovation Education Rule, this exception was primarily designed as a means for distinguishing between renovation activities and routine maintenance activities (Ref. 23, p. 29911). Because this exception for small surface area disturbances has acted as a surrogate for routine maintenance activities in the Pre-Renovation Education Rule, EPA is proposing to apply this exception to the requirements of this regulation.

The stakeholders participating in the various meetings EPA has held on renovation issues have had varying opinions of this exception. In general, property owners and managers favored this exception because it would remove routine, minor maintenance activities from the scope of the rule. Renovation firms thought it would have little impact on the jobs that they typically do. Advocacy organizations did not favor this exception because small projects can also create lead-based paint hazards. EPA requests additional comment on the appropriateness of this exception as a surrogate for routine building maintenance activities, and suggestions for alternate or additional surrogates.

Although EPA believes that increasing the size of the exception from 2 ft^2 to 5 or 10 ft^2 would reduce the number of renovations covered by this proposed rule, EPA does not have enough

information to estimate the number of renovations that would be affected by such a change. EPA is concerned that increasing the size of the exception, particularly for interior projects, would reduce the protections against lead-based paint hazards offered by this proposal. In addition, increasing the exception size would make this proposal inconsistent with the Pre-Renovation Education Rule and likely cause confusion among the regulated community, because renovation firms have been implementing the 2 ft^2 exception for a number of years.

Finally, HUD's Lead Safe Housing Rule, at 20 CFR 35.1350(d), includes ''*de minimis*'' levels of 2 ft^2 per room for interior projects and 20 ft^2 on exterior surfaces. 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 abatement regulations also use these as small project exceptions, at 40 CFR 745.65(d). EPA requests comment on incorporating these size limitations into this proposal and is particularly interested in any data regarding the number of renovations that would be affected by a change in the mirror maintenance exception and any data that would support a change in this exception.

c. *Emergency projects*. EPA is proposing to retain the emergency project exception of the existing Pre-Renovation Education Rule. Under that exception, renovators are not required to provide a lead hazard information pamphlet to owners and occupants of target housing that is undergoing emergency renovation operations. In general, stakeholders participating in EPA's renovation meetings favored an exception for emergency projects. This proposal would retain that exception, but would require that the emergency renovation operations be performed in compliance with the work practice standards to the extent practicable.

EPA is proposing to modify the language of the exception 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 exemption from the Pre-Renovation Education Rule requirements. The term ''interim controls,'' defined in 40 CFR 745.83 of the proposal, means measures designed to temporarily reduce exposure to lead-based paint hazards. Some interim control projects, such as the repair of damaged areas of paint, are renovations as defined in 40 CFR 745.83, and are subject to the Pre-Renovation Education Rule and would also be covered by this proposed regulation. Others, such as specialized cleaning, may not involve the disturbance of paint, and would therefore not be covered by either regulation.

EPA is 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 PYF pamphlet before an interim control project begins. The Pre- Renovation Education Rule allows persons performing renovations to mail a copy of the pamphlet to the owner, but the mailing must occur at least 7 days before the project begins. Exempting these types of projects from the Pre-Renovation Education Rule would enable public health organizations to begin responding to an elevated blood-lead level immediately, without significantly affecting the flow of information to the population at risk. Organizations that intervene in these cases typically provide a great deal of lead-based paint hazard information to the family of the lead-poisoned child. EPA is proposing to limit this provision of the emergency project exception to interim control projects that are performed as a direct response to a lead-poisoned child. EPA requests comment on whether a time limit should be placed on projects qualifying for this exception, whether only projects performed within a certain amount of time after a lead-poisoned child has been identified should be exempt, and, if so, what period of time would be adequate for these purposes.

EPA also understands that there may be emergency situations where compliance with the training, certification, and work practice requirements of this proposal is not practicable. In general, the proposed phase-in period for the regulatory requirements proposed in § 745.81 should be more than sufficient to allow enough persons to be trained and certified to provide an adequate supply of certified entities available for emergency renovation operations. An important reason for creating the emergency exception to the Pre-Renovation Education Rule was to allow property managers to respond quickly to problems such as a broken water pipe in an apartment even if the occupant is away from the premises. EPA anticipates that most property management companies who do their own maintenance will find it advantageous to have a trained and certified renovator on staff to perform renovations, so there should be no reason why these entities would not be able to comply with the training and certification requirements on all renovations. Likewise, EPA knows of no reason why firms performing emergency renovation operations would not be able to follow the clean-up procedures specified in this proposal after emergency repairs have been made. In fact, in the vast majority of cases, persons performing emergency renovation projects should be able to comply with all of the work practice requirements of this proposal. However, because there may be situations where it is not feasible to post warning signs or contain the work area before responding to the emergency, EPA is proposing to add a statement to the section describing this exemption to make it clear that the work practice requirements, the recordkeeping requirements, and the training and certification requirements in proposed §§ 745.85, 745.86, 745.89, and 745.90 apply to the extent practicable.

C. Training, Certification, and Accreditation

Under the 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 is proposing a similar, but not identical, regulatory scheme for individuals and firms that perform renovations.

EPA is proposing to require that all renovations regulated by this rule be performed by a firm certified to perform renovations and directed by a certified renovator. Although not required by the proposed rule, if dust sampling were performed, it would also have to be performed by a certified dust sampling technician, inspector, or risk assessor on behalf of a certified firm. In order to become a certified renovator, a person would have to either possess certification as a lead-based paint abatement supervisor or worker, or take an accredited renovator course. In order to perform dust sampling, a person would have to possess certification as a lead-based paint inspector or risk assessor, or take an accredited dust sampling technician course. Certification based on a dust sampling technician course would qualify the individual to conduct dust sampling as part of a renovation, but not as part of a lead-based paint activity under 40 CFR part 745, subpart L. EPA renovator or dust sampling technician certification would allow the certified individual to perform renovations or dust sampling in any State or Indian Tribal area that does not have a renovation program authorized under 40 CFR part 745,

subpart Q. Each of these requirements is discussed in greater detail in the following sections.

1. *Firms*—a. *Firm responsibilities.* Proposed § 745.89(d) describes the responsibilities of firms performing renovations or dust sampling. These 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 proposed § 745.90. Firms must also ensure that all persons performing dust sampling on behalf of the firm are certified as either risk assessors, inspectors, or dust sampling technicians. 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 proposed § 745.90. The firm is also responsible for ensuring that all renovations performed by the firm are performed in accordance with the work practice standards in proposed § 745.85. Finally, EPA is proposing to amend § 745.86 to require a firm to retain and make available to EPA all records necessary to demonstrate compliance with the provisions of this proposal. These records would have to include copies of training certificates for certified renovators and dust sampling technicians used on projects, along with signed and dated descriptions of how worker training activities, sign posting, work area containment, waste handling, cleaning, and post-renovation cleaning verification or clearance were conducted in compliance with this subpart. These descriptions must include a certification by the record preparer that the descriptions are complete and accurate. To assist firms in complying with these recordkeeping requirements, EPA has developed a simple form that firms could use to ensure that they are maintaining all of the necessary records (Ref. 51). Use of this form would not be mandatory, firms could keep the required records in any manner that they choose. EPA requests comment on the utility and practicality of the sample recordkeeping form, which EPA would make available on its internet site and from the National Lead Information Center. EPA also requests comment on the recordkeeping requirements in general, as well as information on the business records typically kept by renovation firms that could be used to demonstrate compliance with the training, certification, and work practice requirements of this proposal.

When multiple contractors are involved in a renovation, any contractor who disturbs, or whose employees disturb, paint in excess of the minor projects exception would be responsible for compliance with all of the requirements of the Pre-Renovation Education Rule and this proposal. In this situation, renovation firms may find it advantageous to decide among themselves which firm will be responsible for providing 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. The general contractor can then provide the subcontractors with copies of the signed acknowledgment form or proof of mailing. 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 would have to be certified renovators or trained and directed by certified renovators in accordance with this proposal. In addition, these personnel would be 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, would be responsible for compliance with this proposal, regardless of any agreements the contractors may have made among themselves.

EPA considered requiring renovation firms to provide notification to EPA before commencing a renovation activity, in the same way that abatement firms are currently required by 40 CFR 745.227(e)(4) to notify EPA before commencing an abatement. This is not the preferred option at this time because EPA believes that it would be unduly burdensome for renovation firms, given the large number of renovations that EPA estimates would be subject to this proposed regulation annually. In addition, the processing of notifications would require a significant resource commitment on EPA's part. However, notification could improve EPA's ability to monitor compliance with work practice requirements while renovations are ongoing. EPA requests comment on whether notifications should be required for all renovation projects, or whether they should be required for a subset of regulated renovations, such as large-scale projects, projects in rental properties, or projects in housing built before 1940. Suggestions for how these categories could be identified are also requested. In addition, EPA requests comment on whether a notification requirement should be phased in over time, to allow the regulated community and EPA to evaluate the effectiveness and the feasibility of such a requirement.

b. *Initial certification.* Firms that perform renovations covered by this proposal would have to be certified by EPA. EPA is proposing to add a definition of ''firm'' to 40 CFR 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 proposal 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 proposal.

EPA is proposing to use a process for certifying firms to perform renovations that is similar to the process currently used to certify firms to perform lead-based paint activities, such as inspections or abatements, that are regulated by 40 CFR part 745, subpart L. This proposal provides information about the certification and re-certification process, establishes procedures for amending and transferring certifications, and identifies clear deadlines.

Under proposed § 745.89(a), a firm wishing to become certified to perform renovations would 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.

Proposed § 745.89(a) also sets out EPA's possible responses to a firm certification application and gives the reasons why EPA would choose a

particular response. Under this proposal, EPA would 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. If the application is approved, EPA proposes to follow the current practice under 40 CFR part 745, subpart L, of establishing the firm's certification expiration date at 3 years from the date of EPA's approval. EPA certification would 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 was incomplete, EPA would 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 did 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 would not approve the application and would provide the applicant with the reasons for not approving the application. EPA would 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.

c. *Re-certification.* Under proposed § 745.89(b), a certified firm would maintain 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, EPA is proposing that 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 would be considered timely and sufficient, and the firm's existing certification would remain in effect until its expiration date or until EPA had made a final decision to approve the re-certification application, or not, whichever occurred later. If the firm submitted 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 did not approve the re-certification application before the existing application expired, the firm's certification would expire and the firm would not be able to conduct renovations until EPA approved its re-certification application. In any case, the firm's new certification expiration date would be 3 years from the date the existing certification expired.

If the firm submitted an incomplete application for re-certification, and EPA had not received all of the required information and fees before the date the firm's current certification expired, or if the firm did not submit its application until after its certification expired, EPA would not approve the firm's re-certification application. The firm could not cure any deficiencies in its application package by postmarking missing information or fees by its certification expiration date. All required information and fees would have to be in EPA's possession as of the expiration date for EPA to approve the application. If EPA did not approve the application, the Agency would provide the applicant with the reasons for not approving the re-certification application. Any fees submitted by the applicant would not be refunded, but the firm could submit a new application for certification, along with the correct amount of fees, at any time.

As with initial applications, this proposal includes a description of the actions EPA may take in response to an application for re-certification and the reasons why EPA would take a particular action. This section is identical to the proposed 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, as described in the preceding paragraph, the firm must make its application complete by the date that its current certification expires. There is no compelling reason to establish another deadline for making an incomplete application complete.

d. *Amendments.* Proposed § 745.89(c) would require that a firm amend its certification within 45 days whenever a change occurred to information included in the firm's most recent application. If the firm failed to amend its certification within 45 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 would be required to submit an application, noting on the form that it was submitted as an amendment. The firm would be required to complete the sections of the application pertaining to the new information, and sign and date the form. The amendment would have to include the correct amount of fees. Amending a certification would not affect the validity of the existing certification or extend the certification expiration date. EPA would 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 § 745.89(a).

e. *Suspension, revocation, or modification of certification.* EPA is also proposing, in § 745.91, procedures for suspending, revoking, or modifying a firm's certification. These procedures are identical 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.

2. *Individuals*—a. *Renovators and workers.* EPA is proposing to establish a new individual certification discipline for renovators. All renovation activities covered by this proposal would have to be performed by certified renovators, or by persons who have received on-the-job training in lead-safe work practices from certified renovators. The certified renovator assigned to a renovation would be responsible for ensuring that the renovation is performed in compliance with the work practice requirements of this proposal.

Under the proposal, a certified renovator must:

- Perform the post-renovation cleaning verification described in proposed § 745.85(b).
- Perform or direct uncertified workers who perform all of the work practices described in proposed § 745.85(a).
- Provide training to uncertified workers on the lead-safe work practices they will be using in performing their assigned tasks, how to isolate the work area and maintain the integrity of the containment barriers, and how to avoid spreading lead contamination beyond the work area.
- Be physically present at the work site when the signs required by proposed § 745.85(a)(1) are posted, while the work area containment required by proposed § 745.85(a)(2) is being established, and while the work area cleaning required by proposed § 745.85(a)(4) is performed.

• Regularly 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.

• Be available, either on-site or by telephone, at all times that renovations are being conducted.

• Have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

In order to use the term ''renovator'' to cover the new proposed certified discipline, EPA is proposing to revise the definition of the term in 40 CFR 745.83 to describe what a renovator is and how a renovator becomes certified. EPA is also proposing to modify the existing Pre-Renovation Education Rule requirements to replace the word ''renovator'' with a reference to the firm performing the renovation wherever the term appears. This is not intended to change the requirements of the Pre-Renovation Education Rule in any significant way. The effect of this change is to make it clear that any person associated with the firm performing the renovation, not necessarily the certified renovator, may handle the firm's pre-renovation education responsibilities.

This proposal would not require everyone involved in performing a regulated renovation project to be a certified renovator. To allow maximum flexibility for firms undertaking these projects, EPA is proposing to allow these firms to use uncertified workers to perform renovation activities as long as they receive on-the-job training in lead-safe work practices from a certified renovator. This training must include instruction in the specific lead-safe work practices that these workers will be responsible for performing. To ensure that renovations are performed safely, this proposal would require a certified renovator to be at the work site during critical phases of the renovation activity to perform or direct uncertified workers who perform tasks directly related to protecting homeowners and occupants from the hazards of lead dust. These tasks include posting warning signs, containing the work area, and cleaning the work site. The proposed post-renovation cleaning verification requirements would have to be performed by a certified renovator, they could not be delegated to an uncertified worker.

In addition, while the renovation project is ongoing, a certified renovator would have to be present at the work site on a regular basis in order to ensure that the uncertified workers are observing lead-safe work practices and maintaining the integrity of the systems employed to contain lead dust. When a certified renovator is not physically present at the work site, the uncertified workers must be able to contact the renovator immediately by telephone or other mechanism. Because these workers would be allowed to work without formal training in protecting children and other building occupants (OSHA requires these workers, like all construction workers, to receive training in protecting themselves and other workers from job hazards including lead), EPA believes that the kind of limited supervision envisioned by OSHA's competent person requirements or the EPA regulations pertaining to lead-based paint abatement supervisors is not sufficient in this situation. A walk around the job site once every shift is not enough to ensure that the uncertified workers are following lead-safe work practices at all times.

EPA realizes that there may be other ways to achieve the goal of maximizing flexibility for renovation firms while ensuring that all persons involved in performing renovations have sufficient training and oversight to perform their tasks in a safe manner. An option EPA considered was a requirement that a certified renovator be physically present at the work site at all times while regulated renovation activities are ongoing. EPA believes that this approach would provide less flexibility for renovation firms, but requests comment on whether that is actually the case, and whether this approach would significantly improve the quality of the work performed by uncertified workers.

Another way to provide flexibility for firms would be to prohibit certified renovators from being assigned to more than one job at a time, while not specifying when a certified renovator must be present during renovations, except that only a certified renovator would be permitted to perform the post-renovation cleaning verification step. EPA requests comment on whether this approach would provide flexibility and decrease costs for renovation firms without also decreasing the amount of protection provided by these proposed regulations. Regardless of the approach used, EPA anticipates that most 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.

EPA considered an individual certification scheme similar to that established for lead-based paint abatement activities, with a certified supervisor and certified workers. EPA does not prefer this option primarily because of the differences between renovation projects and abatement projects. All abatement projects have the same purpose--to permanently eliminate lead-based paint hazards. Renovation projects that involve the disturbance of paint are performed for many different reasons, using many different techniques. As a result, the training required by EPA for renovators is necessarily limited to the common elements of interest to EPA, which are the methods that a renovator can use to limit the creation of lead dust, prevent it from spreading to other parts of the dwelling, and properly clean it up afterwards. The containment and clean-up methods that would be required by this regulation are easy to understand and simple to use. A certified renovator who has received accredited training in these subjects should be able to communicate the principles of lead-safe renovation to others with very little difficulty. In addition, during the SBREFA panel process, discussed in greater detail in Unit VIII.C., the regulated community expressed concern over training requirements, given the level of employee turnover in the industry. Requiring certified renovators, but allowing firms to use uncertified workers where necessary, is an attempt to address this concern while still ensuring that everyone who performs regulated renovations understands how to follow lead-safe work practices.

b. *Dust sampling technicians.* 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.

As discussed in Unit IV.E., some renovators or homeowners may choose to perform dust clearance testing at the completion of renovation activities instead of the post-renovation cleaning process that EPA is proposing. Dust clearance testing after abatements must be performed by a certified inspector or risk assessor in accordance with the procedures set forth in 40 CFR 745.227(e)(8). If dust clearance testing is to be performed after a renovation, it would also have to be performed as

directed in § 745.227(e)(8), but EPA is also proposing to allow certified dust sampling technicians to perform the testing. This proposal includes training and certification requirements for the dust sampling technician discipline to help ensure the quality of initial training, provide for periodic refresher training to keep dust sampling technicians up to date regarding current regulatory and technical protocols, and assist the public in the identification of qualified individuals. Dust sampling technicians would not be subject to any additional education or experience requirements beyond completion of an accredited dust sampling technician course, nor would they be required to pass a third-party certification examination. As with the other certified disciplines, dust sampling technicians would be required to obtain re-certification every 3 years.

EPA has determined that accredited dust sampling technicians would be qualified to perform the work described in this Unit for renovations because 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.

A certified dust sampling technician is responsible for collecting dust samples, sending them to an EPA-recognized laboratory, and comparing the results to the clearance levels in accordance with 40 CFR 745.227(e)(8). The certified dust sampling technician must also have with them at the work site copies of their initial course completion certificate and their most recent refresher course completion certificate.

c. *Initial certification.* Proposed § 745.90 addresses renovator and dust sampling technician certification. To become a certified renovator, a person would have to successfully complete a renovator course that has been 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*. More information on the development of this curriculum and the accreditation of renovator and dust sampling technician courses can be found in Unit IV.D. The renovator course primarily covers how to isolate and contain renovation projects so that leaded dust does not escape, how to minimize the creation of leaded dust, and how to properly clean up after a renovation project so that lead-based paint hazards are not left behind. EPA is not proposing to require additional education or work experience of persons wishing to become certified renovators.

To become a certified dust sampling technician, a person would have to 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. The dust sampling technician course primarily covers dust sampling methodologies and clearance standards and testing. EPA is not proposing to require additional education or work experience of persons wishing to become certified dust sampling technicians.

EPA renovator certification would 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. EPA dust sampling technician certification would allow the certified individual to perform dust sampling 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.

Because EPA is not proposing 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, under this proposal EPA would still receive course completion information from course providers. With this information, under the proposal EPA would 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 proposed regulations, EPA will have the ability to verify, to the same extent, the validity of a course completion certificate held by a renovator or dust sampling technician at that job. Therefore, EPA is proposing 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, EPA would require a certified renovator or dust sampling technician to have a copy of the course completion certificate at the job site.

EPA also considered alternatives such as requiring renovator and dust sampling technician candidates to apply to EPA for certification, following the same procedures established for worker certification in 40 CFR 745.226. EPA also considered requiring a third-party examination for persons wishing to become certified renovator or dust sampling technicians. A third-party examination would be an additional check on the adequacy of the training courses being offered, as well as an independent assessment of how well a particular candidate retained the information presented. On the other hand, a third-party examination would significantly increase the burden of administration and the expense of complying with these proposed regulations. EPA requests comment on these options, as well as EPA's assessment of the costs and burdens of these options.

d. *Re-certification.* EPA is proposing to require that renovators and dust sampling technicians who wish to remain certified take refresher training every 3 years. This is consistent with the existing re-certification interval for firms and for certified individuals under 40 CFR 745.226. In addition, EPA is proposing to require that the refresher training course be half the length of the initial course. This is also consistent with current practice for certified individuals performing lead-based paint activities. If an individual does not take a refresher course within 3 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 on a renovation project regulated by this proposal. There would be no grace period. To become certified again, the individual would have to take another initial training course.

EPA also considered an alternative of requiring certified renovators to re-take the initial renovator course every 3 years. The primary advantage to such an approach is that, eventually, renovator course attendees would be a combination of experienced renovators and persons new to the field. This would allow the experienced persons to share helpful tips and lessons learned

with others and could have a positive impact on the overall quality of the training delivered. On the other hand, longer training requirements mean increased costs for the regulated community. In addition, with the preferred option, certified renovators would always be permitted to substitute an initial renovator course for a refresher course to allow maximum flexibility, particularly if for some reason the person was unable to attend a refresher course. EPA requests comment on this option on whether 3 years is an appropriate interval for refresher training, and whether refresher training should be required at all.

e. *Individuals certified to perform lead-based paint activities.* EPA is also proposing to allow individuals who are or who become certified lead-based paint abatement supervisors or workers to act as certified renovators. These persons would have to possess a current and valid certification from EPA or an EPA-authorized State, Territorial, or Tribal lead-based paint program. EPA has determined that the training taken by candidates for supervisor or worker certification meets or exceeds the proposed training requirements for renovators with respect to many of the requirements of this proposal. Both disciplines must receive training in lead-based paint hazard recognition and control, as well as dust abatement and clean-up. However, the proposed post-renovation cleaning verification process, discussed in Unit IV.E., and the use of test kits for paint testing is not currently being taught in abatement supervisor or worker courses. EPA plans to develop guidance documents on these processes, and amend the model curriculum to cover them. EPA requests comment on whether an effective guidance document would be sufficient to familiarize abatement supervisors and workers with performing post-renovation cleaning verification and using paint test kits, or whether another approach, such as requiring certified supervisors or workers to take a renovator refresher course, would allow the regulated community to make use of the workforce already trained in lead-based paint hazard control, while ensuring that this workforce understands how to perform the post-renovation cleaning verification requirements and use test kits to test for lead-based paint.

Persons who are or who become certified lead-based paint inspectors or risk assessors based on a certification issued either by EPA under 40 CFR 745.226 or by an authorized State or Tribal program would be deemed under the proposal to be certified dust sampling technicians. Certified inspectors and risk assessors are qualified to perform dust sampling as part of lead hazard screens, risk assessments, or abatements. This rule would also allow them to perform dust sampling after renovation activities.

f. *Persons who have previously taken a course in Lead Safe Work Practices or a Dust Sampling Technician course.* For the purposes of HUD's Lead Safe Housing Rule, many individuals have already taken HUD-approved training in lead-safe work practices. In addition, many individuals have taken a dust sampling technician course based on the model developed by EPA. EPA is specifically requesting comment on whether a streamlined certification process would be appropriate for these individuals. For example, in promulgating the lead-based paint activities certification requirements at 40 CFR 745.226, EPA allowed persons who had previously taken worker training to become certified by EPA as abatement workers without taking an accredited initial lead-based paint worker course. Individuals could become certified as workers by demonstrating that they had completed training (including on-the-job training) in the conduct of lead-based paint activities and completing an accredited worker refresher course. This option was only available for a limited time. A similar process could be used for individuals who have already taken lead-safe work practices training and who wish to become certified renovators, or individuals who have taken a dust sampling technician course and who wish to become certified dust sampling technicians.

g. *Suspension, revocation, or modification of certification.* EPA is also proposing, in § 745.89, procedures for suspending, revoking, or modifying an individual's certification. These procedures are identical to the current procedures in place for suspending, revoking, or modifying the certification of an individual who is certified to perform lead-based paint activities. However, EPA has added a sentence to this provision to make it clear that renovator certification could be suspended, revoked, or modified if the renovator does not ensure that projects to which he or she is assigned are conducted in accordance with the work practice requirements in this proposal.

3. *Training providers.* EPA is proposing to amend 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. Proposed amendments to § 745.225 would add specific requirements for the renovator and dust sampling technician disciplines. This proposal introduces minimum training curriculum, training hour, and hands-on requirements for courses leading to certification as a renovator or a dust sampling technician.

The minimum curriculum requirements for an initial renovator course are described in proposed § 745.225(d)(6). The topics would 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 clean-up verification and clearance testing; and waste handling and disposal. Hands-on activities relating to renovation methods, containment and clean-up, clean-up verification, and waste handling would be required in all courses. Proposed § 745.225(c)(6)(vi) would establish the minimum length for an initial renovator course at 8 training hours, with 2 hours being devoted to hands-on activities. A 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.

The minimum curriculum requirements for an initial dust sampling technician course are described in proposed § 745.225(d)(7). The topics would 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. Proposed § 745.225(c)(6)(vii) would establish the minimum length for an initial dust sampling technician course at 8 training hours, with 2 hours being devoted to hands-on activities.

Accreditation would also be required for refresher training courses for

renovators and dust sampling technicians. Refresher courses would consist of, at a minimum, 4 hours of training. Topics covered would have to include a review of the topics covered in the initial renovator or dust sampling technician course, along with general lead-based paint safety practices and technologies.

EPA requests comment on whether all of the topics that should be covered in the renovator and dust sampling technician courses are included, and whether hands-on activities should be required. EPA also requests comment on whether the specified training hour requirements for the initial and refresher courses are sufficient or excessive. In addition, EPA requests comment on whether minimum training hour requirements should be specified for these courses. EPA is concerned that such requirements may limit training provider flexibility without offering a substantial contribution to the quality of training.

Renovator and dust sampling technician courses, both initial and refresher, could 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. EPA is proposing to modify § 745.225(b)(1)(ii) to clarify 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 proposing to require that the training provider include in its application both the English version as well as the non-English version of all training materials, as well as 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 the translation is accurate. This requirement would apply 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 proposing to require that course completion certificates include the language in which the course was taught.

EPA is also proposing to modify the requirements for course completion certificates to make it clear that the interim certification expiration date applies only to initial lead-based paint activities courses. The concept of interim certification is not applicable to refresher courses, nor would it be applicable to the proposed certification requirements for renovators or dust sampling technicians.

Consistent with the existing accreditation requirements for lead-based paint activities training programs, alternative training techniques (e.g., video training, computer-based training) may be used as a supplement to the hands-on skills assessment or as a substitute for the lecture portion of the training course requirements. All training programs, including those using alternative training methods, would be required to meet minimum hourly requirements for hands-on activities in their training courses. In addition, all training programs would have to administer a course test and conduct a hands-on skills assessment.

As currently required for training providers who wish to offer lead-based paint activities courses, training providers who would like to provide courses leading to renovator or dust sampling technician certification, or refresher training courses in those disciplines, would have to apply to EPA for accreditation and pay an accreditation fee. The application would have to include a description of the facilities to be used for training, a description of the methods to be used to present hands-on activities, the blueprint for the course test, and the quality control plan. In addition, the proposal provides that if the training provider will not be using EPA-recommended model course materials, or course materials approved by an EPA-authorized State or Tribal program, the application must include copies of all course materials, including the agenda or syllabus.

D. Renovation Activities

EPA is proposing to require that all renovations subject to this rule be conducted in accordance with a defined set of work practice standards. TSCA section 402(a)(1) directs EPA to promulgate regulations that, among other things, contain standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety. In revising those regulations to apply to renovation activities, EPA is proposing more specific work practice standards for firms performing renovations than are currently required for certified firms conducting lead-based paint abatement activities regulated by 40 CFR part 745, subpart L. These more specific standards are necessary, because unlike abatement firms, under this proposal renovation firms would not be required to conduct clearance testing at the conclusion of renovation activities. Clearance testing serves as a performance standard under the abatement regulations, allowing firms flexibility when establishing and cleaning a work area. Without such a performance indicator for renovation it is necessary to more specifically describe work practices and conditions at a work site in order to protect the occupants and ensure that new lead-based paint hazards are not introduced to the home. The proposed renovation work practices are consistent with the joint EPA-HUD curriculum, *Lead Safety for Remodeling, Repair, & Painting* (Ref. 52). EPA requests comment on the work practice, cleaning, and cleaning verification requirements discussed in greater detail in this Unit.

1. *Background.* As was discussed in Unit III.B.3., HUD developed its *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* in response to a directive in Title X. The *Guidelines* provide detailed, comprehensive technical information on how to identify lead-based paint hazards in housing and how to control such hazards safely and efficiently. The *Guidelines* were the result of *The HUD Lead-Based Paint Abatement Demonstration (FHA)* that evaluated various lead-based paint hazard control methodologies both for effectiveness in reducing the lead hazard and for amount of lead dust generated (Ref. 53), as well as a number of other research projects. The *Guidelines* were developed in close consultation with EPA, CDC, OSHA, several other Federal agencies, and numerous experts and practitioners.

While the primary purpose of the *Guidelines* is to provide guidance to people involved in identifying and controlling lead-based paint hazards in Federally assisted housing, they have also proven to be useful in housing that has no connection with the Federal government. The *Guidelines* have been accepted as the *de facto* standard for evaluation and reduction of lead hazards. EPA's training and certification program under TSCA sections 402 and 404 recognizes the *Guidelines* and their recommendations. The *Guidelines* complement such regulatory programs because they provide more complete work practice recommendations and explain why certain measures are recommended.

EPA relied on the *Guidelines* in developing draft technical specifications for renovation, repair, and painting activities (Ref. 54). While the *Guidelines* are focused on work practices associated with hazard reduction (permanent or temporary elimination of existing lead hazards), they also provide detailed

information relevant to renovation (i.e., containment, and cleaning). In addition, the *Guidelines* have a useful section devoted to routine building maintenance. While the activities considered in this section are often small-scale, and do not encompass the wide range of potential renovation work projects, they were extremely helpful in formulating work practice standards that are intended to be scalable based upon the activity being performed.

EPA's draft technical specifications were developed in September 1998 with the assistance of the National Center for Lead Safe Housing (now known as the National Center for Healthy Homes) in consultation with a group of technical experts. The specifications described the precautions needed to ensure that lead-contaminated dust and debris are minimized, controlled and properly cleaned up. The technical specifications themselves were developed to be applicable both to contractors and to homeowners who perform these activities without the aid of a contractor. However, the specifications document itself was not intended for use by the general public or contractors; it was developed to provide background information and serve as a reference for EPA to prepare technical materials, including a training curriculum.

Following completion of the draft technical specifications, EPA began development of a model renovation training curriculum. In September 2000, EPA completed development of the curriculum *Minimizing Lead-Based Paint Hazards During Renovation, Remodeling, and Painting* (Ref. 55). The model curriculum was developed with the assistance of a review panel of representatives from state regulatory programs, lead advocacy groups, renovation contractors, EPA, HUD, and NIOSH. The course was developed to provide strategies to reduce or eliminate the introduction of hazards that occur when lead-based paint is disturbed. The curriculum was revised, in consultation with HUD, and renamed *Lead Safety for Remodeling, Repair, & Painting* in July 2003 (Ref. 52). The revised curriculum is one of several courses approved for training purposes under HUD's Lead Safe Housing Rule. The course represented a major Agency effort to protect public health from lead-based paint hazards associated with renovation and repainting activities, and was intended to be a model training curriculum for future regulations. Upon completion of the course, EPA made the model curriculum publicly available and encouraged renovation contractors to voluntarily obtain training.

This proposal presents basic work practice standards derived from the model training course, draft technical manual, and the *Guidelines*, among other sources. These practices provide standards as to how the work must be done in order to protect occupants from lead hazards. While the standards provide basic requirements for occupant protection, site preparation, and clean-up, the course provides more complete guidance on how activities should be carried out and why certain measures are recommended.

EPA requests comment on whether there may be situations where some or all of these proposed lead safe work practices are not necessary. For example, where housing is not occupied during the renovation process, some or all of the lead safe work practice requirements may not be necessary. In those cases, cleanup and cleaning verification may be sufficient. The Agency requests comment on the requirements that should apply in unoccupied housing, and also on whether there should be differential requirements for other situations.

2. *Proposed work practice standards*—a. *Occupant protection.* Under proposed § 745.85(a)(1), work areas must be clearly defined with signs warning occupants and other persons not involved in renovation activities to remain outside of the work area. These signs must be posted before beginning the renovation and must remain in place until the renovation has been completed and the work area has been verified to have been adequately cleaned. 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 by this proposal.

b. *Containing the work area.* Under proposed § 745.85(a)(2), a firm must contain the work area so that no visible dust or debris leaves the work area while the renovation is being performed. Containment refers to methods of preventing leaded dust from contaminating objects in the work area and from migrating beyond the work area. It includes everything from the simple use of disposable plastic drop cloths to the sealing of openings with plastic sheeting. When planning a renovation project, special consideration should be given to determining 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. Repairing a small area of damaged drywall is likely to generate less lead-contaminated dust and debris than sanding a large area in preparation for painting. 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 minimal 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. The certified renovator assigned to a renovation would weigh all of these factors in determining the appropriate work area size and preparation level for that particular situation. For example, repairing a small area of damaged drywall would probably require a smaller work area and minimal preparation while demolition work would probably require a larger work area and extensive preparation in order to prevent the migration of dust and debris from the work area. The certified renovator is responsible for weighing all of these factors and designing a system of containment that ensures that no dust and debris leaves the work area. EPA is proposing to define the term ''work area'' as the area that the certified renovator establishes to contain all of the dust and debris generated by a renovation, based on the certified renovator's evaluation of the extent and nature of the activity and the specific work practices that will be used.

i. *Interior renovations.* At a minimum, interior work area preparations must include removing or covering all objects in the work area, closing and covering all forced air HVAC ducts in the work area, closing all windows in the work area, closing and sealing all doors in the work area, and covering the floor surface, including installed carpet, with taped-down plastic sheeting in the work area. Doors within the work area that must 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. Alternatively, the paths used to reach the exterior of the home must be covered with plastic sheeting or other impermeable material to prevent the

spread of lead contaminated dust and debris outside the work area.

ii. *Exterior renovations.* For exterior projects, work area preparations must include, at a minimum, covering the ground with plastic sheeting or other disposable impermeable material extending out from the edge of the structure a sufficient distance to collect falling paint debris, 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 on 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, or where the work area abuts a property line, the firm 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. In addition, doors within the work area that must 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.

iii. *Prohibited practices.* Under the current regulations for lead- based paint abatement activities, certain practices are prohibited in 40 CFR 745.227(e)(6). These practices are open flame burning or torching of lead-based paint; machine sanding, grinding, abrasive blasting, or sandblasting of lead-based paint except when done with HEPA exhaust control; dry scraping of lead based-paint except around electrical outlets or for any area no more than 2 ft^2 in any one room, hallway, or stairwell, or for any area no more than 20 ft^2 on exterior surfaces; and operating a heat gun at 1100 degrees Fahrenheit or higher.

Unlike with abatement, EPA is proposing to allow the use of these practices during renovation activities. The Agency understands that, because these practices are commonly used during renovation work, prohibiting such practices could make certain jobs, such as preparing a surface for new painting, extremely difficult, if not impossible. For example, contractors indicated there may be no practical way to restore old and historic millwork other than open flame burning, and that prohibiting dry scraping and sanding would cause many problems because wet sanding tends to raise the grain of wood surfaces preventing a smooth finish which consumers demand. The Agency believes that proper training, in combination with appropriate containment and cleanup requirements, is safe, effective, and reliable in preventing the introduction of new lead-based paint hazards. EPA is seeking comment regarding the prohibition of these practices, and specifically whether different prohibitions should apply to interior and exterior renovations.

Although EPA is proposing to allow the use of these practices, other Federal, State, and local requirements may govern these practices and renovations in general. Persons performing renovations should check to see whether other regulations, including the OSHA regulations at 29 CFR 1926.62, apply to their projects.

c. *Waste from renovations.* Renovation projects can generate a considerable amount of waste material. Lead-contaminated building components and work area debris must be handled carefully to prevent the release of lead-contaminated dust and debris. EPA is concerned that allowing the storage of lead-contaminated waste where it may be accessible to residents and others could cause a lead-based paint hazard. Therefore, under proposed § 745.85(a)(3) a firm would be required, at the conclusion of each work day, to 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, transporting lead-based paint waste in uncovered vehicles is a possible source of releases in the form of paint chips or dust. The proposal would require renovation firms transporting lead-based paint waste from a work site to contain the waste to prevent identifiable releases, e.g., inside a plastic garbage bag.

In a policy issued on July 31, 2000, EPA's Office of Solid Waste (OSW) clarified that both homeowners and contractors can be eligible for the hazardous waste exclusion under 40 CFR 261.4(b)(1) for lead-based paint wastes generated from renovation and remodeling activities in households, including single and multiple residences. This conclusion was based on the fact that both the definition of ''household waste'' in 40 CFR 261.4(b)(1) and the Agency's criteria for determining the scope of the exclusion focus on the type of waste generated and the place of generation rather than the identity of the waste generator. Therefore, under this clarification, lead-based paint waste may be disposed of in municipal solid waste landfill units, as long as those wastes are generated during abatement or renovation and remodeling activities in households (Ref. 56).

On June 18, 2003, EPA amended its regulations to provide an additional option for disposal of this waste (Ref. 57). Having clarified that lead-based paint waste generated through abatements and renovation and remodeling activities in residential settings could be disposed of in municipal solid waste landfill units, EPA also wanted to offer the option of disposing of this waste in construction and demolition (C&D) landfills. Accordingly, EPA amended 40 CFR 258.2 to add definitions for ''construction and demolition (C&D) landfill'' and ''residential lead-based paint waste'' and to amend the definition of ''municipal solid waste landfill (MSWLF) unit.'' The primary purpose of these amendments was to allow a C&D landfill to accept residential lead-based paint waste without becoming a municipal solid waste landfill unit and having to comply with RCRA requirements for such units.

When disposing of waste from renovation activities, the certified renovator should follow all applicable Federal, State, and local requirements.

d. *Cleaning the work area.* Under proposed § 745.85(a)(4), a firm would be required to clean the work area to remove visible dust, debris or residue, as well as dust particles too small to be seen by the naked eye. 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, a small amount can create a health hazard for young children. Unless this dust is properly removed, renovation and remodeling activities are likely to introduce new lead-based paint hazards. Therefore, careful cleaning is required. Improper cleaning can increase the cost of a project considerably because additional cleaning may be necessary during post-renovation cleaning verification. Although it may not be possible to remove all leaded dust generated by the renovation, it is possible to reduce it below levels that EPA has determined to be hazardous.

The proposal specifies that, upon completion of renovation activities, all paint chips and debris must be picked up. Protective sheeting must be misted and folded dirty side inward, using care to trap any remaining dust. Sheeting

used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting; this sheeting must then be misted and removed last. Removed sheeting must be either 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. The walls, starting from the ceiling and working down to the floor, would have to be vacuumed with a vacuum equipped with a HEPA filter or wiped with a damp cloth. The proposal would require that all remaining surfaces and objects in the work area, including floors, furniture and fixtures, be thoroughly vacuumed with a vacuum equipped with a HEPA filter. When cleaning carpets, the HEPA-equipped 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. Where feasible, floor surfaces underneath a rug or carpeting must also be thoroughly vacuumed with a HEPA-equipped vacuum. This cleaning step is intended to remove as much dust and remaining debris as possible.

EPA requests comment on whether the rule should allow the use of vacuums other than vacuums equipped with HEPA filters. 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 these particles with 100% efficiency. Available information indicates that lead particles generated by renovation activities range in size from over 20 microns to 0.3 microns or less (Ref. 58). It has been suggested that vacuums not equipped with HEPA filters fail to capture smaller lead particles, and that these vacuums are more likely to recirculate these particles to the air instead. EPA is concerned that the unintended release of lead particles into the air during cleaning activities may not only cause unintended dust lead hazards in the work area, but that it could impact other areas of the dwelling unit. EPA requests 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. EPA also requests comment on whether the rule should allow other types of vacuums in addition to HEPA-equipped vacuums, given that the OSHA Lead in Construction standard, at 29 CFR 1926.62(h)(4), requires that vacuums be equipped with HEPA filters where vacuums are used.

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.

These special cleaning methods and procedures are typically not standard operating procedure for general home improvement contractors. Therefore, this proposal seeks to train renovators and establish work practice standards that renovators must follow to ensure no lead-based paint hazards are introduced as a result of a renovation.

When cleaning following an exterior renovation, under the proposal all paint chips and debris must be picked up. Protective sheeting used for containment must be misted with water. All sheeting must be folded carefully from the corners or ends to the middle to trap any remaining dust. The sheeting must be disposed of as waste.

EPA invites comment on all aspects of its proposed work practice standards. EPA is especially interested in studies showing the effectiveness of each component of its proposed work practices, as well as the effectiveness of these components in combination. As noted in the Draft Economic Analysis for this proposed rule, discussed in greater detail in Unit VIII.A., the Agency assumes that the specified combination of warning signs, containment barriers, cleaning measures, and the post-renovation cleaning verification process discussed in the next section, taken together, will result in lead dust levels at or below the dust-lead hazard standards established at 40 CFR 745.65(b). The available data, however, does not support a quantitative assessment of the independent efficiency of each of these measures.

E. Cleaning Verification

1. *Background.* The goal of this proposed rule is to ensure that lead-based paint hazards are not created and left behind after residential renovations. To achieve this goal, EPA has outlined training requirements to provide renovators with information and techniques on how to minimize the lead dust they produce during renovation activities and the appropriate methods for cleaning the work area after a renovation has been completed. The Agency has also proposed a series of work practice standards that must be followed during renovations. In addition, to achieve the goal of ensuring that residential renovations do not increase exposure to lead-based paint hazards, EPA has determined that additional cleaning verification procedures are necessary.

However, requiring dust clearance sampling after each renovation project, as is done for abatements, would be problematic for several reasons. Dust clearance sampling, which is required after abatements, may be very expensive. The costs can be attributed to two major factors: the cost of trained personnel to collect the samples and the cost of the laboratory analysis. EPA estimates the cost of three dust samples to be approximately $160 to collect and analyze. If EPA were to require dust clearance sampling after every renovation project, it would make up a significant portion of the cost of smaller projects. More information on the costs of dust clearance sampling can be found in Unit VIII.A. and in EPA's draft economic analysis of the impacts of this proposal (Ref. 59). In addition, dust clearance sampling takes a great deal of time. Laboratory results may not be available for several days, during which time the work area cannot be re-occupied.

On the other hand, a visual inspection, while less expensive and less time-consuming than dust clearance sampling, does not provide sufficient assurance that the renovation activities have not increased the potential for exposure to lead-based paint hazards. Recent studies indicate that visual inspection alone is not a reliable and effective method for identifying the presence of a lead-based paint hazard after cleaning (Ref. 60).

In addition, one of the significant difficulties associated with requiring clearance after renovation projects is the difference in focus and scope between abatement projects and renovations. The purpose of an abatement project is to permanently eliminate lead-based paint and lead-based paint hazards. It is therefore perfectly appropriate to require an assurance that the abatement firm has, in fact, eliminated these hazards. However, renovations may be performed for many reasons, most of which have nothing to do with

eliminating lead-based paint hazards. Moreover, if clearance using dust wipes were required after every renovation job, it could have the effect of holding the renovation firm responsible for abating all dust-lead hazards, including such hazards that may have existed in the area before the renovation commenced. During the public meetings in 1998 and 1999, as well as during the SBREFA panel process, discussed in Unit VIII.C., contractors pointed out that, if post-renovation clearance sampling were required, the contractors would have to protect themselves by collecting pre-renovation dust samples, to ensure that they would not be held liable for pre-existing hazards. EPA understands this concern and has attempted to address it by finding an alternative to dust clearance sampling. The goal of this proposal is to ensure any potential lead-based paint hazards created during the actual renovation project are cleaned up by the renovation firm. EPA requests comment on all of the available methods for achieving this goal, including visual inspections, dust clearance testing, and the proposed post-renovation cleaning verification process described below. EPA also requests comment on whether any cleanup verification is necessary, given the proposed cleaning requirements described above.

2. *Disposable Cleaning Cloth/White Glove Study.* EPA began looking for an alternative to dust clearance sampling that would be quick, inexpensive, reliable, and easy to perform. EPA conducted a series of studies using commercially available disposable cleaning cloths to determine whether variations of a ''white glove'' test could serve as an effective alternative to dust clearance sampling. White disposable cleaning cloths were used to wipe windowsills and wipe floors, then 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 below the dust lead hazard standard in 40 CFR 745.65(b). Cloths that matched the standard were considered to have achieved ''white glove.''

Initial studies focused on dry, or electrostatic, disposable cleaning cloths (dry cloths). These cloths were used to wipe a windowsill or a section of floor until a cloth had achieved ''white glove.'' Then, dust samples were collected to determine whether the windowsill or floor had also achieved clearance. These studies were conducted both in vacant buildings, where the amount of leaded dust on the surfaces was uncontrolled and no pre-cleaning was done, and in a controlled laboratory setting. The results of these studies indicate that dry cloths are most effective in predicting clearance through the ''white glove'' test when the initial lead levels are between 40 μg/ft^2 and 200 μg/ft^2.

EPA then began looking at wet disposable cleaning cloths (wet cloths) as a means to improve the effectiveness of dry cloths. In a controlled setting, the effectiveness of various combinations of dry cloths and wet cloths were tested, using a leaded dust loading of 1,600 μg/ft^2. The first protocol tested used only dry cloths--after ''white glove'' was achieved, the surface was wiped with two more dry cloths. This protocol led to a false negative error rate of 30%, meaning that in 30% of the cases, ''white glove'' was achieved, but dust sampling indicated that the surface lead levels exceeded 40 μg/ft^2. This procedure was performed again, and followed by one wiping with a wet cloth. With this protocol, all 12 of the tests performed resulted in levels below the clearance standard, or a false negative error rate of 0%. Finally, the original dry cloth protocol was used, until ''white glove'' was achieved, and then followed by one mopping with a wet cloth. This simplified protocol achieved a false negative error rate of 10%.

The promising results of this controlled study led to a field test of three potential protocols: Dry cloths to ''white glove,'' dry cloths to ''white glove'' followed by one wet cloth, and wet cloths to ''white glove.'' This field test was performed in vacant housing units. Lead levels were determined before testing began, but no cleaning was performed. The results of this field test were as follows: On floors, 91.5% of the surfaces that achieved ''white glove'' using only dry cloths also achieved clearance, while 97.3% of the floors that achieved ''white glove'' using only wet cloths also achieved clearance. 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, achieved clearance anyway. Unexpectedly, the protocol using dry cloths to ''white glove'' followed by one wet cloth was the least successful protocol--the false negative error rate for this protocol was nearly 20%. Windowsills were also tested during this part of the study, but only the all-dry-cloth protocol and the all-wet-cloth protocol were used. For the dry cloth protocol, 96.4% of the sills that achieved ''white glove'' also achieved clearance, and the one sill that did not achieve ''white glove'' still passed clearance. For the wet cloth protocol, all of the sills that achieved ''white glove'' also achieved clearance, as did the four sills that did not reach ''white glove.''

The floors in the housing units tested in this portion of the study were in vacant buildings that had high levels of accumulated lead that was often encrusted on the surface as part of a hard, gummy layer. In the case where false negative results were seen, it was primarily due to the moisture from the wet cloth loosening lead after the ''white glove'' was achieved with the wet cloth.

The final report for these studies and the earlier studies, entitled *Electrostatic Cloth and Wet Cloth Field Study in Residential Housing*, underwent an external peer review process. The final report, including the Quality Assurance Project Plan, the photographic comparison standards, the comments from the peer reviewers, and EPA's response to the comments from the peer reviewers, has been placed into this docket (Ref. 61). EPA also requests comments on the conclusions drawn from this study, as well as on the study itself. EPA is particularly interested in information or data on the Agency's conclusions that this approach is practical and provides reliable information on removal of lead hazards and that renovators will be able to use a reference card to properly assess when ''white glove'' is achieved.

3. *Steps for cleaning verification.* Based on these study results, EPA is not proposing to require dust clearance sampling after any renovations. Instead, for interior renovations, EPA is proposing to require an additional post-cleaning verification step following the visual inspection. This step involves wiping the interior windowsills and floors with a wet disposable cleaning cloth and, if necessary, a dry disposable cleaning cloth, and comparing it to a cleaning verification card that EPA will develop and distribute. A prototype of this card has been placed in the docket (Ref. 62). The purpose of this step is to verify that horizontal surfaces where dust will settle have been adequately cleaned. The specific post-renovation cleaning verification requirements are proposed as follows.

a. *Visual inspection.* A certified renovator must perform a visual inspection to determine whether visible dust, debris, or residue is still present in the work area. If such dust, debris, or residue is present, these conditions must be eliminated. If the renovation involved is an interior renovation, these conditions must be eliminated by re-cleaning the work area as directed in proposed § 745.85(a)(4). After an

exterior work area passes the visual inspection, the project has been properly completed and the warning signs may be removed. 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 discussed in this Unit.

b. *Interior windowsills.* For interior renovations, after the work area has been cleaned and has passed the visual inspection, a certified renovator must wipe each interior windowsill (also known as a stool) in the work area with a wet disposable cleaning cloth. All wet cloths used in the post-renovation cleaning verification process must be at least damp to the touch, and must remain so during the process. After wiping each windowsill with a wet cloth, the certified renovator must compare the cloth to the cleaning verification card. If the cloth matches the card, that windowsill has passed the post-renovation cleaning verification. If the cloth does not match the card, that windowsill must be re-cleaned in accordance with proposed § 745.85(a)(4)(ii). After the windowsill has been re-cleaned, 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 the card, that windowsill has passed. If not, the windowsill must be re-cleaned again and left to dry.

To perform this verification on a windowsill, the certified renovator must wait for one hour after the surface has been re-cleaned or until the surface has dried, whichever is longer. Then, the certified renovator must wipe the windowsill with a dry disposable cleaning cloth and compare it to the cleaning verification card. This process must be repeated until a dry cloth, or a folded section of a dry cloth, that has wiped the windowsill matches the cleaning verification card. 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.

EPA considered requiring that certified renovators repeat the process of cleaning and then wiping with a wet disposable cleaning cloth until each windowsill and each section of uncarpeted floor within the work area achieved post-renovation cleaning verification with a wet cloth. The disposable cleaning cloth studies suggest that it is possible that some floors may never achieve verification with a wet cloth. Verification on floors that are in poor condition or floors with built-up layers of grime may be particularly difficult. In the second field study of disposable cleaning cloths, there were 21 floors that did not achieve ''white glove,'' even after 15 separate wipings with a fresh wet cloth. However, 20 of these floors passed clearance through dust sampling.

Therefore, for each windowsill and for those sections of the floor that did not achieve post-renovation cleaning verification using the wet cloths, EPA is proposing to require that after the second re-cleaning, the surface be allowed to dry, and then a dry disposable cleaning cloth verification process be performed. The dry cloth may be less likely to dissolve additional layers of built-up grime, which may have contributed to the phenomenon of floors passing clearance, but not achieving ''white glove'' with the wet cloths. In addition, lead dust trapped in built-up layers of grime is not likely to be the result of a current renovation activity.

c. *Floors.* After the windowsills in the work area have passed the post-renovation cleaning verification, a certified renovator must wipe the floor surfaces in the work area with a wet disposable cleaning cloth. Wiping of floors must be done with an application device consisting of a long handle and a head to which the wet cloth is attached. This will help the certified renovator apply fairly constant pressure over the floor surface. Again, the wet cloth must remain at least damp to the touch throughout this process. During the field studies, the cloths tended to dry out as they were used over large areas, or on more porous floor surfaces. As the cloths dry out, they pick up less dust. To ensure that the cloths remained damp during the field studies, the persons performing the wiping were directed to use each wet cloth on no more than 40 ft^2 of floor area (Ref. 63). EPA is proposing to require the same for the purposes of post-renovation cleaning verification, but requests comment on whether this is an appropriate size cut-off. If the floor surface in the work area exceeds 40 ft^2, the certified renovator would divide the floor surface into sections, each section being less than 40 ft^2, and perform the post-renovation cleaning verification on each section separately.

If the wet cloth used to wipe a particular section of floor matches the cleaning verification card, that section has passed the post-renovation cleaning verification. If, however, on the first wiping of a section of the floor surface, the wet cloth does not match the cleaning verification card, the surface of that section of the floor must be re-cleaned in accordance with proposed § 745.85(a)(4)(ii). After re-cleaning, the renovator must wipe that section of the floor again using a new wet cloth. If the wet cloth matches the cleaning verification card, that section of the floor has passed. If the wet cloth does not match the verification card, that section of the floor must be re-cleaned as directed in proposed § 745.85(a)(4)(ii) and left to dry.

For those sections of the floor that did not achieve post-renovation cleaning verification using the wet cloths, the certified renovator must wait for 1 hour after the floor has been re-cleaned or until the floor has dried, whichever is longer. Then, the certified renovator must wipe those sections of the floor with a dry disposable cleaning cloth and compare it to the cleaning verification card. This wiping must also be performed using an application device with a long handle and a head to which the dry cloth is attached. This process must be repeated until a dry cloth that has wiped all of the sections of the floor that have not yet passed verification matches the cleaning verification card. At that point, the entire floor has passed the post-renovation cleaning verification process and the warning signs may be removed.

EPA believes that adherence to this post-renovation cleaning verification protocol, in combination with the proposed training, containment, and cleaning requirements is a safe, reliable and effective system of ensuring that renovation activities do not result in an increased risk of exposure to lead-based paint hazards. In the great majority of cases, windowsills and floors that achieve post-renovation cleaning verification will also pass dust clearance sampling. EPA specifically requests comment on the elements of the proposed protocol, especially with regard to their efficacy and utility. EPA also requests comments on whether the reliability of the cleaning verification would be improved if it were performed by an individual who had not previously participated in the renovation activity, for example, another certified renovator in the renovation firm.

d. *Carpets.* As a final step in the renovation process, EPA is proposing that after containment is removed, the work area be thoroughly cleaned. For floors, the proposal would require vacuuming with a HEPA-equipped vacuum. When cleaning carpets, the vacuum would have to be equipped with a beater bar to aid in dislodging and collecting leaded dust. EPA believes that use of the HEPA-equipped vacuum

equipped with a beater bar to dislodge dust and debris is the most effective cleaning practice for carpets, and that an effective cleaning verification method for carpets is not available. EPA is not proposing that the ''white glove'' cleaning verification protocol be used on carpets after they have been cleaned using a HEPA-equipped vacuum equipped with a beater bar. EPA did not verify use of the ''white glove'' protocol on carpets. In addition, there are questions about the validity of dust clearance sampling on carpeted floors, even though such sampling is required by EPA after abatements and by HUD after interim controls. In its final rule for hazard and clearance standards for the Title X program (Ref. 24), the Agency included standards for carpeted floors, even though the proposed floor standards would have applied only to bare floors (Ref. 64). The Agency initially was concerned that there was a lack of data on the relative performance of sampling methods for carpets, given that various studies had used different sampling techniques (e.g., the Baltimore Repair and Maintenance Study's ''BRM'' vacuum (Ref. 65), the Comprehensive Abatement Performance Pilot Study's ''Blue Nozzle'' vacuum (Ref. 66), and standard dust wipes). Additionally, the Agency did not have adequate data on the effectiveness of carpet cleaning techniques that would be needed to establish a dust clearance level for carpeted floors. Consequently, there were problems establishing a dust lead level on a wipe that would independently indicate that the carpet had been sufficiently cleaned. This problem was exacerbated by the wide variety of carpet types and conditions that would likely be encountered in residential units.

The Agency changed its position in the final lead hazard standards rule as a result of commenters' concerns that many housing units contained carpeting and that, without a standard, such units could not be assessed for the presence of lead hazards from floor dust. Based upon data available to the Agency at that time (Ref. 67), EPA estimated that approximately 54 million housing units built prior to 1978 contained some wall-to-wall carpeting and, of these, 47 million had such carpeting in living rooms and 46 million in bedrooms (i.e., rooms in which children reside and play frequently). Agreeing with these concerns, the Agency determined that the floor standards (using dust wipes) should apply to both bare and carpeted floors in order that all floors would be addressed in lead hazard screens, risk assessments, and abatements.

In making this determination, EPA did not specifically consider the question of whether both the hazard and the clearance floor standards should apply to carpeted floors. Because the hazard and clearance standards were numerically equal, even though they served different purposes and uses, EPA chose to apply both standards to carpeted and uncarpeted floors.

The decision to apply the clearance standard to carpeted floors ultimately had little consequence, given the context in which clearance standards are used--namely, to ensure that sufficient cleanup has been performed after an abatement. Typically, in abatement situations, carpets that are in poor condition or are known to be highly contaminated are removed and disposed of. Where carpets are not replaced, they are cleaned according to specified criteria (Ref. 27). In general, carpets are acknowledged to be potential traps of leaded dust and great care is taken to replace or thoroughly clean them in order to ensure that, once the abatement is concluded, the housing unit is cleanable so that the benefits of the abatement will continue as long as routine cleaning is performed. Consequently, EPA believes that it is this special attention to carpets that ensures that they are sufficiently clean, rather than reliance upon only a post-abatement wipe clearance sample.

e. *Optional use of clearance testing.* Some renovators or homeowners may choose to perform clearance at the completion of renovation activities instead of the post-renovation cleaning verification described in proposed § 745.85(b). If so, dust sampling for clearance would have to be performed by a certified inspector, risk assessor, or dust sampling technician, who would be responsible for collecting dust samples, sending them to an EPA-recognized laboratory, and comparing the results to the clearance levels in accordance with 40 CFR 745.227(e)(8). EPA recommends that the renovation work area be re-cleaned if the home fails the clearance test. It is a good idea to specify in the renovation contract who is responsible for this re-cleaning if the home fails the clearance test. EPA welcomes comment on this part of the proposal.

F. State Renovation Model Program and Authorization Process

Recognizing the importance of EPA's State partners in achieving the goal of eliminating lead-based paint hazards in housing, Congress specifically directed EPA to establish model State programs and a process for authorizing States to operate lead-safe programs in lieu of the Federal program. As it did in the regulations at 40 CFR part 745, subpart L, for lead-based paint activities, the Agency is also seeking to provide Federally recognized Indian Tribes the opportunity to apply for and receive program authorization similar to that available to States. Providing Indian Tribes with this opportunity is consistent with EPA's Policy for the Administration of Environmental Programs on Indian Reservations (Ref. 17).

Accordingly, EPA is proposing 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 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. Under this proposal, EPA would not authorize a State, Territorial, or Tribal program that sought only the authority to administer and enforce the training, certification, accreditation, and work practice requirements of this proposal, and not the pre-renovation education provisions of subpart E. Because this proposal allows and encourages renovation firms to use the existing pamphlet acknowledgment process to obtain information about occupant age and rental status, in order to determine whether the property would be covered by these regulations, and because 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, EPA believes that authorizing States, Territories, and Tribes to administer all of the regulations applicable to renovations is the best approach. However, some States have already been authorized to administer and enforce the existing pre-renovation education provisions in 40 CFR part 745, subpart E. EPA believes that those States should be able to continue administering their pre-renovation education programs without being required to add the training, certification, accreditation, and work practice elements of this proposal. Therefore, EPA is proposing to allow all States, Territories and Tribes to apply for authorization to administer and enforce only the pre-renovation education requirements of 40 CFR part 745, subpart E. Because there are no authorized jurisdictions in the opposite position, no existing State, Territorial, or Tribal program will have to choose

between adding more program responsibilities or relinquishing its authorization.

For the purpose of authorizing State, Territorial, and Tribal programs, EPA is proposing to use the existing procedures codified in 40 CFR part 745, subpart Q, with the amendments of this proposal setting forth the specific elements that would be required of a program seeking authorization to administer and enforce the training, certification, accreditation, and work practice requirements of this proposal. In accordance with the current process for authorization, States, Territories and Tribes may not choose only to administer, but not enforce, the provisions of subpart E, nor may they selectively choose to administer and enforce only the accreditation or certification provisions, but not the work practice standards, for renovations.

States, Territories, and Tribes seeking authority to administer and enforce the provisions of this proposal must obtain public input, then submit an application to EPA. Existing 40 CFR 745.324 describes the process for applying for authorization. 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 in this proposal.

To be eligible for authorization to administer and enforce the training, certification, accreditation, and work practice requirements of this proposal, EPA is proposing to require that State, Territorial, and Tribal renovation programs contain certain minimum elements. These minimum elements would be very similar to the minimum elements currently codified in 40 CFR 745.326(a) for lead-based paint activities. In order to be authorized, State, Territorial, or Tribal programs would have to have procedures and requirements for the accreditation of training programs, which could 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 would also be 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 would also be required to establish work practice standards for renovations that ensure that renovations are conducted only by certified renovation firms and the renovations are conducted using lead-safe 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.

EPA encourages 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 a potential cost-saving 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.

V. New Renovation-Specific Pamphlet

The existing regulations at 40 CFR part 745, subpart E, require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to owners and occupants of such housing prior to commencing the renovation. The term ''pamphlet'' is defined at 40 CFR 745.83 to mean, in part, the EPA pamphlet developed under TSCA section 406(a) for use in complying with this and other regulations under TSCA Title IV and Title X. Until recently, the only pamphlet developed under TSCA section 406(a) was *Protect Your Family from Lead in Your Home* (Ref. 20). EPA has now developed another pamphlet more specific to lead dust hazards created during renovation activities to be distributed to occupants before these activities commence. EPA intends to announce in a future **Federal Register** notice the availability of this new pamphlet, entitled *Protect Your Family from Lead During Renovation, Repair & Painting* (the ''RRP'' pamphlet) for notice and comment.

The RRP pamphlet is very similar to the original PYF pamphlet in that both pamphlets contain information on lead human health effects, human exposure pathways, lead testing, and the location of additional information resources (Ref. 68). However, after careful analysis of available research data related to lead-based paint and renovation activities, EPA has decided to place more emphasis on potential hazards caused by disturbing lead-based paint during renovation activities. This new emphasis offers the public additional information regarding lead-safe work practices which can greatly reduce the creation and release of leaded dust. Because the RRP pamphlet was developed specifically to inform the public about the potential lead hazards that can be caused by renovation activities, EPA is proposing to require the RRP pamphlet to be handed out prior to renovation activities instead of the PYF pamphlet. This pamphlet contains information on lead-based paint hazards specific to renovation activities, as well as information on how to select a renovation firm.

As an alternative to the RRP pamphlet, an authorized State or Tribal program could distribute an alternate pamphlet that had been reviewed and approved by EPA in accordance with 40 CFR 745.326. The alternate pamphlet would have to contain renovation-specific information similar to that in the RRP pamphlet, would have to meet the content requirements prescribed by TSCA section 406(a), and would have to be in a format that was readable to the diverse audience of housing owners and occupants in that State or Tribe.

EPA therefore proposes to amend the definition of ''pamphlet'' in 40 CFR 745.83 to refer specifically to the RRP pamphlet. The effect of this amendment would be to require that renovators who are required under 40 CFR part 745, subpart E, to distribute an information pamphlet, distribute the RRP pamphlet rather than the PYF pamphlet.

In addition, to maintain consistency among the Federal, State, and Tribal pre-renovation notification program requirements, EPA proposes to amend 40 CFR 745.326 to require authorized State or Tribal programs to use the RRP pamphlet or create and distribute an

alternate pamphlet. Alternate pamphlets would be required to contain renovation-specific information similar to that in *Protect Your Family from Lead During Renovation, Repair & Painting*, meet the content requirements prescribed by section 406(a) of TSCA, and be in a format that is readable to the diverse audience of housing owners and occupants in that State or Tribe.

VI. Effective Dates

A. Requirements for Renovation Activities

Interested States, Territories and Indian Tribes could begin applying for authorization of renovation programs from EPA as soon as the final rule is promulgated. Also, after the final rule is promulgated, providers of courses that cover lead-safe work practices for renovations could continue to offer these courses, but they would not be permitted to advertise these courses for EPA certification purposes until they receive accreditation from EPA.

EPA would begin accepting training provider accreditation applications for renovator and dust sampling technician initial and refresher courses 1 year after promulgation of a final rule. The reason for the delay is to provide interested States, Territories and Indian Tribes 1 year to develop, or begin developing, renovation-specific work practice standards and accreditation, training, and certification programs. EPA believes the nation's experience in implementing the lead-based paint activities program regulations at 40 CFR part 745, subpart L should help everyone involved, including States, Territories, Tribes, the regulated community, and EPA, move more quickly towards implementing renovation programs. Thus, EPA is not proposing to make training programs for the federal program wait 2 years before they can receive accreditation, as EPA did for the subpart L regulations. On the other hand, EPA is concerned about the duplication of effort that could occur, and the additional costs that could be 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. Training providers, firms, and individuals working in such jurisdictions could end up having to become accredited or certified by both EPA and the State, Territory or Tribe within a fairly short period of time. EPA requests comment on the feasibility of developing State, Territorial, or Tribal programs and getting them authorized within a year after EPA promulgates a final rule. EPA also requests comment on ways to avoid multiple accreditations and certifications in jurisdictions that are unable to receive authorization for their programs within the first year after EPA promulgates a final rule. In addition, EPA requests comment on whether any implementation delay is necessary, given that EPA accreditation and certification would be valid in any State or Indian Tribal area that does not have a renovation program authorized under 40 CFR part 745, subpart Q.

Firm certification applications would be accepted by EPA starting 6 months after EPA begins accepting training provider accreditation applications, or 18 months after the promulgation date of the final rule. The work practice standards would become effective 2 years after the promulgation date of the final rule, at which time all covered renovations would have to be performed in accordance with those standards by certified renovators and trained workers.

As discussed in Unit IV.B., EPA is proposing to initially apply the training, certification, accreditation, and work practice requirements of this proposal to pre-1960 rental target housing, pre-1960 owner-occupied target housing where a child under age 6 resides, and any target housing where a child under age 6 with a blood lead level that equals or exceeds 10 μg/dL, or any lower State or local government level of concern, resides. Those requirements would apply 1 year later to rental target housing built between 1960 and 1978, and owner-occupied target housing built between 1960 and 1978 where a child under age 6 resides. Allowing for the time given to interested States, Territories and Tribes to develop programs, the first phase of this regulation would be fully effective 2 years after the date of promulgation of a final rule. The second phase of this regulation would take effect 3 years after a final rule is promulgated.

B. Renovation-specific Pamphlet

EPA is also proposing to phase in the requirement to use the new RRP pamphlet discussed in Unit V. For the purpose of complying with the Federal Pre-Renovation Education Rule, in the first 6 months after this regulation is promulgated, persons performing renovations could distribute either the PYF or the new RRP pamphlet. After 6 months, only the RRP pamphlet could be used to comply with the Pre-Renovation Education Rule in jurisdictions where the Federal program is in effect.

However, EPA recognizes that approved State, Territorial, and Tribal Pre-Renovation Education programs, or jurisdictions developing programs, may need time to amend their programs and either adopt the RRP pamphlet or develop and obtain approval for an alternate pamphlet. EPA has worked with the existing State programs to develop an acceptable time frame for meeting the new requirements. In doing so, EPA identified three potential non-Federal program categories: (1) Programs authorized prior to the effective date of the final rule, (2) potential new programs with an application submitted but not approved prior to the effective date of the final rule, and (3) potential new programs that might apply after the effective date of the final rule. The time frame for compliance for each category is set forth in proposed 40 CFR 745.326(b)(3).

In sum, such programs authorized prior to the effective date of the final rule would demonstrate compliance in the first § 745.324(h) report submitted at least 2 years after the effective date of the final rule. Potential new programs with an application submitted but not approved prior to the effective date of the final rule would demonstrate compliance in the first § 745.324(h) report submitted at least 2 years after the effective date of the final rule or by amending their application to comply with this amendment. Potential new programs that might apply after the effective date of the final rule would be required to demonstrate compliance with the amendment at the time of their application to EPA for program approval.

VII. References

The following is a list of the documents that are specifically referenced in this proposed 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). Sample acknowledgment form. (2005).

2. Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) (Public Law 102–550).

3. U.S. Department of Health and Human Services (HHS), Public Health Service (PHS), Centers for Disease Control and Prevention (CDC). Preventing Lead Poisoning in Young Children; A Statement by the Centers for Disease Control and Prevention (August 2005).

4. HHS, PHS, Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological Profile for Lead (July 1999).

5. USEPA, Office of Research and Development (ORD). Air Quality Criteria for Lead, First External Review Draft (EPA/600/R-05/144aA, December 2005)

6. USEPA. Integrated Risk Information System; Lead and compounds (inorganic) (CASRN 7439–92–1) (July 8, 2004).

7. U.S. Consumer Product Safety Commission. **Federal Register** (42 FR 44199, September 1, 1977, as amended at 43 FR 8515, March 2, 1978).

8. U.S. Department of Labor (USDOL), Occupational Safety and Health Administration (OSHA). Final Standard for Occupational Exposure to Lead. **Federal Register** (43 FR 52952, November 14, 1978).

9. USDOL, OSHA. Lead Exposure in Construction; Interim Final Rule.**Federal Register** (58 FR 26590, May 4, 1993).

10. USEPA. Control of Lead Additives in Gasoline; Final Rule. **Federal Register** (38 FR 33734, December 6, 1973).

11. USEPA. Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper; Final Rule. **Federal Register** (56 FR 26460, June 7, 1991).

12. U.S. Department of Health and Human Services (HHS), Public Health Service (PHS), Centers for Disease Control and Prevention (CDC). Preventing Lead Poisoning in Young Children; A Statement by the Centers for Disease Control and Prevention (October 1991).

13. Alliance to End Childhood Lead Poisoning. Preventing Childhood Lead Poisoning: The First Comprehensive National Conference; Final Report. (October 6, 7, 8, 1991).

14. 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).

15. HHS, PHS, CDC. Preventing Lead Exposure in Young Children: A Housing Based Approach to Primary Prevention of Lead Poisoning: Recommendations from the Advisory Committee on Childhood Lead Poisoning Prevention (October 2004).

16. USEPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities: Final Rule. **Federal Register** (61 FR 45778, August 29, 1996).

17. USEPA. EPA Policy for the Administration of Environmental Programs on Indian Reservations (November 8, 1984).

18. USEPA. Lead; Fees for Accreditation of Training Programs and Certification of Lead-based Paint Activities Contractors; Final Rule. **Federal Register** (64 FR 31092, June 9, 1999).

19. USEPA. Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training; Final Rule. **Federal Register** (69 FR 18489, April 8, 2004).

20. USEPA, Consumer Product Safety Commission, U.S. Department of Housing and Urban Development (HUD). Protect Your Family From Lead in Your Home (EPA 747-K-99-001, June 2003).

21. USEPA. Lead Hazard Information Pamphlet; Notice of Availability. **Federal Register** (60 FR 39167, August 1, 1995).

22. HUD, USEPA. Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing; Final Rule. **Federal Register** (61 FR 9064, March 6, 1996).

23. USEPA. Lead; Requirements for Hazard Education Before Renovation of Target Housing; Final Rule. **Federal Register** (63 FR 29908, June 1, 1998).

24. USEPA. Lead; Identification of Dangerous Levels of Lead; Final Rule. **Federal Register** (66 FR 1206, January 5, 2001).

25. USEPA. Targeted Grants to Reduce Childhood Lead Poisoning; Notice of Funds Availability. **Federal Register** (69 FR 69913, December 1, 2004).

26. HUD. Requirements for Notification, Evaluation, and Reduction of Lead-based Paint Hazards in Housing Receiving Federal Assistance and Federally Owned Residential Property Being Sold (Lead Safe Housing Rule); Final Rule, Conforming Amendments and Corrections. **Federal Register** (69 FR 34262, June 21, 2004).

27. HUD. Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995).

28. HHS, PHS, CDC. Managing Elevated Blood Lead Levels Among Young Children (March 2002).

29. USEPA. Reducing Lead Hazards When Remodeling Your Home (EPA747-K-97-001, September 1997).

30. USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase I, Environmental Field Sampling Study (EPA 747-R-96-007, May 1997).

31. USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase II, Worker Characterization and Blood-Lead Study (EPA 747-R-96-006, May 1997).

32. USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase III, Wisconsin Childhood Blood-Lead Study (EPA 747-R-99-002, March 1999).

33. USEPA. Report of the Small Business Advocacy Review Panel on the Lead-based Paint Certification and Training; Renovation and Remodeling Requirements (March 3, 2000).

34. McMillan Associates. Response to SBREFA Panel Recommendations for Further Analysis of Existing Phase III Data (August 6, 2001).

35. HHS, 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).

36. 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).

37. 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).

38. USEPA. Lead Exposure Associated with Renovation and Remodeling Activities; Final Summary Report (EPA 747-S-00-001, January 2000).

39. USEPA. TSCA Section 402(c) Lead Exposure Reduction Stakeholder Meeting for the Proposed Renovation and Remodeling Rule (December 7, 1998).

40. USEPA. Round Table Discussion of TSCA Section 402(c) Lead Exposure Reduction Proposed Renovation and Remodeling Rule (March 8, 1999).

41. USEPA. Lead Programs Meeting, Meeting Summary (September 25-26, 2000).

42. USEPA. Summary of Discussion with State, Local, and Tribal Government Representatives (May 1, 2003).

43. USEPA. Summary of Discussion with State, Local, and Tribal Government Representatives (May 15, 2003).

44. USEPA. Summary of Discussion with Industry Stakeholders (May 9, 2003).

45. USEPA. Summary of Discussion with Industry Stakeholders (May 29, 2003).

46. HUD. National Survey of Lead and Allergens in Housing, Volume I: Analysis of Lead Hazards, Final Report, Revision 7.1. (October 31, 2002).

47. NIST. Spot Test Kits for Detecting Lead in Household Paint, a Laboratory Evaluation (NISTIR 6398, May 2000).

48. USEPA. Estimates of Concentration of Lead in Paint by Age of Housing (October 2005).

49. USEPA. Lead; Requirements for Hazard Education Before Renovation of Target Housing; Proposed Rule. **Federal Register** (59 FR 11108, March 9, 1994).

50. ASTM International. Standard Practice for Evaluating the Performance Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint (E 1828-01).

51. USEPA. Draft Recordkeeping Checklist for Firms (December 2005).

52. USEPA, HUD. Lead Safety for Remodeling, Repair, and Painting (EPA 747-B-03-001/2, July 2003).

53. HUD, Office of Policy Development and Research. The HUD Lead-Based Paint Abatement Demonstration (FHA) (August 1991).

54. USEPA, Office of Pollution Prevention and Toxics (OPPT). Lead Dust Minimization Work Practices for Renovation, Remodeling and Repainting; Draft Technical Manual (September 29, 1998).

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56. USEPA, Office of Solid Waste (OSW). Memorandum from Elizabeth A. Cotsworth, Director, ''Regulatory Status of Waste Generated by Contractors and Residents from Lead-Based Paint Activities Conducted in Households'' (July 31, 2000).

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59. USEPA, OPPT. Draft Economic Analysis for the Renovation, Repair, and Painting Program Proposed Rule (December 2005).

60. National Center for Healthy Housing. An Evaluation of the Efficacy of the Lead Hazard Reduction Treatments Prescribed in Maryland Environmental Article 6-8 (April 30, 2002).

61. USEPA. Electrostatic Cloth and Wet Cloth Field Study in Residential Housing (September 2005).

62. USEPA. Draft Cleaning Verification Card (2005)

63. USEPA, OPPT. Quality Assurance Project Plan (QAPP) for the Field Study; Appendix A - Standard Operating Procedure (SOP) for Using the Dry Electrostatic Cloth and Mop to Collect Lead Dust (July 12, 2004).

64. USEPA. Lead; Identification of Dangerous Levels of Lead; Proposed Rule. **Federal Register** (63 FR 30302, June 3, 1998).

65. USEPA. Lead-Based Paint Abatement and Repair and Maintenance Study in Baltimore: Pre-Intervention Findings. (EPA 747-R-95-012, August 1996).

66. USEPA. Comprehensive Abatement Performance Pilot Study, Volume 1: Results of Lead Data Analyses (EPA 747-R-93-007, February 1995).

67. U.S. Census Bureau. Current Housing Reports, Series H150/97, American Housing Survey for the United States (1997).

68. USEPA. Protect Your Family from Lead During Renovation, Repair, & Painting (2005).

69. USEPA. Proposed ICR amendment for rulemaking entitled ''Lead; Renovation, Repair, and Painting Program; Proposed Rule'' (December 2005).

70. USEPA. Risk Analysis to Support Standards for Lead in Paint, Dust, and Soil (EPA 747-R-97-006, June 1998).

71. USEPA. Risk Analysis to Support Standards for Lead in Paint, Dust, and Soil: Supplemental Report (EPA 747-R-00-004, December 2000).

72. ASTM International. Standard Practice for Clearance Examinations Following Lead Hazard Reduction Activities in Single-Family Dwellings and Child-Occupied Facilities (E 2271-05).

73. ASTM International. Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities (E 2052-99).

VIII. Statutory and Executive Order Reviews

A. Regulatory Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this proposed 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.

As required by the Executive Order, EPA also submitted a draft analysis of the potential costs and benefits associated with this proposed rulemaking. This analysis is contained in a document entitled *Draft Economic Analysis for the Renovation, Repair, and Painting Program Proposed Rule* (Draft Economic Analysis) (Ref. 59). The Agency is conducting additional analyses with other assumptions for baseline activities than those that were used in the Agency's Draft Economic Analysis to estimate the potential costs and benefits of the proposed rule. Information about these new analyses is available in the docket, and, once completed, the revised Economic Analysis will also be available in the docket. The additional analyses are expected to change the estimated potential costs and benefits of the proposed rule. A copy of this Economic Analysis is available in the docket for this action, and is briefly summarized here.

1. *Options evaluated.* EPA evaluated a number of options in the development of the proposed rule. All options address target housing, which is defined in section 401 of TSCA as housing constructed before 1978, except housing for the elderly and persons with disabilities, unless any child under age 6 resides or is expected to reside in such housing, or any 0–bedroom dwelling. Option A applies to renovation, repair, and painting projects performed for compensation in all rental target housing and owner-occupied target housing built before 1978 where a child under age 6 resides. Option B has 2 phases. The first phase applies to rental target housing built before 1960, and owner-occupied target housing units built before 1960 where a child under age 6 resides, plus all housing units built before 1978 where a child with a blood lead level that equals or exceeds applicable levels of concern resides. The second phase, which takes effect a year after the first phase, applies to all the housing units covered by Option A. Option C also has 2 phases. The first phase applies to all rental housing built before 1950, and owner-occupied housing units built before 1950 where a child under age 6 resides, plus all housing units built before 1978 where a child with a blood lead level that equals or exceeds applicable levels of concern

resides. The second phase, which takes effect a year after the first phase, applies to all the housing units covered by Option A. Option D covers the same housing units at the same times as Option B, but differs from Options A, B, and C in that they allow a certified renovator flexibility in selecting appropriate work practices for each individual job, while Option D does not provide such flexibility. The proposed rule is Option B.

2. *Number of events and individuals.* As shown in the Draft Economic Analysis, the number of renovation, repair, and painting events covered by the rule varies across regulatory options in Phase 1 as a result of the different time periods addressed by the options. The number of events covered in Phase 2 is the same for all options because the housing units regulated are the same, i.e., pre-1978 units. Because not all housing units built before 1978 have lead-based paint, not all events need to use lead-safe work practices. The number of events with lead-safe work practices in Phase 2 is smaller than in Phase 1 for all but Option C, despite the increase in housing units covered by Phase 2 under Options B, C, and D. The number of events requiring lead-safe work practices is smaller because the accuracy of lead paint test kits (in terms of detecting the presence or absence of regulated lead-based paint) is expected to have improved by Phase 2. Under the proposed rule, in Phase 1 there would be 4.8 million events in housing where lead-safe work practices are used due to the rule. Slightly more than 4.9 million individuals reside in these housing units, including 729,000 children under age 6. In Phase 2, the proposed rule would cover 4.4 million such events in units housing nearly 5.8 million individuals, including 855,000 children under age 6.

3. *Benefits.* The Draft Economic Analysis describes the estimated benefits of the proposed rulemaking in qualitative and quantitative terms. Benefits result from the prevention of adverse health effects attributable to lead exposure. These health effects include several illnesses as well as impaired cognitive function in adults and children.

There are not sufficient data at this time to quantify some of the potential benefits of reducing exposure to lead. EPA's Draft Economic Analysis estimates the benefits of avoiding selected health effects in children and adults.

The Agency considered the potential benefits to both children and adults because studies indicate that they are both adversely affected by exposures to lead in dust from renovation and remodeling activities. As stated in Unit III.B., one of the purposes of Title X is the elimination of lead-based paint hazards in target housing. EPA considered the potential benefits to children separately from adults, because a focus of Title X is the reduction in the threat of childhood lead poisoning. The Agency specifically seeks comment on its consideration of potential benefits to both adults and children, as well as comments and information about the potential uncertainties associated with the adult health effects considered and the magnitude of those uncertainties.

4. *Costs.* The Draft Economic Analysis estimates the potential costs of complying with this proposed rule including training costs, certification costs, and work practice costs. As indicated previously, the Agency is conducting additional analysis that could change the estimated potential costs of the proposed rule. This new analysis will be added to the docket as soon as it is complete. In the Draft Economic Analysis, training costs will be incurred for renovators, who will perform or direct the performance of key tasks during renovations, and workers, who may perform renovation tasks under the direction of renovators. Persons who are not currently certified as lead-based paint abatement supervisors or workers and who wish to become certified renovators would be required to take an accredited 8–hour renovator course. Currently certified abatement supervisors and workers would merely need to familiarize themselves with this proposal's work practice and cleaning verification requirements. Training for renovation workers under this proposal would consist of informal, on-the-job training by a renovator. Renovators not otherwise certified would be required to take a 4–hour refresher course every 3 years to maintain their certification. Firms performing renovations will have to be certified by EPA or an EPA-authorized State, Tribal, or Territorial program. Certified firms would have to be re-certified every 3 years.

The work practice requirements of this proposal cover 3 general categories of activities: Containing the work area, cleaning up the work area after the project has been completed, and verifying that the clean-up was adequate. Costs associated with these work practice requirements are primarily related to the cost of materials, such as the plastic used to cover the floors, and the cost of the labor needed to establish containment before the project, clean the work area afterwards, and perform the post-renovation cleaning verification step.

To further improve the analysis for the final rule, the Agency is also specifically interested in comments and supporting information on the following questions related to assumptions used in the Agency's analysis:

- To what extent do renovators/contractors already conduct any of the individual activities described in the proposed rule, and under what renovation, repair or painting circumstances are any of these activities routinely or rarely conducted? Do any contractors already perform all of the lead safe work practices described in this proposal?
- To what extent is the whole house or rooms adjacent to the work area contaminated by typical renovation, repair or painting activities? Under what circumstances do renovators/contractors clean the whole house or adjacent rooms during or after renovation, repair or painting activities?
- Under what circumstances do homeowners or rental management firms clean the work area or adjacent rooms during or after renovation, repair or painting activities?
- To what extent do renovators/contractors or homeowners already use vacuums equipped with HEPA filters to clean-up debris created during renovation, repair or painting activities?
- Under what circumstances do renovators/contractors use plastic sheets or other methods to isolate and collect dust and debris, during or after renovation, repair or painting activities?
- If dust or debris is generated in preparing the surfaces, to what extent do renovators/contractors or building owners clean-up the dust or debris before painting?
- To what extent should the analysis reflect any exposures to owners or occupants (both inhalation and ingestion) during the renovation, repair or painting event? (The Draft Economic Analysis only looks at ingestion exposures after the renovation, repair or painting event is completed and the contractor has left).
- How many days does a typical renovation, repair or painting event last? How many days during the renovation, repair or painting event is dust created? How often and how thoroughly is cleaning performed during or after the renovation, repair or painting event?
- To what extent should the analysis of adult exposures consider average dust loading on surfaces as compared to the typically higher dust loadings resulting from renovation, repair or painting events?

- How do cleaning efficiencies of different cleaning methods (sweeping, regular vacuum, HEPA vacuum) vary with the dust loading level? There is information suggesting that cleaning is more effective (as a percentage of dust removed) at higher dust loading levels. Thus, when there are multiple rounds of cleaning, each one picks up a lower percentage of dust than the one before it. Would the cleaning efficiency be the same for dust with different lead concentrations? The Draft Economic Analysis assumes that cleaning effectiveness is constant, and does not vary with dust loading levels.
- How do lead dust loading levels vary by the age of the home and by home component type (e.g., indoor trim versus outdoor trim)?

B. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document prepared by EPA, an amendment to an existing ICR that is approved under OMB control number 2070–0155 and referred to as the ICR Addendum (EPA ICR No. 1715.07) has been placed in the public docket for this proposed rule (Ref. 69).

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. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

The new information collection activities contained in this proposed 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 contractors; and determining whether work practice standards are being followed. EPA has carefully tailored the proposed reporting and recordkeeping requirements so they will permit the Agency to achieve statutory objectives without imposing an undue burden on those entities that choose to be involved in residential renovations.

Burden under the PRA 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 proposal, the new information collection requirements may affect training providers and firms that perform renovation, repair, or painting for compensation in regulated housing. Although these entities have the option of choosing to engage in the covered activities, once an entity chooses to do so, the information collection activities contained in this rule become mandatory for those entities.

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 renovation firms is summarized here.

There are 100 to 167 training providers that are estimated to incur burden to become accredited, and to notify EPA (or an authorized State, Tribe, or Territory) before and after training courses. The average burden related to accreditation is estimated to be 15 hours during the year a training provider is first accredited, 7 hours in years that it is re-accredited (re-accreditation is required every 3 years), and 1 hour during other years. For notifications, the average burden per training provider is estimated at 35 to 95 hours per year, depending on the number of training courses provided. Total training provider burden is estimated to be 6,300 to 12,900 hours per year.

The estimated number of firms certified to engage in residential renovation, repair, or painting activities under the rule varies from 115,000 to 218,000, depending on the phase of the rule. The number of firms that receive initial certification ranges from 72,000 per year to 141,000 per year, depending on the year. 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 3 years). Firms must also keep records of the work they perform in regulated housing; this recordkeeping is estimated to take an average of 5 hours per year. Total burden for renovation, repair, and painting firms is estimated to be 981,000 to 1,530,000 hours per year, depending on the year.

Total respondent burden during the period covered by the ICR is estimated to average 1,260,000 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 proposed 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.

Direct your comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to EPA using the public docket that has been established for this proposed rule (Docket ID No. EPA–HQ–OPPT–2005–0049). In addition, send a copy of your comments about the ICR to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, Attention: Desk Office for EPA ICR No. 1715.07. Since OMB is required to complete its review of the ICR between 30 and 60 days after January 10, 2006, please submit your ICR comments for OMB consideration to OMB by February 9, 2006.

The Agency will consider and address comments received on the information collection requirements contained in this proposal when it develops the final rule.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, and the Agency's long-standing policy of always considering whether there may be a potential for adverse impacts on small entities, the Agency has evaluated the potential small entity impacts of this proposed rule. The Agency's analysis of potentially adverse

economic impacts is included in the Draft Economic Analysis for this proposed rule (Ref. 59). As discussed in Unit VIII.A., the revised Economic Analysis, to be available in the docket, will provide additional information about the expected costs and benefits, and supplement the information now provided in the initial regulatory flexibility analysis and considered for the final regulatory flexibility analysis. The following is a brief overview of EPA's initial regulatory flexibility analysis.

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined in accordance with 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.

1. *Legal basis and objectives for the proposed rule.* As discussed in Unit III.C., 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 a lead-based paint hazard 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 proposing to revise the TSCA section 402(a) regulatory scheme to apply to individuals and firms engaged in renovation and remodeling activities. The primary objective of this proposal is to prevent the creation of new lead-based paint hazards from renovation, repair, and painting activities in housing where children under age 6 reside.

2. *Potentially affected small entities.* The small entities that are potentially directly regulated by this proposed rule include small businesses, such as renovation, repair, and painting contractors, property owners and managers, small non-profits that own target housing, and small governments that may own certain target housing. The vast majority of businesses in the industries affected by this rule are small. Approximately 200,000 small contractors and real estate establishments per year will be affected per year under the proposed rule. Information was not available to estimate the number of small governments and small non-profits, but there are expected to be few, if any, small governments that incur costs due to the rule.

3. *Potential economic impacts on small entities.* EPA used annual compliance costs as a percentage of annual company revenues to assess the potential impacts of the rule on small businesses. EPA believes this is a good measure of a firm's 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 a company's business volume. Where regulatory costs represent a small fraction of a typical firm's revenues (for example, less than 1%, and not greater than 3%), EPA believes that the financial impacts of the regulation on such firms may be considered as not significant. EPA believes it is appropriate to calculate this measure based on annualized costs, because these costs are more representative of the continuing costs firms face to comply with the proposed rule.

Using studies from the economics literature, the Draft Economic Analysis (Ref. 59) for this proposed rule estimates that nearly 90% of the estimated cost will be passed on to consumers in the form of higher prices. The resulting cost impact ranges from about 0.5% to 1.6% of revenues, depending on the industry. The costs represent less than 1% of revenues for small firms when considered together. Because of the lack of information on small non-profits and governments that might be affected by the rule, it was not possible to calculate the typical cost per entity or the impact ratios for them. However, the cost per event for non-profits and governments is expected to be similar to that incurred by businesses.

4. *Relevant Federal rules.* The proposed 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 III.B.2.b., requires renovators to distribute a lead hazard information pamphlet to owners and occupants before conducting a renovation in target housing. This proposal has been carefully crafted to harmonize with the existing pre-renovation education requirements.

As discussed in Unit IV.D.2.c., disposal of waste from renovation projects that would be regulated by this proposal is covered by the Resource Conservation and Recovery Act (RCRA) regulations for solid waste. This proposal does not contain specific requirements for the disposal of waste from renovations.

As described in Unit III.B.3., 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 would be regulated under this proposal 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 proposal. 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 proposal. However, this proposal would 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, described in Unit III.B.3., may cover many of the same projects as this proposal, the requirements themselves do not overlap. The OSHA rule addresses the protection of the worker, this EPA proposal addresses the protection of the building occupants, particularly children under age 6.

5. *Skills needed for compliance.* This proposal would establish requirements for training renovators and dust sampling technicians; certifying renovators, dust sampling technicians, and renovation firms; 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. 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. They would also need

to document the work they have performed during renovations. This does not require any special skills. 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*. EPA conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements. The Panel was convened by EPA's Small Business Advocacy Chairperson on November 23, 1999. In addition to the chairperson, the Panel consisted of the Director of the Office of Pollution Prevention and Toxics, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel for Advocacy of the Small Business Administration.

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 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. At the onset of pre-panel discussions with SBA and OMB, EPA held three conference calls with potentially impacted Small Entity Representatives (SERs) to obtain feedback on these options and other alternatives for a renovation and remodeling regulation. The Panel held an outreach meeting with Small Entity Representatives (SERs) on December 3, 1999. Eleven SERs, representing a broad range of small entities from diverse geographic locations, and four association representatives participated in the meeting. The Panel solicited comments from the SERs on the options presented by EPA, as well as EPA's cost estimates for these options. Several SERs submitted written comments to EPA following this meeting. The Panel evaluated the assembled materials and small-entity comments, and prepared a report for the Agency's consideration. A copy of the Panel report is included in the docket for this proposed rule (Ref. 33).

As a result of its deliberations, the Panel made a number of recommendations. The options presented by EPA, the Panel's recommendations, and EPA's responses to the recommendations, are summarized here.

a. *Applicability and scope*. EPA presented four options: All pre-1978 housing, all pre-1978 rental housing, all pre-1960 housing, and all pre-1960 rental housing. The 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. In the discussion of the scope and applicability in Unit IV.B., EPA identified the pre-1960 option, as well as the option of covering all pre-1978 housing, and asked for public comment on these and other options that would limit the costs of the rule to the regulated community while providing protection to children from lead-based paint hazards created by renovation projects.

EPA also presented 2 potential exemptions, a *de minimis* exemption for projects that disturb 2 square feet or less of painted surfaces, and an exemption for emergency projects. The Panel recommended that EPA include both of these exemptions in its proposal. EPA is proposing to extend the existing exemption for small projects available under the Pre-Renovation Education Rule to the training, certification, and work practice requirements of this proposal. However, rather than just exempting emergency renovations from the requirements of this proposal, EPA is adding a statement to the description of the exemption to indicate that the training, certification, and work practice standards apply to the extent practicable. As discussed in Unit IV.B., emergency renovations can generally be conducted in accordance with most of these proposed requirements, but some flexibility is necessary.

b. *Firm certification*. EPA presented three options: Certification for all renovation firms, certification only for firms that perform large-scale surface preparation activities or demolitions, and no firm certification. The Panel believed that firm certification would help consumers identify qualified renovation firms, so the Panel recommended that firm certification be included in any proposal. The Panel also recommended that EPA attempt to balance the goals and objectives of the statute, with the burden associated with such regulatory requirements, in order to avoid placing compliant firms at an undue competitive disadvantage. EPA is proposing to require that firms who perform renovations, as that term would be defined, be certified. EPA believes that the proposed firm certification process is as minimally burdensome for firms as possible, while achieving the objectives of the mandate.

c. *Individual training and certification*. EPA presented four options to the Panel. The first option was to require training and certification for all individuals who perform covered renovations. The second option was to require training and certification only for the supervisor. The third option was to require training for all individuals who perform covered renovations, but no certification. The final option was to require neither training nor certification for individuals. The Panel realized that worker training increases the likelihood that proper lead-safe work practices will be used, but recognized that the rate of worker turnover in the industry would lead to high training and certification costs for firms. As a less-burdensome alternative, the Panel recommended that EPA propose formal training for supervisors, or some other clearly-defined responsible person, and informal training for all others. This recommendation has been adopted by EPA in the proposed rule.

d. *Accreditation of training courses*. EPA presented two options on this topic to the Panel: Accreditation required, or accreditation not required. Although concerned about burdens for training providers, the Panel understood that accreditation provides a mechanism for ensuring quality control of training programs, establishing a minimum level of essential training, and facilitating reciprocity between States. The Panel recommended that EPA propose to require accreditation of training, which is what EPA is doing in this proposal.

e. *Work practice standards*. EPA presented three 3 general options to the Panel for work practice standards: prescriptive containment and clean-up requirements, performance-based containment and clean-up requirements, or no work practice requirements. The Panel recognized that prescriptive approaches to work practice standards

may clearly identify ways to minimize lead-based paint hazards, but felt that prescriptive practices may not be practical or effective in all situations. Because a performance-based approach could provide firms with the flexibility to manage risks in the most cost-effective manner, the Panel recommended that EPA include performance-based standards in the proposal. In response to this recommendation, EPA is proposing an approach that includes required elements, such as warning signs, containment barriers, and specialized cleaning, but allows flexibility for the certified renovator to tailor these requirements to the specific job at hand.

f. *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 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 Panel recognized industry concerns over the feasibility of prohibiting these practices, especially when no cost-effective alternatives exist. The 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. In Unit IV.D., EPA has followed the Panel's recommendation and requested public comment on the cost, benefit, and feasibility of prohibiting certain work practices, but EPA is not proposing to prohibit any work practices. EPA has determined that the training, containment, and clean-up requirements of this proposal are sufficient to address any risks associated with the work practices prohibited by the abatement regulations.

g. *Exterior clearance.* EPA presented three options to the Panel for determining when an exterior renovation project area had been properly cleaned-up and the area made ready for re-occupancy. This determination is typically called ''clearance.'' EPA's three options were visual inspection only, soil sampling, or no clearance process at all. Consistent with other Federal lead-based paint regulations, including the abatement regulations at 40 CFR part 745, subpart L, the Panel recommended that EPA propose to require a visual inspection for clearance after exterior renovations. This is the option EPA has proposed in this rulemaking.

h. *Interior clearance.* Interior clearance was a particularly difficult issue for the Panel. Interior clearance after lead-based paint abatement projects involves an independent third-party collecting dust wipe samples, sending them to an EPA-recognized laboratory for analysis, and comparing the results to the standards established in 40 CFR 745.227(e)(8). This is expensive and time-consuming. EPA presented 4 options to the Panel for interior clearance: dust testing after all projects, dust testing only after large-scale surface preparation, demolition, or any of the practices prohibited by the abatement regulations, visual clearance only, and no clearance at all. After reviewing the studies available at the time, the Panel could not conclude that a thorough professional clean-up or a visual inspection would be an adequate substitute for dust wipe testing. The SBA introduced a new option to the Panel, consisting of a specific cleanup methodology followed by a visual clearance requirement, as an alternative to dust clearance testing. The Panel recommended that EPA include this new option in the proposal and take comment on the merits of all the interior clearance options in the proposal. The Panel also recommended that EPA take comment on options for clearance that are less costly and less burdensome and yet still demonstrate the absence of lead hazards. As discussed in Unit IV.E., EPA followed the Panel report with research into alternatives to laboratory dust clearance and is proposing an option based on this research. EPA is also requesting comment on other methods of ensuring that leaded dust and debris created during renovations have been cleaned up properly.

The Panel also recommended that the EPA do additional analysis of the existing data from Phase III of the renovation and remodeling study conducted under TSCA section 402(c)(2), discussed in Unit III.C.1.c. This phase of the study consisted of telephone interviews about renovation and remodeling activities with the parents or guardians of Wisconsin children for whom blood-lead data was available. The results of this additional analysis, which focused on the relationship between who performs renovation and remodeling activities and the odds of an elevated blood-lead level occurring in a resident child, are discussed in Unit III.C.1.c. and have been placed in the docket (Ref. 34).

Finally, the Panel recommended that EPA continue to refine the impact analysis of the proposal, utilizing comments from affected industry and other parties related to costs and other issues. As always, EPA continues to refine its impact analysis, and is again requesting comment on EPA's updated assessment of the costs and benefits of this proposed rule.

EPA invites comments on all aspects of the proposal and its impacts on small entities.

D. Unfunded Mandates Reform Act (UMRA)

Under Title II of the Unfunded Mandates Reform Act (UMRA) (Public Law 104–4), EPA has determined that this proposed rule contains a Federal mandate that may result in expenditures of $100 million or more 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 the UMRA which has been placed in the public docket for this proposed rule and is summarized here.

1. *Authorizing legislation*. This proposal is issued under the authority of TSCA sections 402(c)(3) and 404.

2. *Cost-benefit analysis*. EPA has prepared an analysis of the costs and benefits associated with this proposed action (Ref. 59), a copy of which is available in the public docket for this rulemaking. The Draft Economic Analysis presents the costs of the proposal as well as various regulatory options and is summarized in Unit VIII.A.

3. *State, local, and Tribal government input*. EPA has sought input from State, local and Tribal government representatives throughout the development of this proposal. 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., the Agency has met with State, local, and Tribal government officials on numerous occasions to discuss renovation issues.

4. *Least burdensome option*. As discussed in the Draft Economic Analysis prepared for this regulation, as well as in the information presented on the Panel review process in Unit VIII.C.6., EPA considered a wide variety of options for addressing the risks presented by renovation activities in

residences where lead-based paint is present. Options considered include covering only homes built before 1960, various combinations of training and certification requirements for individuals who perform renovations in covered housing, various combinations of work practice requirements, and various methods for ensuring that no lead-based paint hazards are left behind by persons performing renovations. EPA has determined that the proposed option is the least burdensome option available that achieves the objective of this proposed rule, which is to prevent the creation of new lead-based paint hazards from renovation, repair, and painting activities in housing where children under age 6 reside.

This proposed rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Based on the definition of ''small government jurisdiction'' in RFA section 601, no State governments can be considered small. Small Territorial or Tribal governments could apply for authorization to administer and enforce this program, which would entail costs, but these small jurisdictions are under no obligation to do so.

E. Federalism

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed 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 proposed rule.

As discussed in Unit IV.F., States would be able to apply for, and receive authorization to administer these proposed requirements, but would be under no obligation to do so. In the absence of a State authorization, EPA will administer these requirements. In addition, although the provisions of this proposal would apply to renovations in target housing owned by State and local governments, many of these housing authorities receive federal subsidies for public housing.

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 this rule. EPA hosted three renovation-specific meetings or conference calls with State and local government officials. Summaries of these meetings have been placed in the public docket for this action (Refs. 41, 42, and 43).

EPA specifically solicits additional comment on this proposed rule from State and local officials.

F. Tribal Implications

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 6, 2000), EPA has determined that this proposed 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. As discussed in Unit IV.F., Tribes would be able to apply for, and receive authorization to administer these proposed 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. 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 at several national lead program meetings hosted by EPA and other interested Federal agencies.

EPA specifically solicits additional comment on this proposed rule from Tribal officials.

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 proposed rule because it has been designated an ''economically significant regulatory action'' as defined by Executive Order 12866, and the environmental health or safety risk addressed by this action 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 Units III.C., IV.A., VIII.A., and VIII.C. Copies of the renovation and remodeling studies (Refs. 30, 31, 32, 37, and 38), the Draft Economic Analysis for this proposal (Ref. 59), the proposed and final TSCA section 403 hazard standards (Refs. 24 and 64), and the risk assessments supporting the hazard standards (Refs. 70 and 71) have been placed in the public docket for this action.

One purpose of this proposed regulation is to prevent the creation of new lead-based paint hazards from renovation activities in housing where children under age 6 reside. EPA's analysis indicates that renovation, repair, and painting projects in housing that is likely to contain lead-based paint will affect over 1.1 million children under age 6 annually. In the absence of this regulation, lead-safe work practices are not likely to be employed to perform the renovation projects. 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.

EPA is proposing 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. EPA has identified 2 voluntary consensus documents that address aspects of the proper performance of renovation projects where lead-based paint is present. ASTM International (formerly the American Society for Testing and Materials) has developed 2 potentially-applicable documents: ''Standard Practice for Clearance Examinations Following Lead Hazard Reduction Activities in Single-Family

Dwellings and Child-Occupied Facilities'' (Ref. 72), and ''Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities'' (Ref. 73). With respect to the first document, EPA is not proposing to require traditional clearance examinations, including dust sampling, following renovation projects. However, as discussed in Unit IV.E., EPA is proposing 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 that EPA is proposing to require. 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 recommends 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 does not believe that it is practical to incorporate these voluntary consensus standards into this proposal.

In addition, EPA is proposing to recognize 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 also intends recognize only those kits that have been properly validated by a laboratory independent of the kit manufacturer. Although EPA is not establishing a particular method that must be used for validating kits, for chemical spot test kits, EPA plans to look to the ASTM document entitled *Standard Practice for Evaluating the Performance Characteristics of Qualitative Chemical Spot Test Kits for Lead in Paint* (Ref. 50) to determine whether a particular kit's validation is adequate.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Environmental Justice

Under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has assessed the potential impact of this proposal on minority and low-income populations. The results of this assessment are presented in the Draft Economic Analysis for this proposal, which is available in the public docket for this rulemaking (Ref. 59). The rule will not have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

List of Subjects in 40 CFR Part 745

Environmental protection, Housing renovation, Lead, Lead-based paint, Reporting and recordkeeping requirements.

Dated: December 29, 2005.

Stephen L. Johnson,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be 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 of target housing performed for compensation. The purpose of this subpart is to ensure the following:

(a) Owners and occupants of target housing receive information on lead-based paint hazards before these renovations begin; and

(b) Persons performing renovations regulated in accordance with § 745.82 are properly trained; renovators, dust sampling technicians, and firms performing these renovations are certified; and lead-safe work practices 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 as of [insert date 1 year after date of publication of the final rule in the **Federal Register**] 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 [insert date 60 days after date of publication of the final rule in the **Federal Register**], 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 [insert date 1 year after date of publication of the final rule in the **Federal Register**].

(2) *Firms.* Firms may apply for certification under § 745.89 beginning [insert date 18 months after date of publication of the final rule in the **Federal Register**].

(i) No firm may perform, offer, or claim to perform renovations, as defined in this subpart, without certification from EPA under § 745.89 on or after [insert date 2 years after date of publication of the final rule in the **Federal Register**]:

(A) In any target housing where the firm obtains information indicating that a child under age 6 with a blood lead level greater than or equal to 10 μg/dL or the applicable State or local government level of concern, if lower, resides there, or in any target housing where the firm has not provided the owners and occupants with the opportunity to inform the firm that a child under age 6 with such a blood lead level resides there; or

(B) In target housing constructed before 1960, 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 and no child under age 6 resides there.

(ii) No firm may perform, offer, or claim to perform renovations, as defined in this subpart, without certification from EPA under § 745.89 on or after [insert date 3 years after date of publication of the final rule in the **Federal Register**] in any target housing, 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 and no child under age 6 resides there.

(3) *Individuals.* (i) All renovations, as defined in this subpart, 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) on or after [insert date 2 years after date of publication of the final rule in the **Federal Register**]:

(A) In any target housing where the firm performing the renovation obtains information indicating that a child under age 6 with a blood lead level greater than or equal to 10 μg/dL or the applicable State or local government level of concern, if lower, resides there, or in any target housing where the firm has not provided the owners and occupants with the opportunity to inform the firm that a child under age 6 with such a blood lead level resides there; or

(B) In target housing constructed before 1960, 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 and no child under age 6 resides there.

(ii) All renovations, as defined in this subpart, 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) on or after [insert date 3 years after date of publication of the final rule in the **Federal Register**] in any target housing, 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 and no child under age 6 resides there.

(4) *Work practices.* (i) All renovations, as defined in § 745.83, 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) on or after [insert date 2 years after date of publication of the final rule in the **Federal Register**]:

(A) In any target housing where the firm performing the renovation obtains information indicating that a child under age 6 with a blood lead level greater than or equal to 10 μg/dL or the applicable State or local government level of concern, if lower, resides there, or in any target housing where the firm has not provided the owners and occupants with the opportunity to inform the firm that a child under age 6 with such a blood lead level resides there; or

(B) In target housing constructed before 1960, 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 and no child under age 6 resides there.

(ii) All renovations, as defined in this subpart, 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) on or after [insert date 3 years after date of publication of the final rule in the **Federal Register**] in any target housing, 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 and no child under age 6 resides there.

(5) The suspension and revocation provisions in § 745.91 are effective [insert date 2 years after date of publication of the final rule in the **Federal Register**].

(b) *Renovation-specific pamphlet.* Before [insert date 8 months after date of publication of the final rule in the **Federal Register**], 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 *Protect Your Family from Lead During Renovation, Repair & Painting.* After that date, *Protect Your Family from Lead During Renovation, Repair & Painting* must be used exclusively.

(c) *Pre-Renovation Education Rule.* With the exception of the requirement to use the pamphlet titled *Protect Your Family from Lead During Renovation, Repair & Painting*, 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 of target housing performed for compensation, except for the following:

(1) Minor repair and maintenance activities (including minor electrical work and plumbing) that disrupt 2 square feet or less of painted surface per component.

(2) Renovations in target housing in which a written determination has been made by an inspector (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/cm^2) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination.

(3) Renovations in target housing in which a certified renovator, using an acceptable test kit and following the kit manufacturer's instructions, has determined 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 mg/cm^2 or 0.5% by weight.

(b) The information distribution requirements in § 745.84 do not apply to emergency renovation operations, 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 renovation operations. The work practice, training, and certification requirements in §§ 745.85, 745.89, 745.90 and the recordkeeping requirements in § 745.86(b)(6) and (b)(7) apply to emergency renovation operations to the extent practicable.

(c) 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 and no child under age 6 resides there. 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 definition of ''Emergency renovation operations.''

b. Revise the definition of ''Pamphlet'' and the definition of ''Renovator.''

c. Add 11 definitions in alphabetic order.

§ 745.83 Definitions.

* * * * *

Acceptable test kit means a commercially available kit recognized by EPA pursuant to section 405 of TSCA as being capable of allowing a user to

accurately 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.

* * * * *

Cleaning verification card means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of 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, window sills 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-equipped vacuum means a vacuum equipped with a high efficiency particulate air filter.

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.

* * * * *

Pamphlet means the EPA pamphlet titled *Protect Your Family from Lead During Renovation, Repair & Painting* 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 [insert date 8 months after date of publication of the final rule in the **Federal Register**], 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.

* * * * *

Renovator means a person who either performs or directs uncertified 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.

Work area means the area that the certified renovator establishes to contain all of the dust and debris generated by a renovation, based on the certified renovator's evaluation of the extent and nature of the activity and the specific work practices that will be used.

§ 745.84 [Removed]

6. Section 745.84 is removed.

§ 745.85 [Redesignated]

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. Revise the introductory text of paragraph (c).

§ 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:

(1) * * *

(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:

(1) * * *

(2) 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.

(3) * * *

(4) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, 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) *Written acknowledgment.* The written acknowledgments required by paragraphs (a)(1)(i), (a)(2)(i), and (b)(1)(i) 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.

(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. 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 visible dust or debris leaves the work area while the renovation is being performed.

(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 of the work area with plastic sheeting or other impermeable material with all seams taped and all edges secured at the perimeter of the work area

(E) Ensure that all personnel, tools, and other items including waste are free of dust and debris when leaving the work area. Alternatively, the paths used to reach the exterior of the home must be covered with plastic sheeting or other impermeable material to prevent the spread of lead contaminated dust and debris outside 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 must 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 out from the edge of the structure a sufficient distance to collect falling paint debris.

(3) *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 identifiable releases of dust and debris.

(4) *Cleaning the work area.* After the renovation has been completed, the firm must clean the work area until no visible dust, debris or residue remains.

(i) *Interior and exterior renovations.* The firm must:

(A) Pick up all paint chips and debris.

(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 and around 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-equipped 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-equipped vacuum. The HEPA-equipped vacuum must be equipped with a beater bar when vacuuming carpets and rugs. Where feasible, floor surfaces underneath a rug or carpeting must also be thoroughly vacuumed with a HEPA-equipped vacuum.

(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 2-bucket mopping method that keeps the wash water separate from the rinse water, 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 visible amounts of dust, debris or residue are still present. If visible amounts of dust, debris or residue are present, these conditions must be eliminated 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 the cleaning verification card, the windowsill has been adequately cleaned.

(*2*) If the cloth does not match the cleaning verification card, re-clean the windowsill as directed in paragraphs (a)(4)(ii)(B) and (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 windowsill again. If the cloth matches the cleaning verification card, that windowsill has been adequately cleaned.

(*3*) If the cloth does not match the cleaning verification card, clean that windowsill again as directed in paragraphs (a)(4)(ii)(B) and (C) of this section and wait for one hour or until the windowsill has dried completely, whichever is longer.

(*4*) After waiting for the windowsill to dry, wipe the windowsill with dry disposable cleaning cloths until a cloth, or section of cloth, used to wipe the windowsill matches the cleaning verification card.

(B) Wipe uncarpeted floors within the work area with a wet disposable cleaning cloth, 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 floor for post-renovation cleaning verification. If the floor surface within the work area is greater than 40 square feet, the floor 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 floor within the work area matches the cleaning verification card, the floor has been adequately cleaned.

(*1*) If the cloth used to wipe a particular floor section does not match the cleaning verification card, re-clean that section of the floor as directed in paragraphs (a)(4)(ii)(B) and (a)(4)(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 floor has been adequately cleaned.

(*2*) If the cloth used to wipe a particular floor section does not match the cleaning verification card after the floor has been re-cleaned, clean that section of the floor again as directed in paragraphs (a)(4)(ii)(B) and (a)(4)(ii)(C) of this section and wait for 1 hour or until the entire floor within the work area has dried completely, whichever is longer.

(*3*) After waiting for the entire floor within the work area to dry, wipe those sections of the floor that have not yet achieved post-renovation cleaning verification with dry disposable cleaning cloths until a cloth that has wiped those sections of the floor matches the cleaning verification card. This wiping must also be performed using an application device with a long handle and a head to which the cloths are attached.

(iii) Dust clearance sampling may be performed instead of, or in addition to, the procedures identified in paragraph (b)(1)(ii) of this section. If dust clearance sampling is performed, it must be performed in accordance with § 745.227(e)(8) through (e)(9), except that a dust sampling technician certified in accordance with this subpart may collect and report the results of the required samples.

(iv) When the work area passes the post-renovation cleaning verification or dust clearance sampling, remove the warning signs.

(2) *Exteriors.* A certified renovator must perform a visual inspection to determine whether visible amounts of dust, debris or residue are still present. If visible amounts of dust, debris or residue are 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) *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 amended by revising paragraph (a) and adding new paragraphs (b)(6) and (b)(7) to read as follows:

§ 745.86 Recordkeeping requirements.

(a) Firms performing renovations or conducting dust sampling 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 or dust sampling activities. 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) * * *

(6) Any signed and dated statements received from owner-occupants that no children under age 6 reside in housing being renovated which document 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, the address of the unit undergoing renovation, the owner's name, 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. This requirement includes any statements received from owners or occupants that a child under age 6 with a blood lead level that equals or exceeds 10 μg/dL, or an applicable State or local government level of concern, if lower, resides there.

(7) Documentation of compliance with the requirements of § 745.85, including documentation that a certified renovator was assigned to the project, the certified renovator provided on-the-job training for uncertified workers used on the project, the certified renovator performed or directed uncertified workers who performed all of the tasks described in § 745.85(a), and the certified renovator performed the post-renovation cleaning verification described in § 745.85(b). This documentation must include a copy of the certified renovator's or dust sampling technician's training certificate, and signed and dated descriptions of how activities performed by the certified renovator or dust sampling technician, including worker training activities, sign posting, work area containment, waste handling, cleaning, and post-renovation cleaning verification or clearance were conducted in compliance with this subpart. The descriptions of these activities must include a certification by the record preparer that the descriptions are complete and accurate.

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.

§ 745.88 [Removed]

12. Section 745.88 is removed.

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 3 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 3 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 recertification 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 3 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 45 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 45 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 or dust sampling must ensure that:

(1)(i) All persons 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.

(ii) All persons performing dust sampling on behalf of the firm are certified as either risk assessors, inspectors, or dust sampling technicians.

(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; and

(3) All renovations performed by the firm are performed in accordance with the work practice standards in § 745.85.

14. Section 745.90 is added to subpart E to read as follows:

§ 745.90 Renovator and dust sampling technician certification.

(a) *Renovator and dust sampling technician certification.* (1) To become a certified renovator or dust sampling technician, a person 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 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.

(2) To maintain renovator or dust sampling technician certification, a person 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 3 years of the date the person completed the initial course described in paragraph (a)(1) of this

section. If the person does not complete a refresher course within this time, the person must re-take the initial course to become certified again.

(3) Persons who have a valid lead-based paint abatement supervisor or worker certification issued by EPA under § 745.226 or by a State or Tribal program authorized under subpart Q of this part are also deemed to be certified renovators.

(4) Persons who have a valid lead-based paint inspector or risk assessor certification issued by EPA under § 745.226 or by a State or Tribal program authorized under subpart Q of this part are also deemed to be certified dust sampling technicians.

(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 uncertified workers who perform all of the tasks described in § 745.85(a).

(2) Must provide training to uncertified workers on the lead-safe work practices they will be using in performing their assigned tasks, how to isolate the work area and maintain the integrity of the containment barriers, and how to avoid spreading dust or debris beyond the work area.

(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)(4) is performed.

(4) Must direct 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.

(5) Must be available, either on-site or by telephone, at all times that renovations are being conducted.

(6) When requested by the entity 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.

(c) *Dust sampling technician responsibilities.* 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.

(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.

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) and paragraph (c)(8)(iv), add paragraphs (c)(6)(vi), (c)(6)(vii), and (c)(8)(vi), and revise paragraph (c)(10).

d. Amend paragraph (c)(13) by replacing the phrase ''lead-based paint activities'' with the phrase ''renovator, dust sampling technician, or lead-based paint activities'' wherever it appears in the paragraph.

e. Add paragraphs (d)(6) and (d)(7).

f. Revise the introductory text of paragraph (e).

g. Amend paragraph (e)(1) by removing the word ''activities'' wherever it appears in the paragraph.

h. 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 [insert date 1 year after date of publication of the final rule in the **Federal Register**].

(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 [insert date 60 days after date of publication of the final rule in the **Federal Register**].

(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.

* * * * *

(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.

* * * * *

(d) * * *

(6) *Renovator*. (i) Role and responsibility of a renovator.

(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) 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 clean-up verification, and clearance testing.

(viii) Waste handling and disposal.

(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:

* * * * *

(1) * * *

(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 or just the pre-renovation education 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. Delete 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) * * *

(i) * * *

(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 [insert date 1 year after date of publication of the final rule in the **Federal Register**], 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.

* * * * *

(i) * * *

(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 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 prior to renovation activities.

(3) Require that the information to be distributed include either the pamphlet titled *Protect Your Family from Lead During Renovation, Repair & Painting,* developed by EPA under section 406(a), 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 *Protect Your Family from Lead During Renovation, Repair & Painting*, 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 owners and occupants in that State or Tribe.

(i) A State or Tribe with a pre-renovation education program approved before [insert date 60 days after date of publication of the final rule in the **Federal Register**] must demonstrate that it meets the requirements of this section no later than the first report that it submits pursuant to § 745.324(h) of this subpart on or after [insert date 1 year after date of publication of the final rule in the **Federal Register**].

(ii) A State or Tribe with an application for approval of a pre-renovation education program submitted but not approved before [insert date 60 days after date of publication of the final rule in the **Federal Register**] 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 [insert date 1 year after date of publication of the final rule in the **Federal Register**].

(iii) A State or Indian Tribe submitting its application for approval

of a pre-renovation education program on or after [insert date 60 days after date of publication of the final rule in the **Federal Register**] 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 dates.

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 subpart E of this part pursuant to this subpart effective [insert date 60 days after date of publication of the final rule in the **Federal Register**].

[FR Doc. 06–71 Filed 1–9–06; 8:45 am]

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Federal Register

Tuesday,
January 10, 2006

Part III

Federal Reserve System

12 CFR Part 205
Electronic Fund Transfers; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket Nos. R–1210 and R–1234]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation codified in Supplement I to Part 205. The commentary interprets the requirements of Regulation E to facilitate compliance primarily by financial institutions that offer electronic fund transfer services to consumers.

The revisions address the regulation's coverage of electronic check conversion services. Under the final rule, merchants and other payees that initiate electronic check conversion transactions must obtain a consumer's authorization for each transaction. In addition, commentary revisions address preauthorized transfers, error resolution, and other matters.

DATES: The final rule is effective February 9, 2006. The mandatory compliance date is January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ky Tran-Trong, Senior Attorney, or Daniel G. Lonergan, David A. Stein or John C. Wood, Counsels, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Electronic Fund Transfer Act (EFTA or Act) (15 U.S.C. 1693 *et seq.*), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of types of transfers covered by the Act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The Act and regulation require disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account activity statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs. Further, the Act and regulation also prescribe restrictions on the unsolicited issuance of ATM cards and other access devices.

The official staff commentary (12 CFR part 205 (Supp. I)) is designed to facilitate compliance and provide protection from liability under Sections 915 and 916 of the EFTA for financial institutions and persons subject to the Act. 15 U.S.C. 1693m(d)(1). The commentary is updated periodically to address significant questions that arise.

II. Background and Overview of Comments Received

On September 17, 2004, the Board published a notice of proposed rulemaking in the **Federal Register** (69 FR 55996) (September 2004 proposal) to provide guidance regarding the rights, liabilities, and responsibilities of parties engaged in electronic check conversion (ECK) transactions and to provide rules governing the coverage under Regulation E of payroll card accounts. In addition, proposed commentary revisions provided guidance on preauthorized electronic transfers from a consumer's account, error resolution procedures, ATM disclosures, and other matters.

The Board received nearly 120 comment letters on the September 2004 proposal. Comments were received from a variety of industry commenters, including banks, thrifts, credit unions, payment card companies, payment processing companies, and industry trade associations. Comments were also received from consumer groups, the Department of the Treasury, the Federal Trade Commission and individual consumers. The following is a summary of significant proposed revisions to the regulation and the staff commentary, and the comments received.

Electronic Check Conversion

The EFTA expressly provides that transactions originated by check, draft, or similar paper instrument are not governed by the Act. In an ECK transaction, a consumer provides a check to a payee and information from the check is used to initiate a one-time EFT from the consumer's account. Specifically, the payee electronically scans and captures the MICR-encoding on the check for the routing, account, and serial numbers, and enters the amount to be debited from the consumer's asset account.

Under the staff commentary, electronic check conversion transactions are covered by the EFTA and Regulation E if the consumer authorizes the transaction as an EFT. Under existing commentary provisions, a consumer authorizes an EFT if the consumer receives notice that the transaction will be processed as an EFT and the consumer completes the transaction. *See* comment 3(b)–3. This standard applies whether the check conversion occurs at a point-of-sale (where a person goes to a merchant's physical location to obtain goods or services) or in an accounts receivable conversion (ARC) transaction where the consumer mails a fully completed and signed check to the payee that is converted to an EFT. Although merchants and other payees are in the best position to provide notice to a consumer for the purpose of obtaining the consumer's authorization for an ECK transaction, they are not currently covered by the commentary provision in Regulation E addressing ECK transactions.

Over the past few years, several issues have arisen relating to ECK transactions in general, and ARC transactions in particular. Concerns have been raised about the uniformity and adequacy of some of the notices provided to consumers about ECK transactions. Some in the industry would like the flexibility to obtain a consumer's authorization to process a transaction either as an EFT or as a check. Board staff also has received inquiries from financial institutions and other industry participants concerning their obligations under Regulation E in connection with ECK services.

The Board proposed to revise the regulation to require merchants and other payees that use information from a check to initiate a one-time EFT from a consumer's account to provide notice to the consumer and obtain the consumer's authorization for each EFT. The Board specifically solicited comment on whether payees should be required to obtain a consumer's written, signed authorization when the transaction occurs at POS. To help consumers understand the nature of an ECK transaction, the Board also proposed to require payees in ECK transactions to disclose to consumers that when a check is converted, funds may be withdrawn from their accounts quickly, and that the check will not be returned by the consumer's financial institution.

Industry commenters supported many of the proposed revisions addressing ECK transactions, including coverage

under Regulation E of merchants and other payees for the limited purpose of providing notice to obtain consumer authorization for ECK transactions. Some industry commenters, however, raised concerns about requiring the authorization to be written and signed for POS transactions. They also raised concerns about providing consumers with disclosures explaining that funds may be withdrawn from the account quickly and that checks will not be returned to the consumer. Commenters asserted, for example, that a written, signed authorization requirement could stifle industry innovation, and that the additional information about ECK transactions would result in overly lengthy disclosures.

Consumer groups also supported many of the proposed revisions addressing ECK transactions, including merchant coverage and the additional disclosure requirements. Consumer groups stated, however, that the Board should require a consumer's written, signed authorization for other debits that may occur in connection with the underlying ECK transaction, such as for debits to collect service fees when consumers have insufficient funds in their account to cover the underlying transaction, since consumers are unlikely to expect the additional debits to their accounts.

Error Resolution

Section 205.11(c)(4) provides that a financial institution may satisfy its obligation to investigate an alleged error by reviewing its own records if the alleged error concerns a transfer to or from a third party and there is no agreement between the institution and the third party for the type of EFT involved. This rule is commonly referred to as the ''four walls'' rule. The Board proposed to revise the staff commentary to clarify that an institution would not satisfy its error resolution obligations solely by reviewing the payment instructions if, for example, there is additional information within the institution's own records that would assist in resolving the alleged error.

Many industry commenters opposed the Board's proposed commentary revisions, expressing concern about the potential scope of information that might need to be reviewed under the proposed revisions to the four walls standard. Consumer groups favored the proposed comment, and urged the Board to revise the comment to state that an institution's review should consider records that could be helpful to resolving the consumer's claim, not just those records that were dispositive.

Preauthorized Transfers

Section 205.10(b) requires that recurring electronic debits from a consumer's account be authorized ''only by a writing signed or similarly authenticated by the consumer.'' Existing commentary provides that a tape recording of a telephone conversation with a consumer who agrees to preauthorized debits does not constitute written authorization under § 205.10(b). The Board proposed to withdraw the existing commentary to address industry concerns that the guidance may conflict with the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 *et seq.* Many industry commenters, in particular those representing retailers, supported the proposed withdrawal, with some of these commenters asking the Board to explicitly state that a recorded conversation complies with the E-Sign Act. Other commenters, however, opposed the withdrawal of the guidance due to concern about potential abuses and the possible increase in unauthorized transfers that could result. Consumer groups did not comment on the proposed withdrawal.

ATM Disclosures

Section 205.16 provides that an ATM operator that imposes a fee (''surcharge'') on a consumer for initiating an EFT or balance inquiry must post a sign at ATMs that a fee *will* be imposed for providing EFT services or for balance inquiries. The September 2004 proposal included proposed commentary revisions to provide ATM operators flexibility when disclosing these surcharges. In particular, the proposal clarified that ATM operators could disclose on ATM signage that a surcharge ''may'' be imposed if there are circumstances where the operator would not impose such a fee for use of its ATM. (Before a surcharge may be imposed by an ATM operator, the operator must provide a separate on-screen notice or a receipt informing the consumer that a fee will be charged and the amount of the fee, and the consumer must elect to continue the transaction.) In August 2005, the Board withdrew the proposed commentary revisions and issued a new proposal to incorporate this clarification into both the regulation and the commentary. *See* 70 FR 49891 (Aug. 25, 2005) (August 2005 proposal). The Board received approximately 25 comments on the August 2005 proposal from a variety of industry commenters, including banks, credit unions and trade associations. Industry commenters strongly supported the revised proposal stating that it would provide institutions with flexibility to provide more accurate disclosures and reduce consumer confusion. Consumer groups and one consumer rights advocate, however, asserted that the revised proposal would not ensure that consumers who are charged a fee will receive adequate notice on ATM signage.

Payroll Cards

The September 2004 proposal also included rules governing the coverage under Regulation E of payroll card accounts that are established either directly or indirectly by an employer on behalf of a consumer for the purpose of providing salary, wages, or other employee compensation on a recurring basis. An interim final rule is being published separately in this **Federal Register** to address payroll card accounts.

III. Overview of the Final Rule

The Board is adopting final revisions to Regulation E and the staff commentary largely as proposed. However, several clarifications and modifications to the proposal have been made to respond to commenters' concerns. The following is a summary of significant revisions to the regulation and the staff commentary. All of the revisions are discussed in detail below in the section-by-section analysis. The rule is effective February 9, 2006. The mandatory compliance date for the final rule is January 1, 2007.

Electronic Check Conversion

Merchant coverage. The final rule provides that merchants and other payees that use information from a check to initiate a one-time EFT from a consumer's account are subject to the regulation solely for the limited purpose of obtaining a consumer's authorization for the one-time transfer. Generally, authorization is obtained when the payee provides a notice to the consumer that a check received as payment will be converted to an EFT, and the consumer goes forward with the transaction. At POS, the notice must be posted in a prominent and conspicuous location, and a copy of the notice must be provided to the consumer at the time of the transaction, such as on a receipt. For ARC transactions, the notice will typically be provided on a billing statement or invoice. Model clauses are provided to try to minimize the risk that merchants and other payees will be subject to private actions.

Alternative authorization. As proposed, the final rule recognizes that payees may obtain a consumer's authorization to use information from

the consumer's check to initiate an EFT, or, alternatively, to process the transaction as a check.

Additional disclosures about ECK transactions. To help consumers understand the nature of ECK transactions, the final rule provides that persons initiating an ECK transaction, whether at POS or in an ARC transaction, must disclose to the consumer that when a check provided as payment is used to initiate an EFT, funds may be withdrawn from the consumer's account as soon as the same day payment is made (for POS transactions) or received (for ARC transactions). Payees must also disclose, as applicable, that the consumer's check will not be returned by the consumer's financial institution. Under the final rule, for POS transactions, payees may provide these additional disclosures on a sign. The requirement to provide these disclosures sunsets three years from the mandatory compliance date of this final rule.

Collection of Service Fees Via EFT

The final rule, as proposed, provides that payees that choose to collect a service fee via an EFT due to insufficient or uncollected funds in a consumer's account in connection with the underlying transaction must obtain the consumer's authorization to collect the fee. Authorization is obtained when a payee provides notice to the consumer stating that the fee will be collected via an EFT and the consumer goes forward with the transaction. Payees also are required to disclose the amount of the fee on the notice.

Error Resolution

The final rule provides that a financial institution does not satisfy its error resolution responsibilities under the ''four walls'' rule by solely reviewing the payment instructions; an institution must review any additional information within the institution's own records pertaining to the particular account in question that would assist in resolving the alleged error.

Preauthorized Transactions

The final rule, as proposed, withdraws the existing commentary stating that a tape recording of a telephone conversation with a consumer who agrees to preauthorized debits does not constitute written authorization under the regulation.

Disclosures at Automated Teller Machines

The final rule, as proposed in the August 2005 proposal, revises the regulation to permit ATM operators to alternatively provide notice on ATM signage that a surcharge *may* be imposed (in place of a disclosure that a surcharge *will* be imposed) if there are circumstances in which an ATM fee may not be charged.

Effective Date of Rule

The effective date of the final rule is February 9, 2006. While institutions may, if they choose, begin complying with the new requirements on February 9, 2006, compliance with this final rule is not mandatory until January 1, 2007. The additional time should give persons affected by this final rule adequate time to implement the new requirements, including developing the new required notices for ECK transactions.

IV. Section-by-Section Analysis

Section 205.3 Coverage

3(a) General

Section 205.3(a) is revised to provide that § 205.3(b)(2), discussed below, applies to any person.

3(b) Electronic Fund Transfer

The term ''electronic fund transfer'' is defined in § 205.3(b)(1) as ''any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.'' The term includes POS transfers, ATM transfers, direct deposits or withdrawals of funds, telephone transfers and debit card transactions. The final rule includes language in the existing regulation that was inadvertently omitted in the September 2004 proposal. Comments 3(b)–1 and 3(b)–2 are redesignated as comments 3(b)(1)–1 and 3(b)(1)–2, and conforming changes are made to comments 2(a)–2 and 3(c)(1)–2.

Electronic Check Conversion

The EFTA excludes from the definition of ''electronic fund transfer'' any transaction ''originated by check, draft, or similar paper instrument.'' 15 U.S.C. 1693a; *see also* § 205.3(c)(1). In ECK transactions, a consumer provides a check to a merchant or other payee to use as a source of information to initiate an EFT from the consumer's account as payment for the purchase of goods or services, and not to initiate a payment by check. The payee electronically captures the routing, account, and serial numbers from the check and initiates a one-time EFT from the consumer's account. The Board proposed to amend § 205.3(b)(2) of Regulation E and comment 3(b)(2)–1 to clarify that ECK transactions are covered by Regulation E and deemed *not* to originate by check. Substantially similar guidance previously had been provided in the commentary to Regulation E. The few commenters addressing the issue agreed that the guidance regarding the status of ECK transactions under Regulation E is more appropriately placed in the regulation. Accordingly, the proposal has been adopted in § 205.3(b)(2)(i) with minor revisions. Section 205.3(b)(2)(i) further provides that a consumer must authorize an ECK transaction (discussed below).

One industry commenter expressed concern that the proposed regulatory language was too broad in stating that a transaction is covered by Regulation E where a check is ''used as a source of information to initiate a one-time EFT.'' According to the commenter, some may interpret the language to include transactions arising from electronic check presentment or image exchange. The Board agrees; § 205.3(b)(2)(i) is intended to apply only when a payee uses a check as a source of information to initiate an EFT from the consumer's account. New comment 3(b)(1)–2.iv clarifies that transactions arising from the electronic collection, presentment, or return of checks through the check collection system, such as through the transmission of electronic check images, are not EFTs covered by Regulation E.

A few commenters asked the Board to clarify that the rules applying to ECK transactions were not intended to apply to Internet- or telephone-initiated transactions (where a consumer provides information—including the MICR-encoding—from his or her check to pay for a purchase via these payment channels). While Internet- and telephone-initiated transactions are covered by Regulation E because they result in electronic transfers from the consumer's account, the rules for ECK transactions do not apply to these transactions.

Coverage of merchants and other payees. Currently, a merchant or other payee that engages in ECK transactions is not covered by Regulation E because it does not meet the definition of ''financial institution.'' Under § 205.2(i) the term ''financial institution'' means a ''bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services.'' The Board has previously acknowledged that a merchant or other payee is in the best position to provide notice to a consumer for the purpose of obtaining authorization of an ECK transaction. *See* 66 FR 15187, 15189–90

(March 16, 2001). The Board has not covered merchants and other payees previously under the regulation because it expected that these persons would provide consumers with the necessary notice. In response to concerns about the uniformity and adequacy of some of the notices provided to consumers about ECK transactions, the Board proposed to exercise its authority under Sections 904(c) and 904(d)(1) of the EFTA to require merchants and other payees that initiate a one-time EFT using information from the consumer's check, draft or similar paper instrument, to provide notice to obtain a consumer's authorization for the transfer. The final rule is adopted, as proposed. Coverage of merchants and other payees under the final rule is solely for the limited purpose of obtaining consumer authorizations for ECK transactions. A financial institution will be subject to the requirement to obtain consumer authorization for the transaction to the extent that the institution initiates an EFT using information from a consumer's check (*e.g.*, if the institution converts checks provided as a payment for a mortgage loan).

Most commenters supported the proposed revision in § 205.3(b)(2)(ii) because they believe the merchant is in the best position to provide the notice. According to one commenter, the consumer's financial institution has no control over a consumer receiving proper notice for purposes of authorization. A few commenters noted the importance of covering merchants and other payees for enforcement purposes. Several commenters also noted that requiring merchants and other payees to adhere to minimum authorization and related notice provisions will better inform consumers on a consistent basis about ECK transactions. Moreover, according to these commenters, the authorization requirement would not pose new or significant compliance burdens since payment system rules currently impose an authorization requirement on merchants and other payees. While supporting the proposed requirement, a few commenters requested clarification that merchants and other payees would be covered solely for the limited purpose of the authorization requirement for ECK transactions.

Some industry commenters opposed the proposed requirement. A few commenters believed merchants and other payees should not be required to assume the liability risks that may be associated with ECK transactions. A few commenters requested clarification of the FTC's enforcement authority for merchants and other payees not regulated by federal banking agencies. A few commenters believed the requirement is an unnecessary duplication of payment system rules.

The Board believes coverage of merchants and other payees in § 205.3(b)(2)(ii) for the limited purpose of providing a notice to obtain consumer authorization for ECK transactions is appropriate to ensure consumers understand that checks will be processed as EFTs. Without such a notice requirement, different information may be given by merchants to consumers, or information may be given solely by signage or other forms that may not be easily discernable by consumers. In addition, coverage of merchants and other payees for the limited purpose of obtaining consumer authorization for ECK transactions will provide a mechanism to ensure that consumers, in fact, receive appropriate notice of check conversion. For those entities subject to FTC enforcement, the FTC would have enforcement authority pursuant to Section 917(c) of the EFTA and under the Federal Trade Commission Act. Merchant coverage would also enable the Board to provide model clauses that will aid consumer understanding of ECK transactions. The model clauses provide a safe harbor from liability, thereby reducing liability risks. *See* § 205.3(b)(2)(iv).

General authorization requirements. As previously noted, revised § 205.3(b)(2)(i) provides that a consumer must authorize an ECK transaction. The current commentary states that a consumer authorizes an ECK transaction when the consumer receives notice that the transaction will be processed as an EFT and completes the transaction. *See* comment 3(b)–3. This guidance, originally proposed to be placed in comment 3(b)(2)–1, is moved to § 205.3(b)(2)(ii) of the final rule. The phrase ''completes the transaction'' is replaced with ''goes forward with the transaction'' to clarify that it is not necessary for a transaction to clear or settle in order for authorization to occur. In addition, under the final rule, for POS transactions, a notice must be posted in a prominent and conspicuous location, and a copy of the notice must be provided to the consumer at the time of the transaction, such as on a receipt.

In the proposal, the Board stated that at POS, a written, signed authorization may be a more effective means than posted signage for informing consumers that their checks are being converted. The Board did not propose to require merchants or other payees to obtain the consumer's signed authorization to convert checks received at POS, but specifically solicited comment on whether this should be required. The final rule does not require a merchant or other payee to obtain the consumer's signed authorization for an ECK transaction.

Some commenters supported a signed authorization requirement for POS transactions. Several of these commenters stated the requirement would be beneficial for enforcement purposes to ensure that consumer authorization is, in fact, obtained by a payee. A few commenters stated that the Regulation E rule should be consistent with the rules established by NACHA—the Electronic Payments Association (NACHA rule(s))—which requires a consumer's written, signed authorization. One such commenter stated making the rules consistent would address consumer confusion issues. Another commenter stated that the current difference between the NACHA rule and Regulation E creates the potential for monetary penalties imposed by NACHA if the payee follows the Regulation E notice rule and does not also comply with NACHA's signed authorization rule. A few commenters noted that there would be no additional regulatory burden associated with a signed authorization requirement since it is already required by NACHA. Some commenters expressed the view that a signed authorization requirement calls a consumer's attention to, and reinforces an awareness of, check conversion.

The majority of commenters opposed a signed authorization requirement for POS transactions under Regulation E. Specifically, some of these commenters stated that the NACHA rule is sufficient, and that a payments system rules-driven approach is preferable to regulation. Several commenters expressed concern that such a requirement would unnecessarily delay transactions at POS. According to one commenter, a signed authorization requirement could impede the general movement toward facilitating paperless payments. A few commenters stated the requirement may limit the industry's flexibility to deal with changing market circumstances. Some commenters expressed concern that a signed authorization requirement may stifle the creation and development of payment system innovations.

The final rule sets forth the authorization requirements for ECK transactions under § 205.3(b)(2)(ii). Generally, a consumer authorizes a one-time EFT (in providing a check to a merchant or other payee for the MICR encoding) when the consumer receives a notice that the transaction will be processed as an EFT and goes forward with the transaction. This guidance was originally in proposed comment 3(b)(2)–

1. (Existing comment 3(b)–3 is deleted.) The phrase ''completes the transaction'' is replaced with ''goes forward with the transaction'' to clarify that it is not necessary for the transaction to clear or settle, for example, in order for authorization to occur. Section 205.3(b)(2)(ii) also addresses the possibility that a payee might elect to obtain a consumer's authorization either to convert a check provided as payment to an EFT or to process the check as a check transaction. *See also* comment 3(b)(2)–2 (further discussed below).

For ARC transactions, a payee (such as a utility company) obtains a consumer's authorization when it provides notice of its intent to convert checks received as payment—for example, on a monthly billing statement or invoice—and the consumer provides or mails a check as payment.

For transactions at POS, the final rule requires payees to post the notice in a clear and prominent location. The requirement for posted signage is necessary to alert consumers that a check provided as payment will be converted to an EFT before the consumer selects a payment method. The Board believes that providing this notice on a sign enables the consumer to authorize the ECK transaction after being given prior notice. The final rule also requires merchants and other payees at POS to provide consumers with a copy of the notice in a form the consumer can keep at the time of the transaction. For example, merchants and other payees could provide the notice on the receipt given to the consumer. The written receipt allows consumers to refer to the notice later, if necessary.

The final rule does not require merchants or other payees at POS to obtain a consumer's signed authorization for ECK transactions. The Board believes that a signed authorization requirement would provide minimal additional benefit given that consumers will be given notice that their checks will be converted at two different points during the ECK transaction, first through posted signage which consumers can read prior to providing a check as payment, and second on a receipt provided to the consumer, presumably after the check has been provided to the merchant. In addition, the periodic statement provided by the consumer's bank will typically reflect ECK transactions in a different manner than check transactions.

New comment 3(b)(2)–1 provides that a payee at POS does not violate the requirement to provide a copy of the check conversion notice to the consumer if the payee is unable to provide notice because of a bona fide unintentional error, so long as the payee maintains procedures reasonably adapted to avoid such occurrences. Thus, for example, a payee will not be deemed to have violated the regulation if it cannot provide a paper notice if its terminal printing mechanism jams, provided that the payee maintains procedures reasonably adapted to avoid such occurrences.

Authorization language. Proposed comment 3(b)(2)–2 provided that a payee must obtain the consumer's authorization to use information from his or her check to initiate an EFT or, alternatively, to process a check. The comment is adopted, largely as proposed. Model notices are provided in Appendix A–6 to assist merchants and other payees in complying with the requirements. *See* § 205.3(b)(2)(iv). Regulation E coverage of ECK transactions continues to be predicated on the consumer's authorization to allow the merchant or other payee to use a check as a source of information to initiate an ECK transaction.

Due to processing or technical errors, a transaction authorized as an ECK transaction ultimately may not be processed as an EFT. Furthermore, in some cases, a payee may decide to process the original check or create a demand draft, or the payee may choose to create a substitute check in accordance with the Check Clearing for the 21st Century Act (Check 21).[1] Currently, if a payee obtained a consumer's authorization solely to initiate an EFT using information from the consumer's check, the payee may have difficulty processing the same document as a check because such an action would arguably fall outside the consumer's payment instructions. Thus, without the consumer's authorization to alternatively process the transaction as a check, the payee may not be able to obtain payment. In other cases, a merchant or payee operating in multiple states may choose to pilot ECK in some locations while processing the payments as checks in others. To address these and similar concerns, and to provide flexibility, the Board proposed three authorization approaches for ECK transactions.

First, the Board proposed to allow a payee to obtain a consumer's authorization to use information from his or her check to initiate an EFT or, alternatively, to process the transaction as a check. *See* proposed Model Clause A–6(a). The Board specifically solicited comment, however, on whether this alternative authorization approach may result in any consumer harm or create any other risks. In particular, comment was solicited on whether payees that obtain alternative authorization should be required to specify the circumstances under which a check that can be used to initiate an EFT will be processed as a check. Second, the Board proposed an optional authorization clause for use by payees that intend to convert all checks to ECK transactions. *See* proposed Model Clause A–6(b). Third, the Board proposed an optional authorization clause for use by payees that choose to disclose the specific circumstances when checks will not be converted to ECK transactions. *See* proposed Model Clause A–6(c).

Most industry commenters supported the alternative authorization approach as illustrated in proposed Model Clause A–6(a), stating that the approach provides needed flexibility. The majority of these commenters did not believe any consumer harm would result from the lack of specification of circumstances under which check conversion would or would not occur. One commenter did not believe consumers would be confused about their rights since many account-holding financial institutions list EFT and check transactions separately on periodic statements given to consumers. A few commenters stated that consumers will have sufficient protections regardless of how the transactions are processed.

Some industry commenters supported alternative authorization, but stated that the Board should also require payees to disclose the circumstances under which conversion will not occur. One such commenter believed the disclosure of the specific circumstances would eliminate any risk of consumer harm.

One federal enforcement agency observed generally that consumers may not understand the differences between checks and ECK transactions or the protections that apply to each, but did not otherwise express a view on the merits of permitting alternative authorization. This commenter thought that focus group testing of the model clauses would be useful to determine what information consumers understand.

A few commenters opposed the alternative authorization clause as unclear and potentially confusing to consumers. According to one industry commenter, confusion arising from an alternative authorization may cause consumers to instruct their financial institutions to state that ECK transactions were unauthorized. This commenter therefore believed the rule

[1] Pub. L. 108–100, 117 Stat. 1177 (codified at 12 U.S.C. 5001–5018).

should require the authorization notice to specify the circumstances when conversion would not occur. According to another commenter, requiring payees to specify the circumstances when a check will be processed as a check is consistent with the purpose of the EFTA—for consumers to know their rights, responsibilities, and liabilities when they engage in EFT services. This commenter believed such disclosure also enhances consumer understanding by making it clear that there are different methods to collect checks and by providing greater certainty as to which method is most likely to apply to a particular transaction. The commenter stated that given the efficiency of check conversion, there should be limited circumstances to disclose. Accordingly, the commenter requested that the Board delete Model Clause A–6(a) as an option.

Some industry commenters supported the approach illustrated in proposed Model Clause A–6(b) for when a payee converted all checks, as long as the use of the clause is optional. One commenter believed the clause unworkable absent additional authorization to process the transaction as a check where the ECK will not clear for technical reasons.

A few industry commenters also supported the specific authorization approach illustrated in Model Clause A–6(c) as long as it is optional. Other industry commenters did not believe the clause would provide a significant benefit to consumers. Several commenters believed a specific disclosure would be highly detailed and complex; if circumstances changed new disclosures would be required. One consumer group commenter was concerned that the burden of providing this notice could result in payees favoring substitute checks under Check 21 which they believed would provide fewer consumer protections. A few industry commenters thought the clause should not be adopted.

A few industry commenters stated that all three model clauses should be retained for flexibility. Other commenters believed that all three clauses should be consolidated to address various payment options available to payees. Several commenters supported having one model notice to avoid confusing consumers. Many commenters expressed concern about the length of the notices. A few commenters requested additional guidance on the clear and conspicuous standard as it pertains to the notices.

In the final rule, Model Clause A–6(a) is retained as proposed, but proposed Model Clauses A–6(b) and (c) have been consolidated in a single Model Clause A–6(b) for simplicity and to facilitate compliance by payees. Model Clause A–6(a) may be used in *all* instances, including when a payee will process a check as an EFT in all circumstances, when the transaction is processed as a check for technical reasons, or because a payee simply chooses to process the transaction as a check. While the Board believes that most payees will likely choose to use Model Clause A–6(a) in all cases, the Board is aware that some payees may want to provide more specific information concerning their ECK practices for business reasons, such as for customer service and education, as well as to reduce possible consumer inquiries. Model Clause A–6(b) offers that flexibility. Thus, for example, payees may choose to use Model Clause A–6(b) to disclose the circumstances under which they will not process a check as an EFT, such as when it is impossible for technical or other processing reasons.

Model Clauses A–6(a) and (b) have also been revised to clarify their application to transactions where a consumer's check is provided *as payment.* Some commenters expressed concern that without this revision, consumers might mistakenly believe the notice applied to preauthorized transfers—where a consumer provides a check and a signed authorization in advance to authorize future payments. *See* § 205.10.

Consistent with § 205.4(a)(1), notices provided to consumers regarding check conversion must be clear and readily understandable. For example, in ARC transactions, notices in small print and buried in the middle of unrelated information would likely not meet the standard. Payees may also consider using headings preceding the notice to call attention to the information presented. For POS transactions, signage informing consumers about check conversion should not be obscured by other information or signs that may also be located at POS.

Notice for each transfer. ECK transactions are one-time, and not preauthorized, transfers. Therefore, under the final rule, a notice must be provided and an authorization must be obtained from the consumer for each transfer. Section 205.3(b)(2)(ii) contains the general rule that the person initiating an ECK transaction must provide notice of check conversion to the consumer before each transfer.

Some industry commenters stated that while it may be appropriate to require notice for each transfer for most ECK transactions, there are certain circumstances where one advance notice may suffice. Coupon books were the most frequently-cited examples. Lenders provide coupon books to consumers typically for mortgages, automobile loans, personal loans, and other recurring loan payments. According to some commenters, coupon books do not present the same notice opportunities as POS and ARC transactions because they are provided in advance and include coupons for several payments. Some credit card issuers suggested that it may be similarly appropriate to allow a consumer to contract with its card issuer for regular ECK payments rather than requiring a notice to be sent on or with each periodic statement sent to the consumer. A few commenters stated that recurring notice is appropriate only for POS transactions. One commenter stated that the consumer benefit of receiving a notice with each periodic statement is negligible compared to the ongoing cost to institutions.

Because a coupon book is designed so that a consumer must detach a coupon from the book and provide the coupon with each payment, the Board believes that it is unnecessary to require that a separate notice of check conversion be printed on each coupon. New comment 3(b)(2)–3 provides that for coupon books, a notice placed on a conspicuous location of the coupon book that the consumer can retain is deemed to constitute the provision of notice on each coupon that accompanies a check provided as payment, for purposes of obtaining a consumer's authorization to convert each check. The notice must be placed on a location of the coupon book that a consumer can retain—for example, on the first page, or inside the front cover. The Board believes this new comment will facilitate compliance with the requirements of the Act and regulation.

Unlike coupon books which contain several payment coupons and are sent once near the beginning of the payment period, periodic statements for credit card accounts are typically sent on a monthly basis. Thus, the Board believes that credit card issuers have the capability of providing a notice of check conversion with each statement without an undue burden. In contrast, payees that send coupon books may not otherwise send monthly information; thus, requiring a separate monthly notice could be costly for these payees. Accordingly, comment 3(b)(2)–3 in the final rule is limited to coupon books.

If a coupon book is issued before the effective date of the final rule, and will cover a time period when notice otherwise must be provided under the final rule, payees may provide a one-

time notice to obtain the consumer's authorization to convert each check submitted with a coupon. For example, a payee may provide a separate mailing informing the consumer that by mailing a check with each payment coupon included in the book, the consumer authorizes the payee to convert each check provided as payment to an EFT. Without such relief, payees would have to re-issue coupon books at considerable expense in order to comply with the new rule.

The final rule also clarifies that the notice regarding a payee's intent to collect a service fee for insufficient or uncollected funds via an EFT and the notice providing additional information about the nature of ECK transactions (further discussed below) must also be provided for each transfer. However, the special exception regarding coupon books would also apply to notices regarding the electronic collection of service fees for insufficient or uncollected funds and the nature of ECK transactions.

Imputed notice. Proposed § 205.3(b)(2)(ii) provided that obtaining authorization from the consumer holding the account for which a check may be converted constitutes authorization for all checks provided for a single payment or invoice for that account. Proposed comment 3(b)(2)–4 stated that notice of check conversion to the person holding the account for which a check may be converted may be imputed to anyone who writes a check as payment for the particular invoice or bill. In the final rule, comment 3(b)(2)–4 is adopted with certain revisions for clarity. The guidance in proposed § 205.3(b)(2)(ii) is also moved to comment 3(b)(2)–4, with some revisions for clarity.

All commenters who addressed the issue of imputed notice supported the proposal. One commenter noted that the rule is consistent with current industry practice. Another commenter stated that complying with a different rule would be unduly burdensome, if not impossible. A few commenters supported the proposal, but stated that alternative authorization would also be necessary to accommodate payees who may choose not to process multiple transactions all as EFTs. A few commenters also suggested that the authorization of the person holding the billing account should apply to all checks received prior to the next bill, not just to checks related to the particular invoice.

In the final rule, comment 3(b)(2)–4 provides that notice to the consumer listed on the billing account constitutes sufficient notice to convert all checks provided in payment for the billing cycle or the invoice for which notice has been provided, whether the check(s) is received from the consumer or someone else for that account. The notice applies to all checks submitted as payment until the provision of notice on or with the next invoice or statement. Thus, if a merchant or other payee receives a check as payment from the consumer listed on the billing account after providing notice that the check will be processed as a one-time EFT, the authorization from that consumer constitutes authorization to convert all other checks provided for a single invoice or statement.

Other required notices for ECK transactions may also be similarly imputed to any other consumer who may provide a check for the same billing cycle or invoice if such notices are provided to the consumer listed on the billing account. Thus, for example, a notice to the consumer on the billing account informing the consumer that a service fee for insufficient or uncollected funds will be debited via an EFT from the consumer's account constitutes notice to obtain authorization for electronically collecting the fee to any other consumer who may provide a check for the same billing cycle or invoice.

Additional ECK disclosures. Consistent with the EFTA's purpose to enable consumers to understand their rights, liabilities, and responsibilities concerning EFT services, and given the unique characteristics of ECK transactions, the Board believes it is appropriate to provide consumers with additional information to help them understand the nature and potential consequences of an ECK transaction. Proposed § 205.3(b)(2)(iii) thus required a person that initiates an ECK transaction to provide a notice to the consumer that when a check is used to initiate an electronic fund transfer, funds may be debited from the consumer's account quickly, and, as applicable, that the consumer's check will not be returned by the financial institution holding the consumer's account. Under the proposal, this information would be provided at the same time a notice is provided to obtain authorization for the underlying ECK transaction. Section 205.3(b)(2)(iii) is adopted as proposed, with some revisions to address commenter concerns. Proposed comment 3(b)(2)–3 is re-designated as comment 3(b)(2)–5, and provides additional guidance to facilitate compliance.

Consumer group commenters stated that the additional information answered many of the common questions they receive from consumers about ECK transactions; thus, they believed that the additional information would help avoid consumer confusion and enhance consumer understanding of ECK transactions. A federal enforcement agency similarly noted that consumers may be more willing to engage in ECK transactions if they better understand them. In particular, the agency stated that the disclosure regarding the quick debiting of deposit accounts through ECK transactions could help consumers avoid the possibility of overdrafts for insufficient funds.

Some industry commenters requested that the Board revise the requirement to state instead that the transaction will be reported on the consumer's periodic account statement. One industry commenter stated that much of the consumer education responsibility for ECK transactions should be borne by the consumer's financial institution. A few industry commenters were concerned about the length of the disclosures, particularly in combination with the authorization disclosure, and expressed concern that consumers may be discouraged from reading them. One industry commenter stated that the disclosures may not be feasible as an ongoing requirement. Another industry commenter expressed concern about the cost of reprogramming terminals. One industry commenter thought the Board should require financial institutions to include the disclosures in their account agreements or on each periodic statement that includes an ECK transaction.

A number of industry commenters opposed the proposed disclosure that states when a consumer's check is used for an ECK transaction, the transaction may clear quickly. Many of these commenters stated that in the majority of cases an EFT and a check will clear in roughly the same period of time. Other commenters stated that under Check 21, checks may clear as fast or faster than EFTs, and expressed concern that the disclosure may mislead consumers. A few commenters stated it might be impossible to explain the meaning of ''quickly'' in different circumstances.

Many industry commenters also opposed the proposed disclosure that the consumer's check will not be returned by the consumer's financial institution. The majority of these commenters stated the disclosure would be misleading, particularly to consumers whose checks currently are not returned by their financial institutions under the terms of their account agreements. A few commenters

asserted the disclosure might become less significant to consumers in light of Check 21. One commenter believed that consumers may confuse the disclosure with similar statements from their financial institution about check handling under Regulation CC, as amended to implement Check 21.

As the payment system evolves, consumers' checks are being used differently than in the past, and consumer rights with respect to EFT transfers are different than those for check transactions. Given the unique characteristics of ECK transactions, the Board believes it would be beneficial to provide additional information to consumers to help them better understand the nature of these transactions. The additional information highlights and may draw consumers' attention to some of the key differences in the way payments are handled under the ECK process, and possibly reduce consumer confusion about ECK transactions. Moreover, the Board notes that some payees, particularly in the ARC environment, are currently providing this information to their customers to help reduce consumer inquiries and complaints. Requiring this notice could facilitate consumer understanding by ensuring that all consumers who engage in ECK transactions receive this information. Accordingly, the Board is exercising its authority under Sections 904(c) and 904(d)(1) of the EFTA and adopting the proposed notice in the final rule, with certain modifications to address commenters' concerns.

The Board recognizes that a check may be processed as fast or faster than an ECK transaction in some instances based on current industry practices and potential changes in check processing facilitated by the Check 21 Act. Nevertheless, the Board believes it is important to draw a consumer's attention to the fact that an ECK transaction ''may'' clear quickly. The purpose of the notice is to emphasize to consumers the importance of having sufficient funds in their accounts at the time of the transaction, since many consumers may still believe that use of a check will result in a significant time lag between the time the consumer provides a check as payment and when funds are in fact debited from the consumer's account. To address commenter concerns about potential comparisons with check processing, the notice in § 205.3(b)(2)(iii) has been revised to state that funds may be debited from consumers' accounts as soon as the same day payment is received.

Section 205.3(b)(2)(iii) also retains the requirement to notify consumers that they will not receive their checks back from their financial institution if their checks are converted. The disclosure addresses complaints received by the Board from consumers expressing confusion about not receiving their checks back in ECK transactions. In particular, some consumers may rely on the checks they receive back with their periodic statements for account reconciliation and recordkeeping purposes. Comment 3(b)(2)–5 clarifies that the statement that a check will not be returned by the consumer's financial institution is not required at POS, if, as is typically currently the case, the merchant returns the check to a consumer.

To provide flexibility and address the concerns about the length of ECK disclosures, payees at POS may provide the notice in § 205.3(b)(2)(iii) on posted signage, and need not also provide the notice on the receipt provided to the consumer at the time of the transaction. However, payees in ARC transactions must provide the notice with the general notice to obtain consumer authorization for the ECK transaction. The Board expects that ARC payees will likely provide the combined notice on a billing statement or invoice. As provided in § 205.3(b)(2)(iv), model clauses are provided in Appendix A–6 to help payees comply with the additional disclosure requirements. Model Clause A–6(c) sets forth two different formulations for the statement regarding when funds may be debited from a consumer's account, depending on where the payment is made. If the payment is made at POS, the statement refers to the possibility that funds may be debited from the consumer's account as soon as the same day the consumer *makes* the payment. For ARC transactions, the statement refers to the date that the payee *receives* the payment.

Consistent with § 205.4(a)(1), and as stated above in the context of the notice to obtain consumer authorization for an ECK transaction, the notice provided under § 205.3(b)(2)(iii) to consumers about the nature of ECK transactions must be clear and readily understandable. For example, notices in small print and buried in the middle of unrelated information would likely not meet the standard. Payees may also consider using headings preceding the notice to call attention to the information presented. If payees elect to provide the information under § 205.3(b)(2)(iii) separately on a sign, the notice should not be obscured by other information or signs that may also be located at POS.

As stated above, with ECK transactions, consumers' checks are being used differently than in the past, and consumers may not be aware that the conversion of their checks to EFTs may impact the collection time for the payment, or that they will not receive their checks (or images of their checks) back with their statements as has been the case for check transactions in the past. Thus, the Board believes that these additional disclosures are appropriate at present. Moreover, many payees are already providing similar disclosures to reduce possible consumer inquiries. Nevertheless, the Board expects that over time, consumers will become more familiar with ECK transactions, thereby reducing the need for the additional information. Thus, the final rule provides a sunset date of three years from the mandatory compliance date of January 1, 2007 for the final rule, after which time payees will no longer be required to provide the notice set forth in § 205.3(b)(2)(iii).

Transactions initiated by mistake. The supplementary information to the proposed rule clarified that where a merchant or other payee initiates an EFT in error, the transaction would not be covered by Regulation E where the transaction does not meet the definition of an EFT. Few commenters addressed the statement, but one requested clarification because the inability to process an item is not necessarily the result of an ''error.'' The Board agrees that the word ''error'' has a particular meaning in the EFTA, Regulation E and other rules, and that in some cases a transaction may not be able to be processed as an EFT for other reasons. Accordingly, the Board believes that the statement applies to transactions where a payee mistakenly initiates an ECK transaction, such as when the payee attempts to convert a money order. Such a transaction is not subject to the coverage of the EFTA and Regulation E, even if initiated as an ECK transaction.

Collection of Service Fees Via Electronic Fund Transfer

In the proposal, comment 3(b)–3 was added to clarify that an EFT from a consumer's account to collect a service fee due to insufficient funds is covered by Regulation E, and must be authorized by the consumer. Under the proposal, the provision of notice to the consumer, coupled with the consumer's decision to proceed with the transaction, would constitute authorization for the debit. This provision has been adopted in the regulation in new § 205.3(b)(3), which also requires payees to notify consumers

about the specific amount of the fee in order to obtain the consumer's authorization for the transaction. Consistent with the authorization requirement at POS for ECK transactions, the final rule requires that where a service fee for insufficient or uncollected funds in connection with a POS transfer may be collected via an EFT, the notice must be posted in a prominent and conspicuous location, and a copy of the notice must be provided to the consumer. Comment 3(b)(3)–1 clarifies that the requirement to obtain the consumer's authorization does not apply to fees imposed against the consumer's account by the consumer's account-holding institution for paying overdrafts or returning a check or EFT unpaid.

The majority of commenters generally agreed that EFTs initiated to collect service fees for insufficient funds should be covered by Regulation E. A few industry commenters stated coverage was appropriate as long as a merchant or other payee could obtain authorization of the service fee when it provides notice to the consumer that the fee will be debited electronically from the consumer's account, and the consumer decides to proceed with the transaction. Other industry commenters generally supported the notice requirement, but believed the Board should also require signed authorization. Several industry commenters requested clarification that additional authorization requirements may be established by payment system rules. A few commenters requested clarification that the proposed rule did not intend to address ''NSF'' fees assessed by a consumer's financial institution for returning a check unpaid. Some industry commenters requested revising the comment to clarify that a check might be returned for reasons other than ''insufficient'' funds.

Consumer group commenters opposed the proposed comment. These commenters stated that notice and the consumer writing a check alone should not be sufficient to authorize the debiting of service fees, noting that while a consumer may reasonably anticipate a withdrawal from his or her account for the face amount of the check, the consumer would not expect an additional debit for the fee, absent additional prior, written authorization. Consumer groups also stated that a written, signed authorization requirement would encourage consumers to exercise more care in determining their actual balances before making a payment.

Some industry commenters also opposed the proposed comment. One commenter asserted that providing notice at POS would not sufficiently inform the consumer of the possibility that a service fee could be debited electronically from the consumer's account. A few commenters opposed the comment as inconsistent with the NACHA rule, which requires written, signed authorization for collection of service fees via an EFT. A couple of commenters believed it important to require signed authorization so a consumer will know and understand the fee imposed. One commenter expressed the concern that some payees believe the current Regulation E notice equals authorization comment grants a substantive right to collect a service fee, notwithstanding other federal or state law requirements that might apply.

Proposed comment 3(b)–3 has been moved to the regulation as new § 205.3(b)(3) in the final rule. In general, § 205.3(b)(3) provides that a consumer authorizes the electronic collection of a fee for a check or EFT returned due to insufficient funds when the consumer receives notice of a payee's intent to collect the fee via an EFT, and the consumer goes forward with the transaction. The final rule also requires payees to include the specific amount of the fee imposed in the notice provided to consumers to ensure that consumers are informed of the amount of the fee they may be charged in the event they have insufficient funds in their account. Section 205.3(b)(3) requires payees to obtain a consumer's authorization for the debit regardless of whether the underlying transaction is an EFT or is a check transaction, as long as the payee intends to collect a service fee for insufficient funds via an EFT to the consumer's account. *See also* comment 3(c)(1)–1.

In addition, section 205.3(b)(3) has been further revised to address some commenters' concerns. First, the provision was not intended to address fees assessed on a consumer's account by the consumer's financial institution for the return of a check or EFT unpaid (commonly known as ''NSF fees''), but rather, to address service charges assessed by a *payee* because the consumer's check or EFT was returned unpaid. Accordingly, references to ''NSF fees'' in the proposed comment have been deleted and replaced with ''service fee(s)'' in the final rule. New comment 3(b)(3)–1 further provides that the authorization requirement does not apply to fees imposed against the consumer's transaction account by the consumer's account-holding institution for paying overdrafts or returning a check or EFT unpaid. (However, where a financial institution holds the consumer's deposit or checking account and also acts as a payee, such as in connection with a loan or credit card account, it would be required to obtain the consumer's authorization in order to collect a service fee for insufficient or uncollected funds in connection with the underlying transaction, but not to collect any separate service fee that may be assessed against the deposit or checking account for returning the check or EFT unpaid.)

Second, because a check or EFT may be returned for reasons other than insufficient funds in the consumer's account, § 205.3(b)(3) states that the rule applies where an EFT or check is returned for ''insufficient or uncollected'' funds.

Third, consistent with the authorization requirements for the ECK transaction, the Board is exercising its authority under Sections 904(c) and 904(d)(1) of the EFTA to require payees at POS to provide notice of their intent to collect service fees for insufficient or uncollected funds via EFT, and to disclose the amount of the fee, on signage posted in a prominent and conspicuous location at POS. A copy of the notice must also be provided to the consumer at the time of the transaction, such as on the sales receipt. Payees in ARC transactions will typically provide written notice on a billing statement or invoice. Model Clause A–6 contains model language that payees may use to obtain a consumer's authorization for the collection of the service fee for insufficient or uncollected funds via an EFT.

The final rule does not require payees to obtain a consumer's signature to authorize the collection of service fees for insufficient or uncollected funds via an EFT. Particularly at POS, the Board believes the added benefit of a signature would be minimal in light of the requirements to provide notice of the intent to collect the service fee via an EFT both on posted signage, and on a receipt provided to the consumer at the time of the transaction. The Board further notes that § 205.3(b)(3) addresses only the requirement that a payee obtain a consumer's authorization for a service fee for insufficient or uncollected funds the payee intends to collect via EFT. The final rule does not, however, address whether a payee has a substantive right to collect the service fee—that is a matter of state or other law. The Board notes that other federal or state laws, such as the Fair Debt Collection Practices Act, as well as payment system rules, may impose additional requirements.

3(c) Exclusions From Coverage

When payees re-present checks electronically, they may also seek to debit a service fee for insufficient funds via EFT from the consumer's account. Although the electronic re-presentment of the returned check (RCK) is not covered by Regulation E because the transaction was originated by check, the separate electronic debit of the service fee *is* covered by the regulation. Proposed comment 3(c)(1)–1 clarified that a consumer authorizes the debit of the service fee when the consumer goes forward with the transaction after receiving notice that the fee will be collected electronically. No commenters opposed the clarification. Comment 3(c)(1)–1 is revised, consistent with § 205.3(b)(3), to add a reference to ''uncollected'' funds and to provide that authorization at POS for the electronic debit of the service fee from the consumer's account in connection with a re-presented check requires notice posted on signage, with a copy of the notice provided to the consumer.

Section 205.5 Issuance of Access Devices

Section 911 of the EFTA, which is implemented by § 205.5 of Regulation E, generally prohibits financial institutions from issuing debit cards or other access devices except (1) in response to requests or applications or (2) as renewals or substitutes for previously accepted access devices. Comment 5(a)(2)–1 generally provides that a financial institution may not issue more than one access device as a renewal of or substitute for an accepted device (the ''one-for-one rule''). Section 205.5(b) provides, among other things, that any access device issued on an unsolicited basis must not be validated at the time of issuance. Under the proposal, comment 5(b)–5 clarified that a financial institution may issue more than one access device in connection with the renewal or substitution of a previously accepted access device, provided it complied with the conditions set forth in § 205.5(b) for the additional unsolicited devices. The proposal retained the general one-for-one rule in comment 5(a)(2)–1; however, a cross-reference to proposed comment 5(b)–5 was added. The revisions are being adopted substantially as proposed, with some modifications to address commenters' concerns.

Most commenters addressing this issue supported the proposal. One commenter asserted that since liability for unauthorized use is on a per-account (not per-device) basis, issuing additional devices would not impose added risk on the consumer. Another commenter agreed that an additional access device should be issued in unvalidated form, but suggested that new initial Regulation E disclosures should not be required to accompany the additional device. (One of the requirements for issuing an unsolicited access device under § 205.5(b) is to provide the initial disclosures required by § 205.7 that will apply to the device. *See* § 205.5(b)(3).) One commenter suggested that the proposed commentary changes be expanded to provide financial institutions flexibility to replace access devices having limited functions with devices having additional functions. For example, cards usable only at ATMs could, under this approach, be replaced with cards usable at POS as well.

A few commenters suggested the Board clarify that when an additional access device is issued at the time of replacement or substitution, both the additional device and the device that replaces the accepted access device may be issued in unvalidated form and a single validation procedure may be used to validate both devices. Under such a procedure, the consumer would not have the option to validate only the device replacing the existing device and refuse to validate the additional device; the consumer would have to choose to validate both devices or neither device.

The revisions to the commentary regarding the issuance of additional access devices are adopted as proposed, with a few clarifying changes as described below. Unlike credit cards, a consumer's own funds are at risk of loss in the event of unauthorized use of a debit card or other access device. The potential for unauthorized use may increase if validated cards are intercepted in the mail and consumers are unaware that they may be receiving multiple cards as replacements for an existing access device. The validation requirement of § 205.5(b) limits the risk of monetary losses from the theft of debit cards sent through the mail. Although there would be no increase in a consumer's liability where multiple access devices are issued, asserting a claim of unauthorized use can be inconvenient and time-consuming, and, at least temporarily, the consumer may be deprived of needed funds. Therefore, the Board believes the benefits afforded by the one-for-one rule and the validation requirements of § 205.5(b) are critical in the context of debit cards, and outweigh any benefits of providing greater flexibility to issue access devices. In addition to the validation requirement in § 205.5(b), the Board notes that where additional access devices are issued unsolicited, whether in connection with the issuance of a replacement or substitute device or otherwise, the other provisions of § 205.5(b), including the requirement to provide new initial disclosures, also apply. (*See, however,* comment 2(a)–2, providing that the term ''access device'' does not include a check used as a source of information to initiate an EFT.)

With respect to the suggestion to expand the proposed comment to provide financial institutions with flexibility to replace access devices with limited functions with devices having additional functions, comment 5(a)(2)–1 already addresses the issue; institutions are permitted to expand functions upon replacement or substitution of access devices. When the proposed revisions to comment 5(a)(2)–1 were issued, existing commentary language on this point was not included for the sake of brevity. To clarify this matter, the language in question is set forth in full in the text of the final commentary revisions. Also, the language is modified slightly to make clear that either the access device replacing the existing device, or the additional access device (or both), may provide expanded functions compared to the existing device.

Regarding validation procedures, an institution may require a consumer to choose to either validate all access devices provided by an issuer, including the replacement and any additional devices, or validate none of the issued devices. Also, although an institution is permitted to issue a validated access device to replace an existing accepted access device, the institution may choose instead to issue the replacement device in a form that requires validation. Furthermore, an institution may choose to link the validation of one access device with the validation of another one. Accordingly, comment 5(b)–5 is revised to include a clarification on this issue. The comment also notes that an institution using such a validation procedure should disclose to the consumer in a clear and readily understandable manner that the single validation will validate both access devices, to ensure that the consumer will not, for example, improperly discard the additional, now validated, device.

Section 205.7 Initial Disclosures

7(a) Timing of Disclosures

Electronic check conversion transactions are a new type of EFT requiring new disclosures. *See* discussion below under § 205.7(c). The Board proposed to revise comment 7(a)–1 to provide that an institution may

choose to provide disclosures about ECK transactions early, *i.e.,* prior to the first ECK transaction involving the consumer's account. Commenters supported the proposed revision. One trade association representing credit unions observed that early notification is a cost-effective way of enabling institutions to establish a single means of notifying and educating consumers about their rights concerning electronic fund transfers. Comment 7(a)–1 is adopted as proposed, with a minor revision. *See also* comment 7(a)–2 (permitting an institution that has not received advance notice of a third party transfer to provide required disclosures as soon as reasonably possible after the first transfer).

7(b) Content of Disclosures

The Board proposed to clarify that financial institutions must list ECK transactions among the types of transfers that a consumer can make. *See* proposed comment 7(b)(4)–4. As further discussed below under § 205.7(c), the Board adopts comment 7(b)(4)–4 as proposed.

7(c) Addition of Electronic Fund Transfer Services

Former comment 7(a)–4 stated that if an EFT service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required. Under the final rule, as proposed, this interpretation is moved to § 205.7(c) of the regulation for consistency with other regulations. *See, e.g.,* § 226.9(b)(2) of Regulation Z. New comment 7(c)–1 is adopted as proposed to provide that ECK transactions are a new type of transfer requiring new disclosures to the consumer, to the extent applicable. The model clauses for initial disclosures are revised to provide guidance to institutions regarding their disclosure obligations to consumers about ECK transactions. *See* Appendix A, Model Clauses in A–2.

The Board proposed comment 7(c)–1 to address industry uncertainty about the extent of an account-holding institution's disclosure obligations to new and existing consumers regarding ECK transactions. As stated in the proposal, new disclosures about ECK transactions are necessary because a consumer's check can be used differently than in the past, that is, information from the check can be used to initiate EFTs. Industry comments generally favored including information about ECK transactions in initial disclosures, and many noted that they already have adjusted their disclosures to reflect the fact that ECK transactions are a new type of transfer that may be made to or from the consumer's account. One commenter stated that ECK transactions should not be treated as a new type of transfer because the consumer intended to pay by check, rather than by EFT. The Board notes, however, that if a merchant or other payee provides proper notice about the transaction (*see* § 205.3(b)(2)), a consumer, by providing the check as payment, authorizes the use of the check as a source of information to initiate a one-time EFT from the consumer's account. Comment 7(c)–1 is thus adopted as proposed.

To assist institutions in implementing the new disclosure requirements, the Board also proposed model initial disclosure language to reflect that one-time EFTs are a new type of transfer that may be made from a consumer's account using information from the consumer's check, and to further instruct consumers to notify account-holding institutions when an unauthorized EFT has occurred using information from their check. Commenters supporting the new model language stated that the proposed language was clear, concise, and helpful. A few commenters requested sufficient time for institutions to make the new disclosures.

A few industry commenters stated that certain of the disclosures were unnecessary. Two commenters observed that referring specifically to ECK transactions in the initial disclosures regarding error resolution might mislead consumers to believe that they only had error resolution rights when their check is converted to an EFT. Another commenter, however, believed that including information about ECK transactions in the liability provisions was appropriate, but this commenter objected to listing ECK transactions as a new type of transfer since the consumer intended to pay by check, and not by EFT, and therefore ECK transactions should not be considered to be EFTs. The Board notes that the model language informs consumers that, in addition to notifying their bank when their card or code has been lost or stolen, or when money has been transferred from their account without their permission, they may *also* contact their institution if an unauthorized transfer has been made using the information from their check.

Consumer groups commented that the new model disclosure language was helpful, but urged the Board to also include other practical information about the nature of ECK transactions, and to include information about consumers' rights under check law to differentiate such transactions from ECK transactions. For example, while the current model disclosures describe the 60-day time frame for consumers to exercise their error resolution rights with respect to EFTs, including ECK transactions, shorter time periods for asserting errors may apply to checks processed by means other than check conversion. While institutions may choose to provide consumers with additional information regarding their rights when a check is processed by other means, the model disclosures are solely intended to address consumers' rights under the EFTA when the transaction involves an EFT to the consumer's account. Other error resolution rights which may exist under other laws, including state check law, are outside the scope of this rulemaking. Consumer groups further suggested that the error resolution notice should state more clearly that an institution ''must'' correct any error within 10 business days, rather than use the current language that an institution ''will correct any error promptly.'' However, under certain circumstances, including where an institution provides a provisional credit to the consumer's account or where the error involves a new account, an institution may extend their investigation period to up to 90 days. Therefore, the Board believes the current language is more accurate.

Consumer groups also urged the Board to subject the model notices to a complete review for readability and understandability. For instance, consumer groups observed that the term ''code'' may not be as well understood as ''PIN'' or even ''access code.'' Based on the Flesch-Kincaid scale, the model initial disclosures in the final rule score at a 9.9 grade level, with a Flesch reading ease score of 60.3 on a 100.0 scale, indicating a high level of readability. The Board agrees that in general consumer disclosures benefit from consumer testing, and anticipates that testing of this and other notices could be made part of a future comprehensive review of the regulation.

One trade association and a company that provides compliance forms for institutions expressed their concerns about the scope of the proposed disclosures, stating that the Board's model disclosures were not broad enough to address other types of third-party initiated EFTs which may be initiated using account information from a check, in particular those initiated via a telephone or the Internet. As noted previously in the discussion of § 205.3(b), while telephone and Internet transactions are covered by Regulation E, the proposed rule was intended to

address ECK transactions only; other types of EFTs are not addressed by these provisions in the final rule.

A few industry commenters asserted that since most banks have considered electronically converted checks to be EFTs since adoption of the 2001 commentary, and have already amended their initial disclosures to include ECK transactions, institutions should not be required to amend their disclosures again to include additional detail that is only applicable to ECK transactions. These institutions also stated that the cost of reprinting and mailing the revised disclosures would far exceed any consumer benefit of receiving a notice that explains a process that financial institutions have already been following. Two commenters asked the Board to clarify that the introduction of ECK services would not require change-in-terms notices to existing consumers, because none of the terms of the underlying account agreement are affected by the new type of transfer.

Under the final rule, for customers opening accounts after the mandatory compliance date of January 1, 2007, institutions must include in initial disclosures that ECK transactions are among the types of transfers that a consumer can make. Where institutions have already amended their disclosures to notify their consumers that ECK transactions may be made from their account, they would not be required to make new disclosures about such transactions to those consumers. New disclosures to existing customers would be required to be provided *after* the mandatory compliance date, however, if an institution has not disclosed to those consumers that ECK transactions may be made, even if other terms of the underlying account agreement would equally apply to the new type of transfer. *See* comment 7(c)–1.

The Board specifically solicited comment on whether six months following adoption of the final rule would provide sufficient time for financial institutions to revise their disclosures to comply with the rule. The vast majority of industry commenters urged the Board to extend the time for compliance to one year. The final rule reflects commenters' suggestions; institutions will have until the mandatory compliance date of January 1, 2007 to revise their initial disclosures to reflect ECK transactions, and to provide new disclosures to existing customers if necessary. The Board anticipates that institutions will have depleted their existing stocks of initial disclosures by that time. Institutions are not required to provide new disclosures reflecting ECK transactions until the mandatory compliance date.

Section 205.10 Preauthorized Transfers

10(b) Written Authorization for Preauthorized Transfers From Consumer's Account

Under § 205.10(b), preauthorized EFTs from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. Under existing comment 10(b)–3, a merchant or other payee could not obtain authorization by tape recording a telephone conversation with a consumer who agrees to recurring debits. Comment 10(b)–3 was adopted prior to the enactment of the E-Sign Act. The final rule withdraws the interpretation in comment 10(b)–3 would be withdrawn in light of the E-Sign Act, as proposed.

The E-Sign Act provides, in general, that electronic records and electronic signatures satisfy legal requirements for traditional written records and signatures. Some have suggested that, given the E-Sign Act's broad definitions of ''electronic record'' and ''electronic signature,'' a tape-recorded authorization, or certain types of tape-recorded authorizations, for preauthorized debits might be deemed to satisfy the Regulation E signed or similarly authenticated written authorization requirements. The Board proposed to withdraw the guidance regarding tape recordings because of E-Sign Act considerations, but did not propose to amend comment 10(b)–3 to address how the E-Sign Act should be interpreted with regard to tape recordings of telephone conversations.

Many commenters, including several financial institutions and financial trade associations, as well as a retailer trade association, supported the proposed withdrawal. These commenters stated that without the proposed change, consumers who do not have, or do not want to use, credit cards would not be able to use the telephone to purchase goods or services involving recurring debits to their deposit accounts. One commenter noted that many less affluent consumers do not own computers, so such consumers would be unable to electronically authorize recurring payments unless the proposal is adopted. Another commenter noted that if the proposal is not adopted, merchants may tend to use alternatives such as demand drafts, which offer less consumer protection than debit cards.

Other commenters, including financial institutions and financial trade associations, retailer trade associations, automated clearing house organizations, and a federal government agency, supported the proposal but with modifications or conditions. A few commenters recommended that merchants be permitted to obtain authorization for recurring debits by telephone, without recording, followed by written confirmation, if the consumer was given the option to cancel the transaction. Because of concerns about deceptive telemarketing, other commenters suggested that the use of telephone authorization be limited to situations where (1) the consumer and the merchant have a preexisting relationship, or (2) the consumer initiates the telephone call.

Several industry commenters urged the Board to remove uncertainty by explicitly stating that a recorded telephone conversation complies with the E-Sign Act and, therefore, Regulation E, to facilitate telephone authorizations of recurring debits. A few such commenters argued that merely withdrawing a portion of comment 10(b)–3 as proposed would cause further confusion and, absent additional guidance, would lead merchants to adopt differing practices. One commenter, a federal enforcement agency, recommended that the Board state affirmatively that if a payee relies upon the E-Sign Act in connection with obtaining the consumer's authorization, it must also fully comply with the E-Sign Act with respect to other provisions of the EFTA and Regulation E, including the requirement to provide a clear and conspicuous copy of the full authorization to the consumer. In contrast, a law firm representing retailers asserted that further clarifications regarding the E-Sign Act in the recurring debit context are unnecessary and may cause confusion in other instances when such clarifications are not provided.

A few industry commenters opposed the proposed withdrawal of the guidance due to the potential abuses and increased unauthorized transfers that could result. One such commenter contended that tape recordings do not provide clear evidence of a consumer's authorization, which may be important in the event of a dispute. This commenter also asserted that banks receive many complaints from consumers alleging that the consumer only authorized a one-time electronic debit, but that recurring debits are being processed.

The final rule withdraws the existing guidance regarding whether a tape recording may satisfy the requirement to obtain a consumer's written authorization for recurring debits as

proposed. The final rule does not interpret Regulation E to treat recorded telephone authorizations as written authorizations; however, the Board believes that the E-Sign Act's provisions regarding written documents are applicable to the EFTA and Regulation E. As a result, if, under the E-Sign Act, a tape-recorded authorization, or certain types of tape-recorded authorizations, constitute a written and signed (or similarly authenticated) authorization, then the authorization would satisfy the Regulation E requirements.

In addition to complying with the E-Sign Act,[2] payees will need to ensure that they comply with the requirements of § 205.10(b) of Regulation E. Specifically, the authorization must be readily identifiable as such to the consumer, and the terms of the preauthorized debits must be clear and readily understandable to the consumer. *See* comment 10(b)–6. Payees must also provide the consumer a copy of the authorization. With respect to additional suggestions from commenters to permit authorization by telephone without recording but with written confirmation, or to limit the use of telephone authorizations to specific circumstances, such changes would require amendments to the EFTA or Regulation E rather than the staff commentary, and thus the Board has decided not to consider these suggestions at this time.

Comment 10(b)–7 addresses authorizations for recurring payments obtained by telephone or on-line, and states that the payee's failure to obtain written authorization is not a violation if the failure was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. For example, an error might occur where the consumer indicates that a credit card (for which no written authorization would be required) is being used for the authorization, when in fact the card is a debit card.

Concerns were expressed by retail and other industry groups about what procedures would be deemed reasonably adapted to avoid error where a telemarketer seeks to obtain a consumer's authorization for recurring payments for goods or services, such as newspaper subscriptions, using the consumer's credit or debit card. The Board proposed to revise comment 10(b)–7 to state that procedures reasonably adapted to avoid error will vary with the circumstances. The proposed revision also stated that asking the consumer to specify whether the card to be used for the authorization is a debit card or a credit card, using those terms, is a reasonable procedure.

The Board also proposed to add an example of a payee learning, after the transaction occurred, that the card used was a debit card as a result of the consumer bringing the matter to the payee's attention. For example, the consumer may call the merchant to assert a complaint about use of a debit card.

Most industry commenters supported the proposal as written, and a few suggested modifications. No commenters opposed the proposal. One trade association representing retailers suggested that comment 10(b)–7 not provide the example of asking the consumer whether the card being used is a debit card or a credit card as the safe harbor for compliance. Another trade association requested that the comment not state that a reasonable procedure would require use of the term ''debit card.'' This commenter also recommended that the Board indicate in the comment that confirmation of the type of card being used is not necessary when the authorization is given in writing, including on-line. In contrast to the comments from the retailer trade associations, a federal enforcement agency urged the Board to require payees to ask whether the consumer is using a debit or credit card, in lieu of creating a safe harbor for that procedure. However, one law firm representing retailers opposed this suggestion contending that such a requirement would be unduly restrictive because merchants might have procedures that would not include asking whether the card is a debit or credit card.

The federal enforcement agency also suggested that the Board clarify that, in some cases, merchants should consider additional information as part of reasonable procedures to avoid error. Such information might include, for example, repeated consumer complaints about unauthorized debits. This commenter suggested that the commentary provide that if a merchant becomes aware of repeated authorization problems, it should examine and possibly change its procedures. A law firm, however, argued that such a requirement would be unnecessary because merchants would have insufficient guidance as to what other information they should consider and under what circumstances.

One consumer group stated that the final rule should require that where the merchant learns only later, after the telephone authorization, that the card used was a debit card, the merchant must obtain a written and signed (or similarly authenticated) authorization or cease debiting the consumer's account.

The Board adopts the revisions to comment 10(b)–7 as proposed, with minor revisions. As stated in the proposal, it may have been reasonable in the past, when relatively few debit cards were in use compared to credit cards, for payees to use procedures that did not involve asking questions about the type of card being used. Today, however, given the growth of debit card usage, the Board believes that reasonable procedures should include interaction with the consumer specifically designed to elicit information about whether a debit card is involved. Accordingly, the final rule retains the safe harbor example of a reasonable procedure of asking the consumer to specify whether the card to be used for the authorization is a debit (or check) card or a credit card. The final comment includes a reference to ''check cards'' to reflect current terminology. To illustrate the safe harbor, assume that a consumer makes a purchase which will result in a series of recurring payments. After the merchant inquires about the payment method, the consumer indicates that they intend to use ''Bank X'' card, without stating whether the card is a debit card or a credit card. In order to fall under the safe harbor, the merchant should then ask the consumer whether the card is a debit (or check) card or a credit card.

The final rule does not impose an express requirement of inquiring whether a card provided is a debit card or a credit card, because the determination of whether a procedure is reasonably adapted to avoid the error of failing to obtain a consumer's written authorization for recurring debits may vary with the circumstances. Similarly, although it may be reasonable in some cases for a merchant to revise their authorization procedures to avoid error based on additional information about potential authorization problems, such as repeated consumer complaints about unauthorized debits, the Board believes it is unnecessary to add a specific provision to the commentary that would require revised procedures in those limited instances.

The Board also does not believe that it is necessary to incorporate in the final rule a requirement that a merchant should promptly notify the consumer when it chooses to cease debiting the consumer's account upon learning that the card used was a debit card. The Board believes that a merchant, due to its own interest, will likely contact the

[2] See, *e.g.*, section 106(5) of the E-Sign Act (definition of ''electronic signature'').

consumer to arrange for some other means of payment.

A few industry commenters also addressed the Board's discussion in the proposal regarding whether merchants should be required to verify card numbers presented by consumers against lists of credit and debit card Bank Identification Numbers, commonly referred to as ''BIN tables,'' as a reasonable procedure to avoid error. *See In re Visa Check/Mastermoney Antitrust Litigation,* No. CV–96–5238 (E.D.N.Y. 2003) (requiring Visa and MasterCard to make BIN tables available to merchants as part of a litigation settlement). These commenters agreed with the Board's observation that to the extent that BIN tables are not available to merchants in an on-line, real-time form, it would be burdensome for merchants to verify card numbers presented by consumers against the BIN tables. Moreover, the Board understands that Visa and MasterCard debit cards issued after January 1, 2005, display the word ''debit'' on the front of the card. Accordingly, the final rule does not require merchants to obtain or consult BIN tables to maintain procedures reasonably adapted to avoid error. Similarly, merchants are not required to check card numbers already on file against BIN tables.

10(c) Consumer's Right To Stop Payment

Proposed comment 10(c)–3 stated that an institution need not have the capability to block preauthorized debits, for example, where a preauthorized debit is made through a debit card system, and may instead use a third party to block the transfer(s), as long as such payments are in fact stopped. The proposal revised comment 10(c)–2 to cross-reference the new proposed comment. Comment 10(c)–2 is adopted as proposed, and comment 10(c)–3 is adopted with revisions for clarity.

In the proposal, comment 10(c)–3 was added to address procedures for stopping recurring debits where the account-holding institution is unable to block a payment from being posted to the consumer's account because, for example, the posting occurs soon after the transaction has been approved, such as where the transaction takes place over a debit card network. In these cases, the institution may not have sufficient time to identify payments against which stop-payment orders have been entered. The proposed comment provided an alternative procedure for how the account-holding institution can comply with the stop payment requirements of Regulation E in these circumstances.

Most commenters addressing this issue supported the proposal. One commenter observed that in the case of debit card transactions, the interception of transactions at the network level may be more effective than blocking transactions at the level of the account-holding institution. Some commenters requested clarification on various points. A few industry commenters asked that the Board clarify that comment 10(c)–3 does not apply to recurring debits processed through batch systems, such as the ACH network. Consumer groups were concerned that the proposal might imply that even if a consumer revokes authority for all future recurring debits by a payee, the financial institution may comply by stopping a single payment; these commenters believed that the obligation should be to cancel the debits permanently.

A number of commenters suggested that the Board adopt other revisions to the existing commentary under § 205.10(c). Several industry commenters asserted that the EFTA and Regulation E only require a financial institution to stop a single preauthorized debit, and do not require the institution to take action to respond to a consumer's revocation of authority for all future debits from a particular payee, as stated in comment 10(c)–2. The commenters suggested that the comment be removed or modified accordingly. In addition, some commenters suggested revising comment 10(c)–1 to state that a stop payment order need not be maintained by the consumer's financial institution for more than six months, maintaining that such a revision would make the comment consistent with Uniform Commercial Code (UCC) provisions relating to stop payment orders on checks and with industry practice.

Comment 10(c)–3 is adopted as proposed. The comment permits an institution, upon receiving a consumer's stop payment order, to use a third party to block a preauthorized transfer if the institution does not have the capability to block the preauthorized debit from being posted to the consumer's account, as long as the payment is in fact stopped, *i.e.*, the consumer's account is not debited for the payment. Comment 10(c)–2 is also revised as proposed. The Board did not intend to imply that an institution's obligation to honor a stop-payment request is limited to a single preauthorized debit. If a consumer revokes authority for all further payments from a particular payee, the institution (through its own procedures or by using those of a third party, as provided in new comment 10(c)–3 must make arrangements such that no further debits originated by that payee are made to the consumer's account. However, the Board notes that under comment 10(c)–2, institutions may require the consumer to provide a copy of a written notice sent to the payee, revoking authority for the payee to originate debits to the consumer's account. If the consumer does not provide the copy within 14 days, the institution is not required to continue stopping payments to the payee.

As stated above, the proposal was intended to address problems in stopping recurring debits that take place over debit card networks, where the account-holding institution may not be able to timely block a debit from being posted to the consumer's account. Nevertheless, although comment 10(c)–3 primarily focuses on debits over debit card networks and other ''real-time'' systems, the comment is not limited to such systems and any institution that does not have the capability to block a preauthorized debit from being posted to the consumer's account may instead use a third party to block the debit, so long as the consumer's account is not debited for the payment.

10(d) Notice of Transfers Varying in Amount

When a preauthorized EFT from a consumer's account will vary in amount from the previous transfer, or from the preauthorized amount, § 205.10(d) requires the designated payee or the consumer's financial institution to send written notice of the amount and date of the transfer at least 10 days before the scheduled date of the transfer. Paragraph 10(d)(2) permits the payee or the institution to give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or only when a transfer differs from the most recent transfer by more than an agreed-upon amount. Under the proposal, comment 10(d)(2)–2 would, in limited circumstances, relieve financial institutions of giving the consumer the option of receiving notice each time a transfer varies from the previous transfer. The final rule adopts proposed comment 10(d)(2)–2, with some revisions for consistency with the regulation.

Some financial institutions have suggested that while the notice requirement is appropriate where consumer funds are transferred to a third party, it should not apply when the transfer is between accounts, as defined under Regulation E, that are owned by the same consumer, even when the accounts are held at different financial institutions. These institutions

assert that the advance notice requirement is particularly burdensome for institutions that offer certificate of deposit (CD) products that allow customers to set up preauthorized transfers of interest from the CD account to another account of the consumer held at a different institution. For such products, monthly interest payments might vary solely because of the different number of days in each month, yet such variance would require the institution to send the consumer advance notice in each instance before transferring the funds. The proposed comment would give financial institutions flexibility to provide notice only when a preauthorized transfer falls outside a specified range where funds are transferred and credited to an account of the consumer held at a different financial institution. (Preauthorized transfers between accounts of the same consumer held at the *same* institution qualify for the intra-institutional exclusion from coverage in § 205.3(c)(5).) Also, the proposal provided that the range must be an acceptable range that could be anticipated by the consumer, and the institution would have to notify the consumer of the range.

Commenters generally supported the proposed comment. Some industry commenters believed that the new comment could eliminate the need for unnecessary notices without detriment to consumers, while providing cost savings for those institutions that offer consumers the option of transferring funds to an account at another institution on a preauthorized basis. One industry commenter requested that the Board provide examples of acceptable ranges of balances and provide optional model language. Another industry commenter urged the Board to go further and exclude CD interest via ACH transfers from the scope of § 205.10(d) altogether, since CD accounts are not transaction accounts, and because transfers involve accrued interest only.

In contrast, one ACH trade association suggested that it may not be appropriate to allow institutions to avoid providing notices with each varying transfer without first obtaining consumer consent given that identity theft is an increasingly prevalent problem. This commenter noted that the NACHA rules already allow for ranges, and few companies take advantage of that opportunity. Consumer groups believed that the proposed commentary provision could facilitate transfers out of a consumer's account to repay payday loans, and urged the Board either to withdraw the proposed commentary provision, or to strictly limit the exception to transfers of interest earned in one account to another account held in the same name.

The final rule adopts comment 10(d)(2)–2 as proposed, with minor revisions for clarity. Given the express language in Section 907(b) of the EFTA, it is not appropriate to remove the notice requirement entirely. Nevertheless, the Board believes that requiring a notice for each varying transfer where the transfer is between accounts owned by the same consumer provides little benefit to the consumer while imposing unnecessary costs on the financial institution making the transfer. Because this exception is limited to transfers of consumer funds between accounts held by the same consumer at different institutions, the Board believes the risk of loss from identity theft is minimal. In addition, because the transfers must be between consumer accounts held at different financial institutions, the exception would not be applicable to transfers to repay loans, including payday loans, which are not accounts under Regulation E. The Board is not aware of any other circumstances that pose additional risks to a consumer's account if this comment is adopted, and thus believes it is unnecessary to limit the exception to accounts solely involving transfers of CD interest.

For consistency with § 205.10(d)(2), the final comment is revised to provide that a financial institution may elect to provide notice only when a preauthorized transfer falls outside a specified range, or differs from a specified amount from the most recent transfer, without providing the consumer the option of receiving notice of all varying transfers, if the funds are transferred and credited to an account of the consumer held at another financial institution. The range or amount of variance must be reasonably anticipated by the consumer, and the institution must notify the consumer of the range or amount at the time the institution obtains the consumer's authorization for the preauthorized transfers. Comment 10(d)(2)–2 includes an example of an acceptable range where the preauthorized transfers are for transfers of interest for a fixed-rate CD account. In this case, an institution could provide a range based on transfers of interest for months containing 28 days and for months containing 31 days.

Section 205.11 Procedures for Resolving Errors

11(b) Notice of Error From Consumer

The Board proposed to clarify in comment 11(b)–7 that an institution need not comply with the procedures and time limits in § 205.11 for investigating a consumer's assertion of an error when the consumer provides a notice of error after the time period specified in § 205.11(b). Where the error involves an unauthorized EFT, however, liability for the unauthorized transfer may not be imposed on the consumer unless the institution satisfies the requirements of § 205.6. Comment 11(b)–7 is adopted generally as proposed, with some revisions to address commenters' concerns.

Commenters on the issue uniformly supported the proposed comment, although some industry commenters asked the Board to provide certain additional clarifications. A few commenters believed that it was unclear which provisions of § 205.6 were applicable where the asserted error involves an unauthorized transaction. For example, one commenter stated that the generic reference to § 205.6 is confusing in light of the limitation on liability in § 205.6(b)(1) when the consumer provides timely notice. The final rule retains the general reference because the requirements for the consumer to provide timely notice is different under § 205.6 than under § 205.11. Under § 205.11, the consumer must provide notice 60 days after the financial institution sends the periodic statement on which the alleged error is reflected. In contrast, under § 205.6, the consumer must provide notice two business days after learning of the loss or theft of an access device. Moreover, the consequences to the consumer for failing to provide timely notice differ under §§ 205.6 and 205.11. For example, a consumer may not find out about the loss or theft of an access device until more than 60 days after a periodic statement is sent.[3] In such case, the consumer's liability could still be capped at $50 or less as provided under § 205.6(b)(1), so long as the consumer notifies his or her financial institution within two business days after learning of the loss or theft of the access device, notwithstanding the fact that the procedures and time frames in § 205.11 would not apply.

Industry commenters also suggested that the Board conform the 60-day time

[3] Comment 6(b)(1)–2 states that the fact that a consumer has received a periodic statement that reflects unauthorized transfers cannot be deemed to represent conclusive evidence that the consumer had such knowledge.

frame for providing notices of error in § 205.11 to time frames provided under other laws or payment system rules. Several commenters urged the Board to conform the time frame for reporting an error in § 205.11(b)(1) from 60 days after the date of availability of the periodic statement to 60 days after the settlement date of the transaction consistent with the NACHA rules. The 60-day time frame for providing a notice of error in connection with an EFT after a periodic statement is sent, however, is a statutory requirement under Section 908(a) of the EFTA. Some commenters believed that the Board should adopt a time limitation for asserting a claim of an unauthorized EFT of one year from the date of availability of the periodic statement, consistent with time frames established by Check 21 and § 4–408 of the UCC. The EFTA does not contain a time limitation for asserting a claim of unauthorized EFTs, and the Board did not propose such a limitation. Accordingly, the Board declines to adopt the suggested changes.

Finally, one banking trade association recommended that the Board recognize the exception in § 205.6(b)(4) for extending the time frames for reporting an unauthorized transaction if the consumer's delay in notification is due to extenuating circumstances. The Board agrees that where a consumer is unable to provide timely notice for an unauthorized EFT due to extenuating circumstances, such as extended travel or a hospitalization, an institution must extend the time frames provided in § 205.6(b) for reporting the unauthorized transaction.

11(c) Time Limits and Extent of Investigation

Section 205.11(c)(4) permits an institution to limit the investigation of an alleged error to ''a review of its own records'' where the allegation pertains to a transfer to or from a third party with whom the institution has no agreement for the type of EFT involved. This is commonly referred to as the ''four walls'' rule. Comment 11(c)(4)–4 provides that a financial institution does not have an agreement with a third party solely because it participates in transactions that occur under the federal recurring payments programs, or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because it agrees to be bound by the rules of such an arrangement. Proposed comment 11(c)(4)–5 provided that an institution's ''own records'' may not be limited to the payment instructions where additional information is available within the institution relevant to resolving the consumer's particular claim. As explained in the supplementary information to the proposal, because the number and variety of ACH payments has expanded significantly since the ''four walls'' rule was first adopted in 1980, an institution's review of additional information beyond the payment instructions may be necessary to provide consumers with a meaningful investigation of an allegedly erroneous or unauthorized payment. Comment 11(c)(4)–5 is adopted as proposed, with some modifications to address commenter concerns.

Some commenters favored the proposed comment, including consumer groups, a federal enforcement agency, and a few industry commenters. These commenters generally agreed with the Board's stated rationale for the proposed comment. For example, several credit union commenters stated that it is reasonable to expect financial institutions to exhaust their review of internal records when responding to alleged errors regarding consumers' Regulation E transactions. Consumer groups urged the Board to revise the comment to state that an institution's reviews should consider records that could be helpful to resolving a consumer's claim(s), not just those records that are dispositive. One industry commenter generally agreed with the proposal in light of both the increased variety of EFT transaction types and its belief that information relevant to an assertion of error could likely to be outside the payment instructions but within the institution's ''four walls'' and records.

Most industry commenters opposed the proposed comment. Many industry commenters raised concerns about ambiguity as to the scope of the required investigation, the potential burden on institutions, and the low likelihood of yielding additional, helpful information. Several commenters asserted that it would unnecessarily require institutions to look beyond their own records and could potentially require that they seek to obtain information from additional parties to the transaction when payment instructions could resolve the claim of error.

Many industry commenters were also concerned that the proposed comment might require that an institution look for any and all potentially relevant records—even in cases where a consumer may have many different relationships with the institution (deposit, credit, investment). One commenter stated that it would be impractical for a large bank to comply with the proposed comment, since it would require a review of information relating to other accounts and transactions stored in various locations. Similarly, a few commenters noted that a bank employee conducting an investigation might not be aware of all of these relationships or may lack a practical ability to obtain all information about the bank's dealings with that customer. These commenters argued that a reasonable interpretation of the ''four walls'' rule must limit the bank's duty to inquire not just about information within the institution's own records relevant to resolving the consumer's particular claim, but to information that is reasonably available to the bank employee investigating the consumer's claim.

Several ACH associations asserted that the proposal could further confuse what is already a troublesome section of the Commentary for their members. These and other commenters generally believed that institutions would be unlikely to have readily available information in their records beyond the payment instructions that would assist in the review of the particular transaction, noting, for example, that the consumer's authorization for the transaction would be in the possession of the originator-payee, not the consumer's institution. These commenters stated that searching for, and obtaining, such additional information would be time-consuming and costly. They added that since authorization is between the consumer and the originator of the transaction, the proposed comment could inappropriately place the consumer's institution in the position of deciding the legitimacy of the authorization. In their view, this issue should be resolved between the merchant or other payee and the consumer—not by the consumer's financial institution.

Many industry commenters, including ACH associations, noted that the NACHA rules already ensure a remedy under which the consumer is already made whole in a timely manner.[4] One industry commenter, however, argued that the NACHA rules were insufficient because of the shorter time period for reversing transactions (chargebacks), urging instead that the Board withdraw the proposed comment and encourage NACHA to amend its rules to conform its chargeback period to the period set forth under § 205.11 for reporting

[4] Under the NACHA rules, if the consumer executes a written statement under penalty of perjury within the prescribed time frame of 60 days from the date of the transaction, the financial institution will promptly re-credit the consumer's account and return the transaction to the payee.

alleged errors.[5] This commenter asserted that this change would properly place the burden of assuring proper authorization of transactions on the originating merchant and financial institution—the two parties best positioned to monitor and ensure compliance with this requirement. This commenter maintained that the automatic right to charge back under the NACHA rules works well for most ACH disputes and that extending the time period for permitting charge backs would not impose significant additional costs on merchants or its financial institution.

Many industry commenters recommended that the regulation require a ''reasonable'' investigation and to provide examples of appropriate steps to be taken to minimize the compliance burden similar to existing guidance under Regulation Z. *See, e.g.*, § 226.12(b)–3. In their view, a reasonable investigation might, for example, consist of an examination of the institution's records for the account in question, but not all accounts held by the particular consumer at the financial institution. These commenters believed that a ''reasonable investigation'' standard would enable institutions to take measures appropriate to the nature of the error and the size of the institution.

A few commenters, including consumer groups, asked the Board to clarify an institution's error resolution responsibilities under the ''four walls'' rule when it has outsourced relevant aspects of its operations, such as payment processing or the investigation of disputes. These commenters believe that in such cases an institution's records should include a review of information that is within the institution's possession or control and not merely within the institution's physical offices. Another commenter inquired how the proposed error resolution process would work where an EFT service provider (rather than an account holding institution) is providing the EFT service. This commenter asserted that currently, account holding institutions have limited error-resolution obligations with respect to errors resulting from a third-party service provider, and that the proposed commentary language should clarify whether there is any intended change in the error resolution responsibilities between the service provider and account holding institution.

As stated in the proposal, the ''four walls'' rule was adopted when most third party transfers involved preauthorized credits to a consumer's account to pay salary or other compensation, or preauthorized debits from a consumer's account to pay a utility company or other payee. In the absence of an agreement between the financial institution and the third party, it was deemed reasonable to permit an institution to limit its investigation to the institution's own records. *See* 45 FR 8248 (Feb. 6, 1980). Historically, alleged errors often pertained to the amount of the transfer. Consequently, an institution would likely have very limited information—such as the ACH payment instructions—for purposes of conducting its investigation. The ''four walls'' approach thus sought to strike a balance between an institution's investigatory burden relative to the types of errors commonly asserted and the institution's practical ability to procure relevant information in light of its lack of an agreement with the third party.

In the twenty-five years since the ''four walls'' analysis was adopted, the increasing use of ACH as a means to effectuate a wide variety of third-party transfers (and preauthorized transfers) has expanded significantly, and, as a result, the types of errors that may occur is far greater than those originally contemplated. For example, the ACH network today is used to process ECK transactions. Similarly, a merchant may use the ACH network in an on-line or telephone transaction to initiate an EFT from a consumer's account using the consumer's checking account number. In these cases, consumers may encounter errors concerning authorizations and the types of transfers, in addition to errors regarding the amounts of the resulting ACH debits. The risk that a consumer's check or checking account number could be used in a fraudulent manner to make an ACH transfer from the consumer's account was not a concern when the ''four walls'' analysis was adopted, since the typical ACH transfer then involved a preauthorized transfer to or from a known party.

Today, when a consumer believes that a transaction is unauthorized, information such as the location of the payee, the particular number of the check (to determine if it is notably out of order), or prior consumer account transactions with the same payee, that could be relevant to the investigation would more likely be within the institution's own records. Thus, for ACH and ECK transactions, for example, the Board believes that an institution's review of its ''own records'' should not be confined to a mere confirmation of the payment instructions when other information within the institution's ''four walls'' could also be reviewed.

Any investigation conducted under the four walls rule must be reasonable. Because the nature of a consumer's allegation of error can vary, the scope of an investigation may vary. In each case, an institution should use relevant information available within its own records for purposes of determining whether an error occurred. Given the potential size and complexity of institutions and their many different relationships with a single consumer, however, it may be impractical and burdensome for an institution to look throughout its entire operation for potentially relevant records. The final rule clarifies that the information reviewed should pertain to the account for which the assertion of error is made and cover a reasonable period of time. The revised comment also provides examples of information that an institution might review. These examples are not set forth as an exclusive list.

Institutions have flexibility to determine what information is relevant to a meaningful investigation of the error in question. To the extent that an account-holding institution has outsourced relevant aspects of its operations, the investigation should include a review of service provider records if such records could help to resolve the consumer's claim. Under the ''four walls'' rule, the institution need not, however, include a review of records that are not within its possession or control—such as the consumer's authorization for the transaction if such authorization is in the possession of a third-party payee. Additional requirements may be established by payment system or other rules, however.

The proposal also solicited comment as to whether there are circumstances in which the ''four walls'' rule should not apply. Industry commenters generally stated that they were unaware of such circumstances at this time, and that there is typically no need to require banks to conduct investigations outside of their own records. The Board will continue to monitor institutions' error resolution practices to assess the continued viability of the ''four walls'' approach to error investigation.

[5] Section 205.11(b) of Regulation E generally requires a financial institution to investigate a claim of error that is received no later than 60 days after the institution sends the periodic statement on which the alleged error is first reflected.

Section 205.16 Disclosures at Automated Teller Machines

Section 205.16 requires an ATM operator that imposes a fee on a consumer for initiating an EFT or a balance inquiry to provide notice to the consumer that a fee will be imposed for providing the EFT service or for a balance inquiry and to disclose the amount of the fee. An ATM operator is any person who operates an ATM at which consumers initiate an EFT or a balance inquiry, and that does not hold the account to or from which the transfer is made, or about which an inquiry is made. Notice of the imposition of the fee must be provided in a prominent and conspicuous location on or at the ATM. The operator must also provide notice that the fee will be charged and the amount of the fee either on the screen of the ATM or by providing it on paper, before the consumer is committed to paying a fee.

In the September 2004 proposal, the Board proposed to revise comment 205.16(b)(1)–1 to clarify that ATM operators can disclose on the ATM signage that a fee may be imposed or specify the type of EFTs or consumers for which a fee is imposed, if there are circumstances in which an ATM surcharge will not be charged for a particular transaction. (69 FR at 56005.) After consideration of the comments received, the Board withdrew the proposed commentary revisions and instead proposed to amend § 205.16(b) to clarify that ATM operators may disclose on ATM signage that a fee will be imposed or, in the alternative, that a fee may be imposed on consumers initiating an EFT or for a balance inquiry if there are circumstances under which some consumers would not be charged for such services. (70 FR 49891 (Aug. 25, 2005).) The proposed commentary was revised to clarify that ATM operators that impose an ATM surcharge in all cases must provide notice on the ATM signage that a fee will be imposed. The revisions are adopted largely as proposed, with certain revisions for clarity.

Several large institutions have asked whether it is permissible under § 205.16 to provide notice on the ATM that a fee ''may be'' charged for providing EFT services because many ATM operators, particularly those owned or operated by banks, apply ATM surcharges to some categories of their ATM users, but not others. For example, an ATM operator might not charge a fee to holders of cards issued by foreign financial institutions, cardholders of banks that are part of a surcharge-free network or that have entered into a contractual relationship with the ATM operator with respect to surcharges, and holders of cards issued under governmental electronic benefit transfer (EBT) programs. (While many financial institutions do not impose ATM surcharges on their own cardholders, they are not ATM operators with respect to those cardholders for purposes of § 205.16 because the institutions hold the cardholders' accounts.) More recently, many banks voluntarily waived surcharges for consumers from areas affected by Hurricane Katrina. Also, an ATM operator might charge a fee for cash withdrawals, but not for balance inquiries. Accordingly, the Board recognized in its two proposals that a disclosure on the ATM that a fee ''will'' be imposed in all instances could be overly broad with respect to consumers who would not be assessed a fee for usage of the ATM.

Industry commenters strongly supported the August 2005 proposal, stating that it would give ATM operators the flexibility to more accurately disclose their surcharging practices, and thereby reduce consumer confusion. Several industry commenters asserted that a ''will'' disclosure could cause consumers who would not be charged a fee by the particular ATM to go to a different ATM, which could inconvenience the consumer, as well as possibly result in a fee surcharge at the second ATM that could have been avoided with a more accurate disclosure. Another industry commenter noted that most consumers will be unaware that the ATM signage disclosure is only required for consumers who do not hold accounts with the ATM operator, and that the use of ''may'' could easily be understood by ATM users as accommodating the ATM operator's cardholders.

Industry commenters also agreed with the Board's observation in the August 2005 proposal's supplementary information that the signage disclosure is intended to allow consumers to identify ATMs that generally charge a fee for use, while the on-screen disclosure made after the consumer has entered his or her card into the machine but before the consumer is committed to the transaction provides a more specific disclosure regarding whether a fee will be incurred in that particular transaction. To support their view that the proposal is consistent with Sections 904(d)(3)(A) and (B) of the EFTA, industry commenters cited a press release issued by the original act's sponsor, Rep. Marge Roukema, which stated that the act ''simply puts existing practice into law.'' [6] One banking trade association noted that prior to the enactment of the Gramm-Leach-Bliley Act, the operating rules for one of the country's largest ATM networks required ATM operators imposing a surcharge for use of their ATMs to post conspicuous notice on the ATM that the operator ''may'' charge a fee for cash withdrawals. The trade association further noted that this practice of disclosing that a fee ''may'' be imposed on signage followed by a more transaction-specific on-screen disclosure was, and continues to be, the common practice of some of the other larger ATM networks in the United States.

Several industry commenters specifically addressed the Board's decision to amend the regulation in the August 2005 proposal, instead of revising the commentary as originally proposed. One banking trade association stated that amending both the regulation and the commentary would facilitate industry understanding and compliance. Two other commenters, representing credit unions, observed that the proposal to amend only the commentary was arguably inconsistent with § 205.16's current language, and therefore the Board's new proposal was appropriate. A few industry commenters asked the Board to clarify that the revisions do not represent a change in the ATM disclosure scheme, but merely a restatement and clarification of the requirements of existing law.

Although agreeing that the EFTA permits signage at the ATM machine indicating that the fee is not charged in every instance, consumer groups believed that the revised proposal did not sufficiently implement the statute because it did not ensure that consumers who ''will'' be charged a fee would be adequately notified of that fact. Consumer groups believed that the circumstances in which fees will not be charged generally are limited. Therefore, consumer groups proposed an alternative approach that would require ATM operators to generally disclose that a fee ''will'' be imposed along with a list of exceptions when a fee would not be imposed. Consumer groups believed that the revised disclosure would more adequately apprise consumers of the fact that a fee will be imposed while still allowing ATM operators the flexibility to make more accurate disclosures regarding their surcharging practices.

[6] Banking Committee OKs Roukema ATM Fee Disclosure (March 10, 1999), *http://finanialservices.house.gov/banking/3109rou.htm.*

Industry commenters, however, noted that a rule requiring a ''will'' disclosure along with a list of the circumstances under which a fee would not be disclosed would likely result in lengthy and complicated signs that consumers are unlikely to read. Moreover, industry commenters also believed that the expense of replacing signs each time a surcharge policy is changed could have the unintended effect of discouraging ATM operators from waiving fees to accommodate consumers in special circumstances, such as in response to a natural disaster.

A consumer rights attorney who opposed the Board's September 2004 proposal on this issue reiterated his view that the current rule and commentary more correctly implements the statute's intent, and cited his prior comments. This attorney urged the Board to withdraw the current proposal.

The August 2005 revisions are adopted as proposed under the Board's authority under Section 904(d) of the EFTA. Amending both the rule and the commentary addresses any potential inconsistencies between the current language of § 205.16 and the earlier proposed commentary, thereby facilitating industry compliance. However, while the Board is amending the regulation to address this issue, this amendment does not represent a change in the Board's interpretation of the rule's requirements.

The final rule clarifies the two-part disclosure scheme established in Section 904(d)(3)(B) of the EFTA. The first disclosure, on ATM signage posted on or at the ATM, allows consumers to identify quickly ATMs that generally charge a fee for use. This disclosure is not intended to provide a complete disclosure of the fees associated with the particular type of transaction the consumer seeks to conduct. Until a consumer uses his or her card at an ATM, the ATM operator does not know whether a surcharge will be imposed for that particular consumer. Rather, it is the second, more specific disclosure, made either on the ATM screen or on an ATM receipt, that informs the consumer before he or she is committed to the transaction whether, in fact, a fee will be imposed for the transaction and the amount of the fee. Thus, consumers who are charged a fee would not be adversely affected by a general notice that a fee ''may'' be imposed because they will have the opportunity to terminate the transaction after receiving the on-screen notice or receipt containing the transaction-specific disclosure.

The Board further believes that an alternative rule requiring institutions to provide a general disclosure that a fee ''will'' be imposed, while also specifying the circumstances under which a fee will not be imposed, would impose significant costs on ATM operators without corresponding benefit to consumers. Commenters indicated at least ten different circumstances in which a waiver may apply for a given ATM transaction, including surcharge-free networks, other contractual relationships, cards issued by foreign financial institutions, cards delivering governmental benefits, corporate affiliations with the ATM operator, and in response to special circumstances, such as to provide disaster relief. Thus, consumers could be confused or discouraged by signage containing potentially lengthy disclosures listing the many circumstances under which a fee would not be imposed. Such a rule could also require ATM operators to modify all of their signs each time they revised their surcharge practices, at considerable cost. Industry commenters estimated the cost of a systemwide change in ATM signage anywhere between $200,000 for an institution with approximately 6,000 ATMs to over $1 million for an institution with over 16,500 ATMs. Moreover, the time necessary for changing all of the signs would render at least some of the signs inaccurate for a period of time.

Accordingly, for the reasons discussed above, § 205.16(b) is revised to explicitly clarify that ATM operators may disclose on ATM signage that a fee will be imposed or, in the alternative, that a fee may be imposed on consumers initiating an EFT or for a balance inquiry if there are circumstances under which some consumers would not be charged for such services. The flexibility provided in the final rule allows ATM operators that currently disclose that a fee ''will'' be charged to continue to use existing signs even if a fee is not charged in all cases. Comment 16(b)(1)–1 is revised for consistency with the final rule, and to clarify that ATM operators that impose an ATM surcharge in all cases must provide notice on the ATM signage that a fee ''will'' be charged.

Appendix A—Model Disclosure Clauses and Forms

A–2—Model Clauses for Initial Disclosures

Model clauses for initial disclosures contained in Appendix A (Form A–2) are revised to provide disclosures about ECK transactions. In particular, model clauses (a) and (b) are revised to instruct consumers to notify their account holding institution when unauthorized EFTs have been made without the consumer's permission using information from their checks. The discussion on the applicable liability limits remains generally unchanged, however, because the first two tiers of liability do not apply to unauthorized transfers made without an access device (for example, those made using information from a check to initiate a one-time ACH debit). *See* comments 2(a)–2, 6(b)(3)–2.

Model clause (d) also is revised to list as a new type of transfer a one-time electronic fund transfer made from a consumer account using information from the consumer's check. *See* comment 7(b)(4)–4.

A–3—Model Forms for Error-Resolution Notice

Paragraph (b) of Model Form A–3 is included after its inadvertent deletion following publication of the March 2001 interim final rule establishing uniform standards for the electronic delivery of disclosures required by the EFTA and Regulation E. 66 FR 17786 (April 4, 2001). No changes are intended by the re-inclusion of paragraph (b). Paragraph (a) is reprinted for convenience.

A–6—Model Clauses for Authorizing One-Time Electronic Fund Transfer Using Information From a Check (§ 205.3(b)(2))

Model Form A–6 is added to provide model clauses for the authorization requirements of § 205.3(b)(2) for a person that initiates an EFT using information from a consumer's check. Consistent with comment 2 for Appendix A, the use of appropriate clauses in making disclosures will provide protection from liability under Sections 915 and 916 of the EFTA provided the clauses accurately reflect the institution's EFT services. *See also* § 205.3(b)(2)(iv). Model Clause A–6(a), which permits payees to obtain a consumer's authorization to use information from his or her check to initiate an EFT or to process the transaction as a check, is adopted generally as proposed. Model Clause A–6(a) may be used in *all* instances. Model Clause A–6(b) is also adopted to accommodate those payees who may want to provide more specific information concerning their ECK practices for business reasons, and consolidates proposed Model Clauses A–6(b) and (c). The additional information about when funds may be debited from the consumer's account and the non-return of checks is provided in Model Clause A–6(c) of the final rule.

V. Final Regulatory Flexibility Analysis

The Board prepared an initial regulatory flexibility analysis as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) in connection with the September 2004 proposal. The Board received no comments on its initial regulatory flexibility analysis.

Under Section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under Section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* The Board is revising Regulation E to require a person initiating an EFT using information from a consumer's check to obtain the consumer's authorization. Generally, authorization would be obtained by the payee providing a notice that a check will or may be converted, and the consumer providing a check as payment. The requirement would enable the Board to promote consistency in the notice provided to consumers by merchants and other payees.

Additional guidance is provided in the staff commentary about a financial institution's error resolution obligations for certain transactions, and to clarify financial institution and merchant responsibilites for preauthorized transfers from consumer accounts.

The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of the EFTA is the provision of individual consumer rights. 15 U.S.C. 1693. The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The EFTA expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions, * * * as, in the judgment of the Board, are necessary or proper to effectuate the purposes of [the EFTA], to prevent circumvention or evasion [of the act], or to facilitate compliance [with the EFTA].'' 15 U.S.C. 1693b(c). The EFTA also states that ''[i]f electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by [the EFTA] are made applicable to such persons and services.'' 15 U.S.C. 1693b(d). The Board believes that the revisions to Regulation E discussed above are within Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. *Issues raised by comments in response to the initial regulatory flexibility analysis.* In accordance with Section 3(a) of the RFA, the Board conducted an initial regulatory flexibility analysis in connection with the proposed rule. The Board did not receive any comments on its initial regulatory flexibility analysis.

3. *Small entities affected by the final rule.* Merchants or other payees that initiate one-time EFTs from a consumer's account using information from the consumer's check are required under the regulation to obtain the consumer's authorization for the transfers. For POS and ARC transactions, payees must provide a notice that a check will or may be converted. For ARC transactions, notice will likely be provided on a billing statement or invoice. At POS, notice also must be provided on posted signage, and a copy of the notice must be given to the consumer at the time of the transaction. Payees in ECK transactions must also provide notice that funds may be debited from a consumer's account as soon as the same day payment is made or received and that the consumer's check will not be returned by the consumer's financial institution. In addition, before a payee may collect a service fee for insufficient or uncollected funds via EFT from a consumer's account, the payee must provide a notice that such a fee may be collected by use of an EFT and disclose the amount of the fee. Account-holding institutions are required under the regulation to disclose to their consumers that electronic check conversion transactions are a new type of transfer that can be made from a consumer's account.

Merchants and other payees that engage in check conversion transactions must obtain consumers' authorizations for electronic check conversion transactions and for the collection of fees debited via an EFT if a payment is returned unpaid, and generally do so via signage and on a transaction receipt at the POS. In particular, payment system rules require that authorization for one-time debits to a consumer's account must be in writing and signed or similarly authenticated by the consumer. The Board further understands that many payees provide notice on receipts at POS. Similarly, payees are generally providing written notices in ARC transactions because payment system rules require written notices to be provided to consumers.

Under the amendments to Regulation E, payees must review the notices that they presently provide in accordance with payment system rules, and may be required to revise these notices in some cases to ensure compliance with the amendments to Regulation E. The Board believes that these amendments will not have a significant economic impact on small entities because payees are generally providing notices regarding ECK and the collection of service fees for insufficient funds electronically in accordance with payment system rules. Furthermore, the Board believes that obtaining consumer authorization for ECK transactions via signage at the POS is less costly than obtaining authorization via signed receipts.

Payees will have to revise their notices to inform consumers in ECK transactions that funds may be debited from their account soon after payment is received and, if applicable, that consumers' checks will not be returned by their financial institutions. At POS, this additional information may be provided separately from the general authorization notice. The Board understands that many payees in ARC transactions are already providing notice to consumers regarding when funds may be debited from a consumer's account when consumers' checks are converted, and stating that consumers' checks will not be returned by their financial institutions. For those payees that are not already providing some form of notice at POS or for ARC transactions, the final rule provides model language to facilitate compliance. Thus, the Board does not believe that the requirement to provide notice about the nature of ECK transactions will have a significant economic impact on small entities.

Small financial institutions may need to review their initial disclosures, and perhaps revise them to reflect that electronic check conversion transactions are a new type of transfer that can be made from a consumer's account. This disclosure is also ''generic'' and will not vary among consumers. Model language is provided in the rule to facilitate compliance. Thus, the Board believes this requirement also should not have a significant economic impact on small entities. The Board also understands that many institutions have already

revised their periodic statements to reflect that checks may be converted.

4. *Other federal rules.* The Board believes no federal rules duplicate, overlap, or conflict with the final revisions to Regulation E.

5. *Significant alternatives to the proposed revisions.* The Board solicited comment about potential ways to reduce regulatory burden. Several commenters urged the Board not to require written, signed authorization for checks converted at POS. In light of the potential impact on entities and limited additional consumer benefit, the final rule does not require a payee to obtain a consumer's signature to convert a check. In the final rule, the Board is also providing a sunset period of three years for the additional ECK disclosures about when funds may be debited from the consumer's account and the non-return of checks. The Board anticipates that increased consumer familiarity with ECK transactions over time will make unnecessary the provision of this additional information.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The final rule contains requirements subject to the PRA. The collection of information that is required by this rule is found in 12 CFR 205.2(b)(3), 205.3(b)(2) and 205.7. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0200. This information is required to provide benefits for consumers and is mandatory (15 U.S.C. 1693 *et seq.*). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months.

All financial institutions subject to Regulation E, of which there are approximately 19,300, are considered respondents for the purposes of the PRA and may be required to provide notice to accountholders that electronic check conversion (ECK) transactions are a new type of transfer that may be made from a consumer's account under § 205.7. In addition, all persons, such as merchants and other payees, that engage in ECK transactions, of which there are approximately 80,000, potentially are affected by this collection of information, because these merchants and payees will be required to obtain a consumer's authorization for the electronic transfer under § 205.3(b)(2).

The following estimates represent an average across all respondents and reflect variations among institutions based on their size, complexity, and practices. The other federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimate methodology.

The first disclosure requirement, described in § 205.7, is the initial disclosure that a financial institution must provide to their accountholders reflecting that ECK transactions are a new type of transfer that can be made from a consumer's account. The Federal Reserve estimates that each of the institutions, for which it has administrative enforcement authority (collectively referred to in the following paragraphs as ''respondents regulated by the Federal Reserve'') will be required to provide a revised initial disclosure to their accountholders. Currently, all respondents regulated by the Federal Reserve are required to provide a disclosure of basic terms, costs, and rights relating to EFT services under Regulation E. For purposes of this PRA analysis, the Federal Reserve estimates that it will take financial institutions, on average, 8 hours (one business day) to reprogram and update systems to include the new notice requirement relating to ECK transactions; therefore, the Federal Reserve estimates that the total annual burden for all financial institutions for this requirement will be 154,400 hours. With respect to the 1,289 Federal-Reserve-regulated institutions which must comply with Regulation E, it is estimated that the total annual burden for this requirement will be 10,312 hours. The final revisions to Regulation E provide institutions with model clauses for the initial disclosure requirement for ECK transactions (provided in Appendix A) that they may use to comply with the notice requirement.

The second disclosure requirement, described in § 205.3(b)(2), is required when persons, such as merchants and other payees, engage in ECK transactions. Under the final rule, merchants and payees are generally required to provide written notice to obtain a consumer's authorization for the one-time EFT. Merchants and payees will also be required to provide a written notice to obtain a consumer's authorization to collect any service fees for insufficient or uncollected funds via an EFT to the consumer's account. The notice must also disclose the amount of the service fee. Finally, merchants and payees that engage in ECK transactions must provide a notice to consumers that when a check is used to initiate an EFT, funds may be debited from a consumer's account as soon as the same day payment is made or received and consumers' checks will not be returned by their financial institution.

The Federal Reserve estimates that of the 1,289 respondents regulated by the Federal Reserve that are required to comply with Regulation E, approximately 10 originate ECK transactions. The Federal Reserve estimates that it will take each respondent, on average, 8 hours (1 business day) to reprogram and update their systems to include the new notice requirement relating to ECK transactions; therefore, the Federal Reserve estimates that the total annual burden is 80 hours. The final revisions to Regulation E provide institutions with model clauses (provided in Appendix A) for the new disclosure requirements. Using the Federal Reserve's methodology, the total annual burden for all other merchants and payees engaging in ECK transactions is 639,920 hours.

A third disclosure requirement applies to ATM operators who are required to provide notice to consumers of an ATM surcharge. Under this final rule, ATM operators will be permitted to disclose on signage posted at the ATM that a surcharge ''may'' be imposed if there are circumstances under which a surcharge is not imposed. All financial institutions, of which there are approximately 19,300, potentially are subject to this requirement to the extent they are ATM operators under the rule. The extent to which this collection of information affects a particular financial institution depends on the number of ATMs an institution operates, and on whether the institution elects to revise its ATM signage disclosures. For purposes of this PRA analysis, the Federal Reserve estimates that it will take financial institutions, on average, 8 hours (one business day) to revise and update ATM signage; therefore the Federal Reserve estimates that the total annual burden for all depository institutions for this requirement will be 154,400 hours. With respect to the 1,289 Federal Reserve-regulated institutions which must comply with Regulation E, it is estimated that the total annual burden for this requirement will be 10,312 hours.

The Federal Reserve's current annual burden for Regulation E disclosures is

estimated to be 63,047 hours. The final rule will increase the total burden under Regulation E for all Federal Reserve-regulated institutions by 20,704 hours, from 63,047 to 83,751 hours. (This burden estimate does not include the burden associated with the new disclosure requirements in connection with payroll card accounts as announced in a separate interim final rule (Docket No. R–1247).) Using the methodology explained above, the final rule would increase total burden under Regulation E for all other financial institutions by approximately 928,096 hours.

Because the records would be maintained by the institutions and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 205 and the Official Staff Commentary, as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693b.

■ 2.–3. Section 205.3 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (b)(1), revising paragraph (b)(1), and adding new paragraphs (b)(2) and (b)(3) to read as follows:

§ 205.3 Coverage.

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, this part applies to financial institutions. For purposes of §§ 205.3(b)(2), 205.10(b), (d), and (e) and 205.13, this part applies to any person.

(b) *Electronic fund transfer*—(1) *Definition.* The term electronic fund transfer means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. The term includes, but is not limited to—

(i) Point-of-sale transfers;

(ii) Automated teller machine transfers;

(iii) Direct deposits or withdrawals of funds;

(iv) Transfers initiated by telephone; and

(v) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

(2) *Electronic fund transfer using information from a check.* (i) This part applies where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer.

(ii) The person that initiates an electronic fund transfer using the consumer's check as a source of information for the transfer shall provide a notice that the transaction will or may be processed as an EFT, and obtain a consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer's account number and the serial number) when the consumer receives notice and goes forward with the transaction. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy of the notice must be provided to the consumer at the time of the transaction.

(iii) The person that initiates an electronic fund transfer using the consumer's check as a source of information for the transfer shall also provide a notice to the consumer at the same time it provides the notice required under paragraph (b)(2)(ii) that when a check is used to initiate an electronic fund transfer, funds may be debited from the consumer's account as soon as the same day payment is received, and, as applicable, that the consumer's check will not be returned by the financial institution holding the consumer's account. For point-of-sale transfers, the person initiating the transfer may post the notice required in this paragraph (b)(2)(iii) in a prominent and conspicuous location and need not include this notice on the copy of the notice given to the consumer under paragraph (b)(2)(ii). The requirements in this paragraph (b)(2)(iii) shall remain in effect until December 31, 2009.

(iv) A person may provide notices that are substantially similar to those set forth in Appendix A–6 to comply with the requirements of this paragraph (b)(2).

(3) *Collection of service fees via electronic fund transfer.* A consumer authorizes a one-time electronic fund transfer from the consumer's account to pay a fee for the return of an electronic fund transfer or a check unpaid due to insufficient or uncollected funds in the consumer's account, when the consumer receives a notice stating that the fee will be collected by an electronic fund transfer from the consumer's account, along with a disclosure of the amount of the fee, and the consumer goes forward with the transaction. If the service fee for insufficient or uncollected funds may be collected in connection with a point-of-sale transfer, the notice must be posted in a prominent and conspicuous location, and a copy of the notice must be provided to the consumer at the time of the transaction.

* * * * *

■ 4. Section 205.7 is amended by adding a new paragraph (c) as follows:

§ 205.7 Initial disclosures.

* * * * *

(c) *Addition of electronic fund transfer services.* If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required.

■ 5. Section 205.16 is amended by revising paragraph (c) as follows:

§ 205.16 Disclosures at automated teller machines.

* * * * *

(c) *Notice requirement.* To meet the requirements of paragraph (b) of this section, an automated teller machine operator must comply with the following:

(1) *On the machine.* Post in a prominent and conspicuous location on or at the automated teller machine a notice that:

(i) A fee will be imposed for providing electronic fund transfer services or for a balance inquiry; or

(ii) A fee may be imposed for providing electronic fund transfer services or for a balance inquiry, but the notice in this paragraph (c)(1)(ii) may be substituted for the notice in paragraph (c)(1)(i) only if there are circumstances under which a fee will not be imposed for such services; and

(2) *Screen or paper notice.* Provide the notice required by paragraphs (b)(1) and (b)(2) of this section either by showing it on the screen of the automated teller machine or by providing it on paper, before the consumer is committed to paying a fee.

* * * * *

■ 6. In Appendix A to Part 205,

■ a. In A–2 Model Clauses for Initial Disclosures (§ 205.7(b)), paragraphs (a), (b) and (d) are revised;

■ b. In A–3 Model Forms for Error Resolution Notice (§§ 205.7(b)(10) and 205.8(b)), paragraph (a) is republished, and paragraph (b) is added;

■ c. Section A–6 Model Clauses for Authorizing One-Time Electronic Fund Transfer Using Information From a Check (§ 205.3(b)(2)) is added.

Appendix A to Part 205—Model Disclosure Clauses and Forms

* * * * *

A–2 Model Clauses for Initial Disclosures (§ 205.7(b))

(a) *Consumer Liability (§ 205.7(b)(1)).*

(Tell us AT ONCE if you believe your [card] [code] has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your [card] [code], you can lose no more than $50 if someone used your [card][code] without your permission.)

If you do NOT tell us within 2 business days after you learn of the loss or theft of your [card] [code], and we can prove we could have stopped someone from using your [card] [code] without your permission if you had told us, you could lose as much as $500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

(b) *Contact in event of unauthorized transfer (§ 205.7(b)(2)).* If you believe your [card] [code] has been lost or stolen, call: [Telephone number] or write: [Name of person or office to be notified] [Address]

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

* * * * *

(d) *Transfer types and limitations (§ 205.7(b)(4))*—(1) *Account access.* You may use your [card][code] to:

(i) Withdraw cash from your [checking] [or] [savings] account.

(ii) Make deposits to your [checking] [or] [savings] account.

(iii) Transfer funds between your checking and savings accounts whenever you request.

(iv) Pay for purchases at places that have agreed to accept the [card] [code].

(v) Pay bills directly [by telephone] from your [checking] [or] [savings] account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(2) *Electronic check conversion.* You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to:

(i) Pay for purchases.

(ii) Pay bills.

(3) *Limitations on frequency of transfers*—(i) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].

(ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].

(iii) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(iv) For security reasons, there are limits on the number of transfers you can make using our [terminals] [telephone bill-payment service] [point-of-sale transfer service].

(4) *Limitations on dollar amounts of transfers*—(i) You may withdraw up to [insert dollar amount] from our terminals each [insert time period] time you use the [card] [code].

(ii) You may buy up to [insert dollar amount] worth of goods or services each [insert time period] time you use the [card] [code] in our point-of-sale transfer service.

* * * * *

A–3 Model Forms for Error Resolution Notice (§§ 205.7(b)(10) and 205.8(b))

(a) *Initial and annual error resolution notice (§§ 205.7(b)(10) and 205.8(b)).*

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number], or Write us at [insert address] [or E-mail us at [insert electronic mail address]] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

(b) *Error resolution notice on periodic statements (§ 205.8(b)).*

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

* * * * *

A–6 Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information From a Check (§ 205.3(b)(2))

(a)—Notice About Electronic Check Conversion

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

[You authorize us to collect a fee of $__ through an electronic fund transfer from your account if your payment is returned unpaid.]

(b)—Alternative Notice About Electronic Check Conversion (Optional)

When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your payment as a check transaction.

[Specify other circumstances (at payee's option).]

[You authorize us to collect a fee of $__ through an electronic fund transfer from your account if your payment is returned unpaid.]

(c)—Notice For Providing Additional Information About Electronic Check Conversion

When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day [you make] [we receive] your payment[, and you will not receive your check back from your financial institution].

Supplement I to Part 205—Disclosures on Automated Teller Machines

■ 7. In Supplement I to Part 205, the following amendments are made:

■ a. Under *Section 205.2—Definitions,* under *2(a) Access Device,* paragraph 2. is revised;

■ b. Under *Section 205.30—Coverage,* under *3(b) Electronic Fund Transfer,* a new heading ''Paragraph 3(b)(1)—Definition'' is added, paragraphs 1. and 2. are redesignated as paragraphs 3(b)(1)1 and 3(b)(1)2, and paragraph 3. is removed;

■ c. Under *Section 205.3—Coverage,* under *3(b) Electronic Fund Transfer,* under Paragraph 3(b)(1)—Definition, paragraph 2.iv. is added;

■ d. Under *Section 205.3—Coverage,* under *3(b) Electronic Fund Transfer,* a new heading ''Paragraph 3(b)(2)—Electronic Fund Transfer Using Information From a Check'' is added, and paragraphs 1. through 5. are added;

■ e. Under *Section 205.3—Coverage,* under *3(b) Electronic Fund Transfer,* a new heading ''Paragraph 3(b)(3)—Collection of Service Fees via Electronic Fund Transfer'' is added, and paragraph 1. is added;

■ f. Under *Section 205.3—Coverage,* under *3(c) Exclusions from coverage,* under heading Paragraph 3(c)(1)—Checks, paragraphs 1. and 2. are revised;

■ g. Under *Section 205.5—Issuance of Access Devices,* under *5(a) Solicited Issuance,* under Paragraph 5(a)(2), paragraph 1. is revised;

■ h. Under *Section 205.5—Issuance of Access Devices,* under *5(b) Unsolicited Issuance,* paragraph 5. is added;

■ i. Under *Section 205.7—Initial Disclosures,* under *7(a) Timing of Disclosures,* paragraph 1. is revised, paragraph 4. is removed, and paragraphs 5. and 6. are redesignated as paragraphs 4. and 5.;

■ j. Under *Section 205.7—Initial Disclosures,* under *7(b) Content of Disclosures,* under Paragraph 7(b)(4)—Types of Transfers; Limitations, paragraph 4. is added;

■ k. Under *Section 205.7—Initial Disclosures,* a new heading *''7(c) Addition of Electronic Fund Transfer Services''* is added, and paragraph 1. is added;

■ l. Under *Section 205.10—Preauthorized Transfers,* under *10(b) Written Authorization for Preauthorized Transfers from Consumer's Account,* paragraphs 3. and 7. are revised;

■ m. Under *Section 205.10—Preauthorized Transfers,* under *10(c) Consumer's Right to Stop Payment,* paragraph 2. is revised, and paragraph 3. is added;

■ n. Under *Section 205.10—Preauthorized Transfers,* under *10(d) Notice of Transfers Varying in Amount,* under Paragraph 10(d)(2)—Range, paragraph 2. is added;

■ o. Under *Section 205.11—Procedures for Resolving Errors,* under *11(b) Notice of Error from Consumer,* under Paragraph 11(b)(1)—Timing; Contents, paragraph 7. is added;

■ p. Under *Section 205.11—Procedures for Resolving Errors,* under *11(c) Time Limits and Extent of Investigation,* under Paragraph 11(c)(4)—Investigation, paragraph 5. is added; and

■ q. Under *Section 205.16—Disclosures at Automated Teller Machines,* under *16(b) General,* under Paragraph 16(b)(1), paragraph 1. is revised.

The revisions and additions read as follows:

Supplement I to Part 205—Official Staff Interpretations

* * * * *

Section 205.2—Definitions

2(a) Access Device

* * * * *

2. *Checks used to capture information.* The term ''access device'' does not include a check or draft used to capture the MICR (Magnetic Ink Character Recognition) encoding to initiate a one-time ACH debit. For example, if a consumer authorizes a one-time ACH debit from the consumer's account using a blank, partially completed, or fully completed and signed check for the merchant to capture the routing, account, and serial numbers to initiate the debit, the check is not an access device. (Although the check is not an access device under Regulation E, the transaction is nonetheless covered by the regulation. See comment 3(b)(1)–1.v.)

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Section 205.3—Coverage

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3(b) Electronic Fund Transfer

Paragraph 3(b)(1)—Definition

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2. *Fund transfers not covered.*

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iv. Transactions arising from the electronic collection, presentment, or return of checks through the check collection system, such as through transmission of electronic check images.

Paragraph 3(b)(2)—Electronic Fund Transfer Using Information From a Check

1. *Notice at POS not furnished due to inadvertent error.* If the copy of the notice under section 205.3(b)(2)(ii) for ECK transactions is not provided to the consumer at POS because of a bona fide unintentional error, such as when a terminal printing mechanism jams, no violation results if the payee maintains procedures reasonably adapted to avoid such occurrences.

2. *Authorization to process a transaction as an EFT or as a check.* In order to process a transaction as an EFT or alternatively as a check, the payee must obtain the consumer's authorization to do so. A payee may, at its option, specify the circumstances

under which a check may not be converted to an EFT. (See model clauses in Appendix A–6.)

3. *Notice for each transfer.* Generally, a notice to authorize an electronic check conversion transaction must be provided for each transaction. For example, a consumer must receive a notice that the transaction will be processed as an EFT for each transaction at POS or each time a consumer mails a check in an accounts receivable (ARC) transaction to pay a bill, such as a utility bill, if the payee intends to convert a check received as payment. Similarly, the consumer must receive notice if the payee intends to collect a service fee for insufficient or uncollected funds via an EFT for each transaction whether at POS or if the consumer mails a check to pay a bill. The notice about when funds may be debited from a consumer's account and the non-return of consumer checks by the consumer's financial institution must also be provided for each transaction. However, if in an ARC transaction, a payee provides a coupon book to a consumer, for example, for mortgage loan payments, and the payment dates and amounts are set out in the coupon book, the payee may provide a single notice on the coupon book stating all of the required disclosures under paragraph (b)(2) of this section in order to obtain authorization for each conversion of a check and any debits via EFT to the consumer's account to collect any service fees imposed by the payee for insufficient or uncollected funds in the consumer's account. The notice must be placed on a conspicuous location of the coupon book that a consumer can retain—for example, on the first page, or inside the front cover.

4. *Multiple payments/multiple consumers.* If a merchant or other payee will use information from a consumer's check to initiate an EFT from the consumer's account, notice to a consumer listed on the billing account that a check provided as payment during a single billing cycle or after receiving an invoice or statement will be processed as a one-time EFT or as a check transaction constitutes notice for all checks provided in payment for the billing cycle or the invoice for which notice has been provided, whether the check(s) is submitted by the consumer or someone else. The notice applies to all checks provided in payment for the billing cycle or invoice until the provision of notice on or with the next invoice or statement. Thus, if a merchant or other payee receives a check as payment for the consumer listed on the billing account after providing notice that the check will be processed as a one-time EFT, the authorization from that consumer constitutes authorization to convert any other checks provided for that invoice or statement. Other notices required under this paragraph (b)(2) (for example, to collect a service fee for insufficient or uncollected funds via an EFT) provided to the consumer listed on the billing account also constitutes notice to any other consumer who may provide a check for the billing cycle or invoice.

5. *Additional disclosures about ECK transactions at POS.* When a payee initiates an EFT at POS using information from the consumer's check, and returns the check to the consumer at POS, the payee need not provide a notice to the consumer that the check will not be returned by the consumer's financial institution.

Paragraph 3(b)(3)—Collection of Service Fees via Electronic Fund Transfer

1. *Fees imposed by account-holding institution.* The requirement to obtain a consumer's authorization at POS to collect a fee via EFT for the return of an EFT or check unpaid due to insufficient or uncollected funds in the consumer's account does not apply to fees assessed against the consumer's account by the consumer's account-holding institution for the return of an EFT or a check unpaid or for paying overdrafts.

3(c) Exclusions From Coverage

Paragraph 3(c)(1)—Checks

1. *Re-presented checks.* The electronic re-presentment of a returned check is not covered by Regulation E because the transaction originated by check. Regulation E does apply, however, to any fee debited via an EFT from a consumer's account by the payee because the check was returned for insufficient or uncollected funds. The person debiting the fee electronically must obtain the consumer's authorization.

2. *Check used to capture information for a one-time EFT.* See comment 3(b)(1)–1.v.

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Section 205.5—Issuance of Access Devices

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5(a) Solicited Issuance

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Paragraph 5(a)(2)

1. *One-for-one rule.* In issuing a renewal or substitute access device, only one renewal or substitute device may replace a previously issued device. For example, only one new card and PIN may replace a card and PIN previously issued. A financial institution may provide additional devices at the time it issues the renewal or substitute access device, however, provided the institution complies with § 205.5(b). (See comment 5(b)–5.) If the replacement device or the additional device permits either fewer or additional types of electronic fund transfer services, a change-in-terms notice or new disclosures are required.

* * * * *

5(b) Unsolicited Issuance

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5. *Additional access devices in a renewal or substitution.* A financial institution may issue more than one access device in connection with the renewal or substitution of a previously issued accepted access device, provided that any additional access device (beyond the device replacing the accepted access device) is not validated at the time it is issued, and the institution complies with the other requirements of § 205.5(b). The institution may, if it chooses, set up the validation procedure such that both the device replacing the previously issued device and the additional device are not validated at the time they are issued, and validation will apply to both devices. If the institution sets up the validation procedure in this way, the institution should provide a clear and readily understandable disclosure to the consumer that both devices are unvalidated and that validation will apply to both devices.

* * * * *

Section 205.7—Initial Disclosures

7(a) Timing of Disclosures

1. *Early disclosures.* Disclosures given by a financial institution earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later enters into an agreement with a third party to initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions differ from those that the institution previously disclosed. This interpretation also applies to any notice provided about one-time EFTs from a consumer's account initiated using information from the consumer's check. On the other hand, if an agreement for EFT services to be provided by an account-holding institution is directly between the consumer and the account-holding institution, disclosures must be given in close proximity to the event requiring disclosure, for example, when

the consumer contracts for a new service.

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7(b) Content of Disclosures

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Paragraph 7(b)(4)—Types of Transfers; Limitations

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4. *One-time EFTs initiated using information from a check.* Financial institutions must disclose the fact that one-time EFTs initiated using information from a consumer's check are among the types of transfers that a consumer can make. (See Appendix A–2.)

* * * * *

7(c) Addition of Electronic Fund Transfer Services

1. *Addition of electronic check conversion services.* One-time EFTs initiated using information from a consumer's check are a new type of transfer requiring new disclosures, as applicable. (See Appendix A–2.)

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Section 205.10—Preauthorized Transfers

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10(b) Written Authorization for Preauthorized Transfers from Consumer's Account

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3. *Written authorization for preauthorized transfers.* The requirement that preauthorized EFTs be authorized by the consumer ''only by a writing'' cannot be met by a payee's signing a written authorization on the consumer's behalf with only an oral authorization from the consumer.

* * * * *

7. *Bona fide error.* Consumers sometimes authorize third-party payees, by telephone or on-line, to submit recurring charges against a credit card account. If the consumer indicates use of a credit card account when in fact a debit card is being used, the payee does not violate the requirement to obtain a written authorization if the failure to obtain written authorization was not intentional and resulted from a bona fide error, and if the payee maintains procedures reasonably adapted to avoid any such error. Procedures reasonably adapted to avoid error will depend upon the circumstances. Generally, requesting the consumer to specify whether the card to be used for the authorization is a debit (or check) card or a credit card is a reasonable procedure. Where the consumer has indicated that the card is a credit card (or that the card is not a debit or check card), the payee may rely on the consumer's statement without seeking further information about the type of card. If the payee believes, at the time of the authorization, that a credit card is involved, and later finds that the card used is a debit card (for example, because the consumer later brings the matter to the payee's attention), the payee must obtain a written and signed or (where appropriate) a similarly authenticated authorization as soon as reasonably possible, or cease debiting the consumer's account.

10(c) Consumer's Right to Stop Payment

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2. *Revocation of authorization.* Once a financial institution has been notified that the consumer's authorization is no longer valid, it must block all future payments for the particular debit transmitted by the designated payee-originator. (However, see comment 10(c)–3.) The institution may not wait for the payee-originator to terminate the automatic debits. The institution may confirm that the consumer has informed the payee-originator of the revocation (for example, by requiring a copy of the consumer's revocation as written confirmation to be provided within 14 days of an oral notification). If the institution does not receive the required written confirmation within the 14-day period, it may honor subsequent debits to the account.

3. *Alternative procedure for processing a stop-payment request.* If an institution does not have the capability to block a preauthorized debit from being posted to the consumer's account—as in the case of a preauthorized debit made through a debit card network or other system, for example—the institution may instead comply with the stop-payment requirements by using a third party to block the transfer(s), as long as the consumer's account is not debited for the payment.

10(d) Notice of Transfers Varying in Amount

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Paragraph 10(d)(2)—Range

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2. *Transfers to an account of the consumer held at another institution.* A financial institution need not provide a consumer the option of receiving notice with each varying transfer, and may instead provide notice only when a debit to an account of the consumer falls outside a specified range or differs by more than a specified amount from the most recent transfer, if the funds are transferred and credited to an account of the consumer held at another financial institution. The specified range or amount, however, must be one that reasonably could be anticipated by the consumer, and the institution must notify the consumer of the range or amount at the time the consumer provides authorization for the preauthorized transfers. For example, if the transfer is for payment of interest for a fixed-rate certificate of deposit account, an appropriate range might be based on a month containing 28 days and a month containing 31 days.

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Section 205.11—Procedures for Resolving Errors

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11(b) Notice of Error from Consumer

Paragraph 11(b)(1)—Timing; Contents

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7. *Effect of late notice.* An institution is not required to comply with the requirements of this section for any notice of error from the consumer that is received by the institution later than 60 days from the date on which the periodic statement first reflecting the error is sent. Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with § 205.6 before it may impose any liability on the consumer.

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11(c) Time Limits and Extent of Investigation

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Paragraph 11(c)(4)—Investigation

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5. *No EFT agreement.* When there is no agreement between the institution and the third party for the type of EFT involved, the financial institution must review any relevant information within the institution's own records for the particular account to resolve the consumer's claim. The extent of the investigation required may vary depending on the facts and circumstances. However, a financial institution may not limit its investigation solely to the payment instructions where additional information within its own records pertaining to the particular account in question could help to resolve a consumer's claim.

Information that may be reviewed as part of an investigation might include:

i. The ACH transaction records for the transfer;

ii. The transaction history of the particular account for a reasonable period of time immediately preceding the allegation of error;

iii. Whether the check number of the transaction in question is notably out-of-sequence;

iv. The location of either the transaction or the payee in question relative to the consumer's place of residence and habitual transaction area;

v. Information relative to the account in question within the control of the institution's third-party service providers if the financial institution reasonably believes that it may have records or other information that could be dispositive; or

vi. Any other information appropriate to resolve the claim.

* * * * *

Section 205.16—Disclosures on Automated Teller Machines

16(b) General

Paragraph 16(b)(1)

1. *Specific notices.* An ATM operator that imposes a fee for a specific type of transaction—such as for a cash withdrawal, but not for a balance inquiry, or for some cash withdrawals, but not for others (such as where the card was issued by a foreign bank or by a card issuer that has entered into a special contractual relationship with the ATM operator regarding surcharges)—may provide a notice on or at the ATM that a fee will be imposed or a notice that a fee may be imposed for providing EFT services or may specify the type of EFT for which a fee is imposed. If, however, a fee will be imposed in all instances, the notice must state that a fee will be imposed.

By order of the Board of Governors of the Federal Reserve System, December 30, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 06–145 Filed 1–9–06; 8:45 am]

BILLING CODE 6210–01–P

Federal Register

Tuesday,
January 10, 2006

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No.: FAA–2002–11301; Amendment No. 121–315]

RIN 2120–AH14

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the FAA regulations governing drug and alcohol testing to clarify that each person who performs a safety-sensitive function for a regulated employer by contract, including by subcontract at any tier, is subject to testing. These amendments are necessary because in the 1990s, the FAA issued conflicting guidance about which contractors were subject to drug and alcohol testing. This action also rescinds all prior guidance on the subject of testing contractors.

DATES: These amendments become effective April 10, 2006. Affected parties, however, do not have to comply with the information collection requirements in part 121, Appendix I, Section IX, and Appendix J, Section VII, until the FAA publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) for these information collection requirements. We will publish the control number to notify the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For technical information, Diane J. Wood, Manager, Drug Abatement Division, AAM–800, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone number (202) 267–8442. For legal information, Patrice M. Kelly, Senior Attorney, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone number (202) 267–8442.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Chapter 451, section 45102, Alcohol and Controlled Substances Testing Programs. Under section 45102, the FAA is charged with prescribing regulations to establish programs for drug and alcohol testing of employees performing safety-sensitive functions for air carriers and to take certificate or other action when an employee violates the testing regulations. This regulation is within the scope of the FAA's authority because it clarifies the existing regulations regarding individuals who perform a safety-sensitive function for a regulated employer by contract. This rulemaking is a current example of FAA's continuing effort to ensure that only drug- and alcohol-free individuals perform safety-sensitive functions for regulated employers.

Background

History

Since the inception of the FAA drug and alcohol testing regulations, the FAA has not directly regulated contractors or subcontractors of regulated parties. The FAA defines who is a regulated ''employer,'' for drug and alcohol testing purposes as a part 121 certificate holder, a part 135 certificate holder, an operator as defined in 14 CFR 135.1(c), or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military. (14 CFR part 121, appendix I, section II, and appendix J, section I.D.)

On February 28, 2002, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) (67 FR 9366). The NPRM proposed changing several provisions in 14 CFR part 121, appendices I and J. Among other proposals in the NPRM, the FAA proposed to clarify that each person who performs a safety-sensitive function directly or by contract (including by subcontract at any tier) for a regulated employer is subject to testing. Currently, both 14 CFR part 121, appendix I, section III and appendix J, section II specify employees performing a safety-sensitive function must be subject to testing if they are performing the function ''directly or by contract for an employer.'' We proposed to add the parenthetical phrase ''including by subcontract at any tier'' after the word ''contract.''

Several commenters to the NPRM, including trade associations, repair stations certificated under 14 CFR part 145 (certificated repair stations), and non-certificated entities, indicated the proposed clarification on subcontractors would impose an economic burden on the aviation industry. We did not include any costs or benefits for the subcontractor issue in the preliminary regulatory evaluation accompanying the NPRM because we considered the proposed language to be merely clarifying. On January 12, 2004, we published a final rule addressing all issues proposed in the NPRM, except for the subcontractor issue (69 FR 1840).

Employees affect aviation safety whenever they perform a safety-sensitive function listed in appendices I and J. Thus, it is important that individuals who perform any safety-sensitive function be subject to drug and alcohol testing under the FAA regulations. We recognize the aviation industry frequently uses subcontractors to perform safety-sensitive functions.

For more than a decade, we have required each regulated employer to ensure any individual performing a safety-sensitive function by contract be subject to drug and alcohol testing under the FAA regulations. If the regulated employer wants to use the individual under a contract, there are two options for drug and alcohol testing. One option is for the contractor company to obtain and implement its own FAA drug and alcohol testing programs. Under this option, the contractor company must subject the individual to testing. The other option is for the regulated employer to maintain its own testing programs and subject the individual to testing under these programs.

Our experience indicates that many regulated employers and contractor companies have recognized contractors and subcontractors are subject to testing under the regulations. The FAA believes it would be inconsistent with aviation safety to change the regulations so that regulated employers are no longer required to ensure individuals performing safety-sensitive functions ''by contract'' are subject to testing.

Many commenters to the NPRM were concerned the proposed language would cause considerable costs by requiring subcontractors to conduct drug and alcohol testing for the first time. However, these commenters did not substantiate their cost concerns with specific data. In response to the economic comments regarding the subcontractor issue in the NPRM, we published a supplemental notice of proposed rulemaking (SNPRM), in the **Federal Register** on May 17, 2004 (69 FR 27980). In the SNPRM, we proposed the same language we proposed in the NPRM. We asked commenters to provide economic information to help us address the concerns they raised in the NPRM.

We prepared a regulatory evaluation for the SNPRM regarding the possible costs associated with explicitly including the words ''by subcontract at any tier.'' We evaluated the costs that could be generated by additional subcontractors who might be subject to testing under the proposal.

Conflicting Guidance

In both the NPRM and the SNPRM, we discussed conflicting FAA guidance about the testing of subcontractors. In the initial implementation phase of the drug testing rule in 1989, the FAA issued informal guidance stating maintenance subcontractors would not be required to be subject to testing unless they took airworthiness responsibility. This guidance was provided to persons and companies as late as the mid-1990s, on an ad hoc basis. However, this guidance constricted the potential reach of the regulation, which offered no exceptions for subcontractors who did not take airworthiness responsibility but performed safety-sensitive activities. Accordingly, this guidance was in conflict with the objective of the regulations, i.e., ensuring that each person who performs a safety-sensitive function is subject to testing. Today's final rule clarifies that the level of contractual relationship with a regulated employer does not limit the requirement that all persons performing safety-sensitive work must be subject to drug and alcohol testing.

As noted in the SNPRM, we are hereby rescinding all prior guidance regarding subcontractors (69 FR at 27981).

Discussion of Comments

General Overview

The comment period for the SNPRM closed on August 16, 2004. The FAA received approximately 35 comments in response to the SNPRM. To ensure we meaningfully considered all comments on the issue, the FAA reviewed both the comments filed to the SNPRM and any comments filed to the NPRM not addressed in the preamble to the SNPRM. We note that none of the commenters opposing the proposal provided specific data challenging the FAA's fundamental economic assumptions. The regulatory evaluation accompanying this final rule specifically addresses the comments about costs and benefits.

Commenters included the Air Transportation Association of America (ATA); Regional Airline Association (RAA); Drug and Alcohol Testing Industry Association (DATIA); International Brotherhood of Teamsters (Teamsters); Aircraft Mechanics Fraternal Association (AMFA); Aviation Suppliers Association; and Aeronautical Repair Station Association (ARSA), which filed joint comments on behalf of itself and 12 other associations.

Approximately 10 of the commenters, including United Technologies Corporation (UTC), the Teamsters, AMFA National, AMFA Local 33, and several individuals, stated they generally support the FAA's Antidrug and Alcohol Misuse Prevention Program regulations. Specifically, UTC said they believe the ''regulations are a valuable tool to the aviation industry in ensuring workplace and public safety.'' One individual stated the proposal makes it clear the duties the individual performs define whether or not the individual will be subject to drug and alcohol testing. Several commenters, including three union commenters, supported the proposal because they believed it would improve aviation safety. One commenter, an individual, stated the regulations will make flying safer.

The remaining 25 commenters opposed the proposal, with many of them citing the comments filed by ARSA. The commenters questioned the FAA's estimates of the cost of the proposal and the benefits to aviation safety. Additionally, ARSA, the Aircraft Electronics Association, and a certificated repair station stated the proposal would substantially expand the scope of the FAA-regulated drug and alcohol testing programs without any evidence it would enhance safety. The Aircraft Electronics Association believes the proposal is based more on a moral preference than on science. ARSA also raised invasion of privacy issues associated with drug and alcohol testing. The Aircraft Electronics Association commented the drug and alcohol testing regulations should not apply to outsourced maintenance.

Commenters also suggested the rule is vague, may add additional regulatory requirements to existing duties, and may exceed the FAA's regulatory mandate. Specifically, ARSA cited the FAA's general regulatory mandate in 49 U.S.C. 44701(d)(1)(A) as a limitation on the FAA's authority to impose requirements on non-certificated entities that supply services to directly regulated parties. The Aviation Suppliers Association was concerned distributors could be recharacterized as performing safety-sensitive functions and opposed the proposal, believing it was not supported by a reasonable government purpose. They requested we publish a statement in the final rule recognizing that the distribution of an aircraft part is not considered to be a safety-sensitive function for the purposes of this rule.

One commenter, who filed comments on behalf of the National Association of Metal Finishers, the American Electroplaters and Surface Finishers Society, and the Metal Finishing Suppliers' Association, requested the

FAA not add regulatory requirements to their members' existing duties. This commenter noted existing regulatory requirements represent a large percentage of their operating expenses.

This final rule does not expand the scope of the FAA-regulated drug and alcohol testing programs. Rather, it clarifies that any individual who performs a safety-sensitive function by contract must be subject to the FAA-regulated drug and alcohol testing requirements, regardless of the tier of the contract under which the individual performs. This rulemaking is not questioning or expanding the current outsourcing process. Instead, the final rule eliminates any confusion that might have existed regarding drug and alcohol testing of subcontractors who are connected to the regulated employer through the outsourcing process. In addition, the issues regarding invasion of privacy were resolved more than 15 years ago when the drug testing regulation carefully balanced the interests of individual privacy with the Federal government's duty to ensure aviation safety. The purpose of this rulemaking is not to reopen the long-settled issue of invasion of privacy.

Further, we do not agree that this rule results in vague standards. We have adopted the proposal as a final rule to create a clear standard for regulated employers to follow for drug and alcohol testing of subcontractors. Contractor companies often choose to conduct their own drug and alcohol testing under the FAA regulations because it improves their marketability. However, the requirement to ensure individuals performing safety sensitive functions are subject to testing ultimately rests with the regulated employer.

In addition, we want to emphasize the proposal does not in any way change the scope of safety-sensitive functions currently covered by the drug and alcohol testing regulations. Drug and alcohol testing applies to any individual who performs a safety-sensitive function, including maintenance or preventive maintenance functions for a regulated employer. The FAA defines ''maintenance'' and ''preventive maintenance'' in 14 CFR 1.1 and 14 CFR part 43. The distribution of an aircraft part is not ''maintenance'' or ''preventive maintenance'' and is not considered a safety-sensitive activity.

While ARSA cited the FAA's general authority for regulating air carriers, 49 U.S.C. 44701(d)(1)(A), as a limitation on testing authority, the Omnibus Transportation Employees Testing Act of 1991 (Omnibus Act), 49 U.S.C. 45101–45106, gave the FAA specific authority to regulate drug and alcohol testing in aviation. In the Omnibus Act, Congress acknowledged the FAA's existing regulations requiring the testing of air carrier employees performing safety-sensitive functions directly or by contract. Specifically, the Omnibus Act ''does not prevent the Administrator from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance * * *.'' 49 U.S.C. 45106 (c). When Congress gave the FAA authority to ''continue'' regulations prescribed before October 28, 1991, they were acknowledging the drug testing regulation that was already in existence.

The drug and alcohol testing regulations have always required any individual performing safety-sensitive functions directly or by contract for a regulated employer to be subject to testing. As this final rule is not adding more regulatory requirements, the ''reasonable government purpose'' of aviation safety that has been the foundation of the drug and alcohol testing regulations since their inception remains valid.

Do Safety Concerns Support Continuing To Subject Subcontractors to Drug and Alcohol Testing?

AOPA, ARSA, and other commenters including certificated repair stations and non-certificated entities, stated the FAA did not show any accident data attributable to drug and alcohol abuse by maintenance personnel to support this rulemaking. In addition, AOPA argued ''it is unreasonable for the FAA to require maintenance contractors performing non-safety critical maintenance functions to incur the added expense of developing and implementing a drug and alcohol testing program.'' Two certificated repair stations and an individual said the redundancies built into the maintenance system already ensure maintenance errors are likely to be caught by someone else through the high level of scrutiny and evaluation in the supervision and inspection process. Also, one certificated repair station noted the largest number of positive test results for maintenance employees exist in pre-employment testing, which indicates individuals who pose a potential threat to aviation safety are being screened out before they enter the performance of safety-sensitive functions.

In addition, the Aircraft Electronics Association commented that it is not correct for the FAA to assume increasing air carrier maintenance outsourcing decreases aviation safety because ''part 135 on-demand air carriers have been outsourcing maintenance for years without a decline in aviation safety.'' This commenter said the proposal would expand the drug and alcohol testing regulations to include all certificated repair stations and their subcontractors. The commenter stated the majority of individuals who would be included in testing programs have not been shown to be substance abusers.

We believe the safety data showing the number of current positive test results offer strong support for this rulemaking. We do not believe we should wait until there is an actual loss of human life before we take action to ensure the remaining subcontractors who are not already subjected to testing are brought into compliance with the regulations. Only one link in the safety chain would have to fail for an accident to occur.

The Aircraft Electronics Association takes issue with the discussion in the SNPRM preamble regarding increased maintenance outsourcing. In the SNPRM preamble, we merely discussed the Department of Transportation Inspector General's reports regarding maintenance outsourcing and offered no independent conclusions (69 FR 27982). We included this information to further explain why it is important for the FAA to clarify its existing drug and alcohol testing regulations regarding outsourced maintenance.

This final rule does not expand the drug and alcohol testing regulations to include all certificated repair stations and their subcontractors. As we said earlier, we have not changed the scope of who is required to conduct testing. We are merely clarifying that a contractor includes a subcontractor. In addition, many certificated repair stations already have drug and alcohol testing programs. According to the FAA's Operations Specifications Subsystem (OPSS), over 3,000 certificated repair stations currently have drug and alcohol testing programs under the existing regulations. This represents more than 60 percent of all certificated repair stations in the FAA's OPSS.

In addition, the Aircraft Electronics association stated the majority of individuals affected by the proposal have not been shown to be substance abusers. While this may be true, a substantial number of maintenance workers have had positive test results on FAA-required tests. As we noted in the SNPRM preamble, in the first 11 years of drug testing, almost half of the 30,192 positive drug test results were attributable to maintenance workers.

Also, in the first 6 years of alcohol testing, almost half of the 876 alcohol violations were attributable to maintenance workers. (69 FR 27984) Thus, there is data showing substance abuse in the maintenance population causing sufficient safety concern to justify this final rule.

As one commenter noted, the largest number of positive test results for maintenance employees was in the pre-employment testing context. This data demonstrates the existing regulations were successful in screening out many maintenance personnel who use illegal drugs. The individuals who were prevented from entering the aviation maintenance field were pre-employment tested by many types of entities including regulated employers, contractors, and subcontractors. However, as evidenced by the continuing number of positive random drug test results each year, pre-employment testing is not a complete barrier to individuals who use illegal drugs, and random testing is a necessary form of detection and deterrence. Thus, the large number of positive test results for maintenance personnel further demonstrates why it is important for regulated employers to ensure all subcontractors are subject to testing.

Safety-sensitive functions include all maintenance or preventive maintenance performed for a regulated employer. The drug and alcohol testing regulations do not differentiate between safety critical and non-safety critical forms of maintenance. This final rule does not expand the types of maintenance functions that are considered to be ''safety-sensitive.'' While there might be redundancies built into the maintenance system, the supervisory and other quality assurance processes involved in aviation maintenance do not constitute a substitute for the protections afforded by drug and alcohol testing. Therefore, we will continue to require subcontractors be subject to drug and alcohol testing.

RAA commented the rate of positive test results for maintenance personnel was not significantly higher than the rate of positive test results for all safety-sensitive employees. To illustrate its point, RAA used the rates for calendar year 1999 when ''the rate for maintenance personnel who test positive for alcohol was 0.02% compared to a 0.18% rate for all employees who tested positive. The rate for maintenance personnel who test positive for drugs was 1.5% compared to a 1.2% rate for all employees who tested positive.'' The Aircraft Electronics Association also commented about the positive test result data, saying the data failed to distinguish between the positive test results of large businesses versus small businesses.

RAA's analysis, while flawed,[1] simply argues that maintenance personnel should be subjected to the same requirements as other personnel performing safety-sensitive functions. The purpose of today's rule is not to apply more stringent requirements on maintenance personnel, but rather to clarify which maintenance personnel are subject to testing, *i.e.*, all personnel performing a safety sensitive function regardless of who their direct employer is.

The Aircraft Electronic Association is correct in noting the positive test result rates have been declining. We believe this annual decline shows the effectiveness of the FAA drug and alcohol testing regulations in deterring illegal drug use and alcohol misuse. Because the data prove the effectiveness of our regulations, we do not see the declining positive rate as grounds for eliminating any safety-sensitive personnel who are subject to testing, including maintenance subcontractors.

Should Airworthiness Responsibility Be the Determining Factor for Drug and Alcohol Testing?

ARSA stated the FAA regulations do not currently regulate non-certificated maintenance subcontractors or require them to take airworthiness responsibility for the work they perform, so the non-certificated maintenance subcontractors should not be subject to drug and alcohol testing. Several commenters, including certificated repair stations and non-certificated entities, expressed similar concerns. In addition, AOPA referred to ''non-aviation contractors that perform non-safety maintenance functions for certificated repair stations,'' saying they should not be required to comply with the FAA drug and alcohol testing regulations.

Several commenters, including ARSA, UTC, RAA, and several certificated repair stations, believe the current regulatory system for maintenance provides sufficient oversight to ensure certificated repair stations adequately monitor the work performed by non-certificated maintenance facilities. ARSA noted a certificated repair station has the responsibility to sign off on the airworthiness of any repair performed by its non-certificated contractors. ARSA said the proposal would require a certificated repair station to oversee its non-certificated contractors' participation in drug and alcohol testing programs, and this would be beyond the scope of a repair station's competencies. ARSA added that a repair station would need to make investments in procedures and personnel in order to fulfill this new regulatory burden.

ARSA and UTC suggested that because non-certificated maintenance entities ensure quality control when they perform repairs, each subcontractor in the chain of maintenance is responsible for its work and that of its noncertificated subcontractors. Thus, each subcontractor in the chain of maintenance relies on the certificated work that is performed. In addition, ARSA noted certificated mechanics who sign off on airworthiness are subject to drug and alcohol testing. ARSA believes these safeguards protect against even the negligent maintenance that results from drug or alcohol abuse. ARSA asserted that an article repaired under the influence of drugs is no less conspicuous in its inability to conform to airworthiness standards than an article improperly repaired due to a failure to follow prescribed procedures. For these reasons, ARSA and UTC supported testing only for those with airworthiness responsibility.

ARSA and the Aircraft Electronics Association suggested that because the FAA regulations do not allow non-certificated maintenance subcontractors to take airworthiness responsibility for the work they perform, they cannot perform safety-sensitive work. Also, the Aviation Suppliers Association commented the FAA regulations do not regulate non-certificated maintenance subcontractors or require them to take airworthiness responsibility for their work. RAA said the current FAA guidance rightfully limits the group of subcontractors only to those technicians who actually work on the airplane or have airworthiness responsibility for the component before it is installed on the airplane. RAA did not believe all maintenance and preventive maintenance should be considered safety-sensitive, rather the airworthiness of a product or actual work on the airplane itself should be the defining line in describing a safety sensitive position.

There is no ''non-safety maintenance'' recognized in our regulations. Within certificated repair stations, there are non-certificated individuals such as mechanic's helpers, who have been

[1] We disagree with RAA's analysis of the testing data. When RAA analyzed the calendar year 1999 data, they compared the rate for maintenance with the rate for all personnel (including maintenance). For a true comparison of the data, one should compare the positive rate for maintenance against the positive rate for all personnel, excluding maintenance. For a full discussion of the data, see the Regulatory Evaluation for this final rule.

subject to testing for more than 15 years. Thus, not only are non-certificated individuals allowed to perform safety-sensitive maintenance but the regulations contemplate the performance of maintenance by non-certificated individuals and entities.

The FAA drug and alcohol testing regulations have never articulated a difference between safety-sensitive functions performed by a certificated versus a non-certificated maintenance facility. Our regulations identify all maintenance and preventive maintenance duties as safety-sensitive functions. Anyone performing maintenance or preventive maintenance duties for a regulated employer must be subject to testing, regardless of who signs off on the airworthiness of the maintenance.

As we acknowledged in the NPRM and SNPRM preambles, some of our early guidance only required subcontractors who took airworthiness responsibility to be subject to drug and alcohol testing. By the mid 1990s, the guidance we developed eliminated the airworthiness responsibility component and followed the rule language explicitly. The point of this rulemaking is to clarify that any individual who performs safety-sensitive functions for a regulated employer must be subject to drug and alcohol testing.

The airworthiness signoff process is not designed to address the safety risk arising from safety-sensitive functions performed by individuals who use illegal drugs or misuse alcohol. ARSA spoke of quality control procedures and review by certificated mechanics as the safeguards to ensure ''negligent maintenance'' will be discovered and corrected. However, the maintenance quality control procedures do not remove individuals who use illegal drugs or misuse alcohol. The FAA drug and alcohol regulations are designed to address exactly this safety risk by deterring drug and alcohol use, and through removing from safety-sensitive functions, individuals who engage in such prohibited practices.

Should the Level of Contractual Relationship Limit Who Is Subject to Drug and Alcohol Testing?

ATA stated it ''does not take issue with the premise that individuals actually performing safety sensitive functions for airlines should be subjected to the highest standards for performance, including appropriate drug and alcohol testing.'' ATA noted ''we agree with the statement in the SNPRM that '[t]he level of contractual relationship with an employer should not be read as a limitation on the requirement that all safety-sensitive work be performed by drug- and alcohol-free employees.' '' Furthermore, ATA commented ''it is the nature of the function being performed by an individual, and not the employment relationship of that individual to the airline, that is relevant.''

The FAA agrees with ATA. As we stated in the preamble to the SNPRM, the level of contractual relationship should not limit the requirement for all safety-sensitive work to be performed by drug-free and alcohol-free employees. If individuals are performing safety-sensitive functions for a regulated employer, the individuals must be subject to testing, regardless of the tier of contract under which they are performing.

It would be inconsistent with aviation safety for individuals performing maintenance work within the certificated repair station to be subject to drug and alcohol testing, while individuals performing the same maintenance work under a subcontract would not be subject to drug and alcohol testing. In addition, if drug and alcohol testing could be avoided by simply sending the maintenance work to a subcontractor, a company could form separate subsidiaries within its organization in order to create an internal subcontracting system that avoids drug and alcohol testing.

Should Subcontractors Be Distinguished From Contractors Based on Differing Contractual Relationships?

ARSA said the language to include subcontractors at any tier is a change in the reach of the regulation, rather than a clarification. In making this assertion, ARSA asserted that a contract is binding only between the parties to the contract, based on the doctrine of privity. In ARSA's opinion, privity does not extend to subcontractors. Thus, ARSA concluded the law does not consider the subcontractor bound by contract to an entity with which it has no direct relationship, in this case the air carrier. UTC echoed this statement, emphasizing the legal concept of privity of contract as being between signatory parties, giving each responsibilities and rights in pursuit of a common goal. Accordingly, UTC asserted that a contractual relationship and all that it incorporates cannot extend to any unnamed party.

In addition, ARSA discussed the Drug-Free Workplace Act (DFWA) requirements that apply to Department of Defense (DoD) contracts.[2] ARSA stated the DoD applies the DFWA to its contractors through specific contract clauses required by regulation. ARSA said DoD does not require the DFWA requirements to extend beyond direct contractors to subcontractors. Based on DoD's practice, ARSA argued it is inconsistent with safety and economics to extend drug and alcohol testing to any tier of the maintenance process, including subcontractors that are not part of a certificated repair station or the aviation industry. DoD's decision to exclude subcontractors from its contracts is not relevant to this rulemaking, and we offer no opinion to the contract practices of other Federal agencies. We note that the DFWA does not apply to the FAA and we are not compelled to follow DoD's lead in this regard.

The issue of subcontractor privity is irrelevant to this regulation, because the FAA will take enforcement action against those employers directly covered by the drug and alcohol regulations by virtue of their part 121 or part 135 operations, as well as those contractors who have voluntarily submitted to our jurisdiction by obtaining their own drug and alcohol programs. This final rule clarifies that these two groups of regulated entities must ensure all individuals performing a safety sensitive function are subject to testing. If the regulated employer or contractor is concerned that there is insufficient privity between itself and a subcontractor to assure that employees of a subcontractor are subject to testing, it can require a testing provision be placed in each contract between its contractors and their subcontractors. Such provisions are common in other contexts and are likely already used by some carriers in this context.

The FAA guidance has always indicated subcontractors were covered by the drug and alcohol testing regulations. The conflict in the guidance was whether all subcontractors or only those subcontractors with airworthiness responsibility were required to be subject to drug and alcohol testing. The guidance requiring all contractors to be subject to testing is consistent with the fact all individuals performing safety-sensitive functions directly or by contract are required to be subject to testing.

[2] DFWA requires Federal contractors to maintain programs for achieving a drug-free workplace, but does not require drug and alcohol testing.

How Will This Rule Affect Contractual Relationships, Including Auditing Contractor's and Subcontractor's Drug and Alcohol Testing Programs?

ATA and ChevronTexaco requested guidance on how air carriers can ensure their contractors and subcontractors are complying with the drug and alcohol testing regulations. In addition, the commenters requested guidance on satisfying the audit requirement for both domestic and overseas contractors and subcontractors.[3] Specifically, ATA asked if air carriers should continue to retain a copy of the contractor's OpSpec or registration. ATA also stated air carriers currently do not independently verify the status of subcontractors' compliance with drug and alcohol testing requirements. ChevronTexaco noted that it currently requests information from its contractors to verify ''they have drug and alcohol prevention plans in place and they audit their contractors for the same.'' ChevronTexaco stated it uses a questionnaire for many of its contractors but not for all subcontractors. Similarly, a certificated repair station said air carriers have used questionnaires as an alternative to performing on-site audits.

ARSA suggested the proposed rule would require certificated repair stations and the air carriers with whom they contract to look beyond the airworthiness of a particular article to the person who performed maintenance, no matter how insignificant the job or how far removed from the aircraft. ARSA also expressed concern that direct contractors would need to ensure their subcontractors actually implemented drug and alcohol testing programs. ARSA stated the proposal would require direct contractors ''to take on the role of human resource auditor'' for all non-certificated subcontractors. Thus, ARSA asserted the proposal would alter contractual relationships and expectations for non-certificated entities performing contracted maintenance functions on the industry's behalf.

The FAA regulations require a regulated employer to ensure any individuals performing safety-sensitive functions for it by contract are included in the FAA-regulated drug and alcohol testing programs of either the regulated employer or the contractor. While it is advisable for the regulated employer to retain a copy of the contractor's OpSpec or registration, merely retaining this copy does not ensure all individuals performing safety-sensitive functions by contract for the regulated employer are subject to drug and alcohol testing under the regulations. While OpSpec or registration documentation may indicate that a contractor has agreed to implement a drug and alcohol program, it does not provide a regulated employer with specific information to determine if the contractor has actually implemented its programs. Accordingly, more oversight is needed. A regulated employer could ask its contractor specific questions and request documentation to ensure the contractor has fully implemented its testing programs and to ensure the individuals who will perform safety-sensitive functions for the regulated employer are subject to testing. It is also a good business practice for an employer to verify and document that specific individuals performing safety-sensitive functions by contract are currently subject to testing under the contractor's drug and alcohol testing program.

Direct contractors must both determine the airworthiness of an article and ensure subcontractors have actually implemented drug and alcohol testing programs because both have safety implications. Regulated employers and contractors at any tier should not disregard the requirements of either safety responsibility. Accordingly, it is not necessary for companies to become auditors because the FAA's regulations do not specifically require audits to ensure the testing requirements are met.

Finally, we note the commenters have not provided any data or information to support an assumption the proposal would alter expectations and contractual relationships with non-certificated entities. As stated previously, the FAA believes the majority of regulated employers are already ensuring individuals who are performing safety-sensitive functions for them under a contract at any tier are subject to drug and alcohol testing.

Who Is Responsible for Subcontractor Compliance?

Several commenters questioned who would be responsible for ensuring subcontractor compliance with drug and alcohol testing. Specifically, they asked if certificated repair stations or regulated employers (air carriers) would be held responsible for any and all subcontractors at any tier. Prime Turbines commented to both the NPRM and the SNPRM, expressing concern that it will be held liable for all tiers of contract work. Another commenter, ChevronTexaco, stated its current practice is to audit its contractors' drug and alcohol prevention programs. ChevronTexaco also specifies in its contractual agreements that contractors must audit subcontractors' programs because it is common for them to have several tiers of subcontractors. ChevronTexaco was concerned the proposal ''would cascade employer responsibility for auditing drug and alcohol programs to ALL these subcontractors with which we have no direct business or contractual relationship.'' Similarly, UTC questioned whether a third tier subcontractor's non-compliance has any affect on the fourth tier subcontractor or on the second tier subcontractor.

We applaud ChevronTexaco for creating a contract provision to require its contractors to audit subcontractors and ensure individuals performing safety-sensitive functions by contract are subject to drug and alcohol testing. While the contract provision ChevronTexaco describes is an excellent business practice, the FAA's regulations have not required ''auditing,'' and this final rule does not require it. As we discussed in the preamble to the SNPRM, although auditing is a business decision, we believe it is a good way to determine if an entity has FAA drug and alcohol testing programs and is testing its employees (69 FR 27982).

As we said in the preamble to the SNPRM, the safety of the air carrier's maintenance and operations ultimately rests with the air carrier (69 FR 27983). Similarly, in 14 CFR 121.363(a) and 135.413(a), we recognize that air carriers are primarily responsible for the airworthiness of its aircraft. A regulated employer must ensure any individual performing safety-sensitive functions for it is subject to the required drug and alcohol testing. Thus, the regulated employer has the ultimate responsibility to ensure individuals performing safety-sensitive functions for it by contract are subject to FAA-regulated testing.

A contractor company can test individuals performing safety-sensitive functions for a regulated employer under the contractor company's own FAA-regulated testing programs. Once a contractor company obtains its FAA-regulated testing programs, the FAA will hold the contractor company responsible for its compliance with the regulations. There may be circumstances where the regulated employer may also share responsibility for a contractor company's non-compliance.

If a contractor company has FAA-regulated testing programs, it must ensure any individual performing a safety-sensitive function by contract (including by subcontract at any tier) below it is subject to testing. The FAA

[3] FAA drug and alcohol testing regulations prohibit testing outside the United States and its territories. Today's rule does not add an extra territorial testing requirement.

recognizes there may be multiple tiers of subcontractors in the aviation industry. Any lower tier contractor company with FAA-regulated testing programs will be held responsible for its own compliance with the FAA drug and alcohol testing regulations. Also, there may be circumstances where the regulated employer and higher tier contractor companies share responsibility for the lower tier contractor company's noncompliance.

The FAA provides information to assist regulated employers and their contractors to implement drug and alcohol testing programs. Entities can obtain this information by:

—Contacting the Drug Abatement Division at the address in the **FOR FURTHER INFORMATION CONTACT** paragraph listed earlier; or

—Referencing the Drug Abatement Division's Web site: *http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol/.*

What Are the Consequences for Subcontractor Noncompliance?

Several commenters, including UTC and ARSA, expressed concern about oversight responsibilities for subcontractors and contended that air carriers would be required to oversee drug and alcohol programs for every subcontractor at any lower tier in the maintenance process. UTC noted the FAA had not proposed to require audits or other specific means of ensuring contractors and subcontractors were properly conducting drug and alcohol testing. UTC believed the lack of an audit requirement would create a wide diversity of compliance standards and a potential variability in enforcement. In addition, UTC was concerned certificated repair stations would audit other certificated repair stations that are subcontractors. This was problematic for UTC because it views certificate oversight as an FAA responsibility.

Since the inception of the FAA drug and alcohol testing regulations, we have had a requirement that any individual who performs a safety-sensitive function directly or by contract must be subject to drug and alcohol testing. The FAA deliberately chose not to specify how regulated employers would ensure subcontractor compliance with the drug and alcohol testing regulations. Similarly, the FAA deliberately chose not to specify how contractors that opt to obtain drug and alcohol testing programs would comply with the regulations.[4] The means for achieving the requirement are somewhat flexible—the regulated employer may conduct the testing or the contractor company may conduct the testing, but the regulated employer must ensure individuals performing safety-sensitive functions for it are subject to testing.

Regulated employers and entities opting to obtain testing programs must include individuals performing safety-sensitive functions by contract in their own programs. Alternatively, they can allow an individual to perform a safety-sensitive function by contract for them if the individual is subject to testing under the contractor company's drug and alcohol testing programs. One way to determine if the individual is subject to testing in accordance with the FAA regulations is to inquire further about the specifics of the contractor company's programs and request supporting documentation from the contractor company. Merely obtaining a program registration or an OpSpec does not indicate a company has implemented compliant drug and alcohol testing programs.

Because each regulated employer currently has a duty to ensure any individual performing a safety-sensitive function by contract for it is subject to testing, several regulated employers might conduct inquiries to ensure the same individual is subject to testing. For example, a contractor company might have personnel with skills that put them in high demand with many regulated employers. Before each of these regulated employers can allow the contractor company's personnel to perform safety-sensitive functions by contract, each regulated employer must ensure the individuals performing safety-sensitive functions by contract for it are subject to drug and alcohol testing in accordance with the FAA regulations. We do not view this as a duplication of effort or as an administrative burden because each regulated employer has a separate duty to ensure drug and alcohol testing occurs.

Furthermore, we acknowledge there will be times when a higher tier contractor company and its lower tier contractors are certificated repair stations. To ensure specific individuals performing safety-sensitive functions by contract are subject to testing, the higher tier contractor company may choose to audit or otherwise inquire into its lower tier contractors' drug and alcohol testing programs. It is possible one certificated repair station might audit the drug and alcohol testing programs of another certificated repair station. We do not see this as a difficulty or a conflict because certificated repair stations can audit their contractors under the current regulations, and the FAA already has and will continue to have oversight responsibilities for certificated repair station certificates.

Should Certificated Repair Stations Disclose Their Subcontractors?

One certificated repair station commented that most air carriers allow repair stations to subcontract, but the identity of these subcontractors normally is not disclosed. Therefore, the FAA should not be allowed to force a repair station to disclose all of its contractors both by name and by contacts. In addition, RAA asserted its members are not able to continuously ensure that subcontractors are being tested. RAA stated that many individuals working for a subcontractor may be an employee only for a short period of time or the contractor may want to quickly replace subcontractors. RAA also said airlines will have difficulty identifying who to include in drug and alcohol testing programs.

We do not agree certificated repair stations should not provide information about subcontractors to regulated employers. The FAA regulations have always required regulated employers to ensure they tested or their contractors tested all contractor and subcontractor employees performing safety-sensitive functions for the regulated employer. This is not a new requirement. At issue in this rulemaking is the confusion resulting from conflicting guidance about which contractors were required to be subject to drug and alcohol testing. The regulated employer must continue to receive information about the drug and alcohol testing programs of contractor companies whose employees are performing safety-sensitive work for the regulated employer under a contract. Regulated employers need this information to continue to ensure individuals performing safety-sensitive functions for them are subject to testing in accordance with the FAA regulations.

We agree regulated employers will have problems identifying who should be subject to drug and alcohol testing if certificated repair stations or other contractors do not provide the regulated employers with current information about which contractors and

[4] There is no difference between the FAA's method for inspecting certificated versus non-certificated maintenance contractors that have opted to obtain drug and alcohol testing programs. Also, we do not vary our inspection method based on the difficulty or criticality of the maintenance performed. While our inspection methodology does not vary by type of company, the sanctions the FAA imposes vary depending on the specific circumstances surrounding the actual violation. We note the FAA has always handled interpretations and enforcement matters on a case-by-case basis. We are not aware that this has caused difficulties in maintenance productivity in the past.

subcontractors are performing safety-sensitive functions. Providing this information is already necessary under the FAA's drug and alcohol testing requirements and is not added by this rulemaking. It is imperative to safety that certificated repair stations and other contractors share current identifying information about subcontractors with the regulated employers to ensure individuals performing safety-sensitive functions for the regulated employers are subject to testing in accordance with the FAA regulations.

Should Subcontractors That Are Not Primarily Aviation-Related Businesses Be Subject to Testing?

Some certificated repair stations and businesses that are not primarily aviation-related commented that the rule, if amended, could place economic pressure on subcontractors that provide service to more than the aviation industry. In addition, several commenters, including ARSA, opposed requiring non-certificated subcontractors be subject to testing. Furthermore, some commenters expressed concern that if non-certificated subcontractors are subject to testing, those entities might stop providing services to the aviation industry.

The FAA disagrees with these commenters' distinction between certificated and non-certificated subcontractors when it comes to the issue of safety-sensitive work. When subcontractors choose to perform safety-sensitive functions for regulated employers, they are choosing to comply with the FAA drug and alcohol testing regulations. The impact these subcontractors have on aviation safety is not related to whether they hold a repair station certificate. Instead, they have an impact because they actually perform safety-sensitive functions.

The commenters did not provide data to support the premise that non-certificated subcontractors would cease providing service to the aviation industry. Furthermore, as discussed in detail in the accompanying regulatory evaluation, the data provided by commenters showed the majority of such contractors would continue doing business with the aviation industry after the final rule becomes effective.

What Is Safety-Sensitive Maintenance or Preventive Maintenance?

ATA believes ''individuals actually performing safety-sensitive functions for airlines should be subjected to the highest standards for performance, including appropriate drug and alcohol testing.'' However, ATA questioned whether many subcontractors doing work for airlines are actually performing safety-sensitive functions.

While ATA recognized the FAA regulations define the terms ''maintenance'' and ''preventive maintenance'' (see 14 CFR 1.1 and 14 CFR part 43), they requested additional guidance. Specifically, ATA requested the FAA provide guidance clearly describing ''maintenance and preventive maintenance for flight-critical systems, and those components whose failure could have a direct adverse effect on the continued airworthiness of the aircraft.'' In addition, ATA requested the guidance distinguish safety-sensitive maintenance from other types of ''maintenance'' that do not have the potential to directly impact airworthiness.

In a related comment, one commenter holding multiple air carrier certificates and a repair station certificate said the proposed rule would cause difficulty whenever an entertainment system component needs repair. This commenter provided cost data on how much revenue air carriers would lose if they had to modify the aircraft to accept a new unit every time an entertainment unit system broke and could not be repaired by a drug and alcohol tested technician. Also, a non-certificated subcontractor company that does interior plating decoration on non-essential components said the proposed rule would have a large impact on the way it does business. This commenter asked the FAA to exclude it from drug and alcohol testing.

The ATA correctly notes the FAA defines maintenance and preventive maintenance in 14 CFR 1.1 and 14 CFR part 43. In the drug and alcohol testing regulations, any maintenance or preventive maintenance (as defined in 14 CFR 1.1 or part 43) an individual performs for a regulated employer is a safety-sensitive function, and therefore subject to drug and alcohol testing.

The FAA Drug Abatement Division defers to the Flight Standards Service for decisions on whether a task is maintenance or preventive maintenance. If we were to attempt to further define maintenance and preventive maintenance functions through a guidance document, it would likely be quickly outdated and would not be helpful. Since job titles and functions vary from company to company, the title of a task performed at one company may not be the title of a similar task at another company. Determining whether a particular task fits under the definitions of ''maintenance'' or ''preventive maintenance'' is the responsibility of the regulated employer, working in conjunction with the regulated employer's assigned FAA principal inspector. Once the principal inspector determines a task is maintenance or preventive maintenance, the individual performing the task for the regulated employer must be subject to drug and alcohol testing.

With respect to the specific assertion that repairing an entertainment system could subject an entity to drug testing, we note that repairing entertainment system components usually is not considered ''maintenance.'' Consequently, drug and alcohol testing usually is not required for individuals who repair these components. On the other hand, removing the entertainment system component from the aircraft and reinstalling the repaired component on the aircraft is maintenance and subject to testing. Similarly, interior plating decoration to nonessential components is ''preventive maintenance'' under 14 CFR part 43, appendix A. Consequently, drug and alcohol testing is required for individuals who perform this type of plating.

Does the Regulatory Flexibility Act Apply to This Rulemaking?

ARSA, several certificated repair stations, and some non-certificated entities stated the FAA failed to conduct a required Regulatory Flexibility Act (RFA) analysis. In ARSA's opinion, the FAA understated ''the impact of this regulation on the aviation industry and on those industries providing maintenance support services.'' ARSA believes an Initial Regulatory Flexibility Act analysis (IRFA) would help the FAA and the public evaluate the costs and benefits of the proposed rule. Also, ARSA argued the FAA failed to meet the RFA requirement to consider significant alternatives to minimize the SNPRM's economic impact on small entities.

The FAA disagrees with ARSA and other commenters who raised RFA issues. In 14 CFR part 121, appendix I, section II, and appendix J, section I.D, the FAA defines which employers are directly regulated by the drug and alcohol testing regulations. Specifically, the directly regulated employers are: Air carriers operating under 14 CFR parts 121 and 135; § 135.1(c) operators; and air traffic control facilities not operated by the FAA or by or under contract to the U.S. military. These directly regulated employers must conduct drug and alcohol testing under the FAA regulations. For drug and alcohol testing purposes, certificated repair stations are contractors, and contractors are not regulated employers. Contractors can

choose to obtain drug and alcohol testing programs. Once a contractor chooses to obtain such programs, it must follow the FAA drug and alcohol testing regulations.

Twenty years ago, the U.S. Court of Appeals for the DC Circuit held the RFA only applies to small entities directly regulated by a proposed rule. ''Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratus of the national economy.'' *Mid-Tex Electric Cooperative* v. *FERC*, 773 F.2d 327, 343 (DC Cir. 1985). The DC Circuit held the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 did not change the fact the RFA only applies to directly regulated entities. *American Trucking Associations* v. *EPA*, 175 F.3d 1027, 1044 (DC Cir. 1999). The DC Circuit ''has consistently rejected the contention that the RFA applies to small businesses indirectly affected by the regulation of other entities.'' *Cement Kiln Recycling Coalition* v. *EPA*, 225 F.3d 855, 869 (DC Cir. 2001) (citing *Mid-Tex Electric Cooperative* v. *FERC*, and its progeny). In *Cement Kiln*, the Environmental Protection Agency (EPA) had done a regulatory evaluation to cost out the impact on small businesses indirectly affected by the proposed regulation. While the EPA's cost evaluation was based on small businesses indirectly impacted, it was ''in the spirit of the RFA because some portion of the burden of compliance might pass through to [these small businesses].'' *Cement Kiln*, 255 F.3d at 868. Similarly in the SNPRM, the FAA followed the spirit of the RFA by evaluating the costs of the proposal on indirectly affected small businesses (contractors). However, the DC Circuit said conducting an economic cost evaluation for small businesses indirectly affected does not trigger the requirements of a full RFA analysis. *Cement Kiln*, 255 F.3d at 868–869.

The DC Circuit specifically explained ''* * * application of the RFA does turn on whether particular entities are the 'targets' of a given rule. The statute requires that the agency conduct the relevant analysis or certify 'no impact' for those small businesses that are 'subject to' the regulation, that is, those to which the regulation 'will apply.' '' *Cement Kiln*, 255 F.3d at 869 (citations omitted). In addition, the DC Circuit went on to say ''The rule will doubtless have economic impacts in many sectors of the economy. But to require an agency to assess the impact on all of the nation's small businesses possibly affected by a rule would be to convert every rulemaking process into a massive exercise in economic modeling, an approach we have already rejected.'' *Cement Kiln*, 255 F.3d at 869.

Accordingly, we have determined we are not required to conduct an RFA analysis, including considering significant alternatives, because contractors (including subcontractors at any tier) are not the ''targets'' of the proposed regulation, and are instead indirectly regulated entities. For the purpose of the RFA, we have evaluated the impact on the regulated employers to reach our decision to certify that this action will not have a significant economic impact on a substantial number of small entities.

While an IRFA can be a tool for evaluating costs and benefits of a proposal, the main tool is the regulatory evaluation. Accordingly, we used the regulatory evaluation to determine the impact on the number of indirectly regulated entities that might be affected by the proposal. This provided a better idea of what the costs to the regulated employers would ultimately be. Evaluating the costs the indirectly regulated entities might bear complied with the spirit of the RFA and provided us with a realistic total cost that could be distributed among regulated employers. We are now explicitly distributing the total cost among regulated employers.

Should FAA Provide More Time for Pre-Employment Testing of Subcontractors?

DATIA (an association of service agents in the drug and alcohol testing industry) and AMFA Local 33 supported the proposed pre-employment provision. The proposal contemplated providing an employer with a 90-day window after the effective date of the rule in which to conduct pre-employment testing of existing subcontractors who have not previously been tested. Both commenters stated the proposed 90-day window would assist air carriers, contractors, and subcontractors to implement any necessary pre-employment testing.

The FAA notes that today's rule merely clarifies an existing requirement that we have estimated at least 60 percent of the industry already follows. Additionally, the regulated parties are not required to establish new testing programs. Accordingly, a 90-day window for pre-employment testing subcontractors appears excessive. In order to provide some additional time to complete testing we have decided to make today's rule effective 90 days after publication rather than our usual 30.

Miscellaneous Comments

One certificated repair station questioned why the FAA requires drug and alcohol testing for a non-certificated entity performing maintenance on a business jet operated under part 135 but not if the same business jet is operated under part 91. This commenter also said it can contract with non-certificated entities ''to perform maintenance on a part 91 aircraft and the FAA has no issue with airworthiness or safety.''

The commenter is not correct in saying the FAA has ''no issue with airworthiness or safety'' for part 91 aircraft. We are very much concerned that maintenance on part 91 aircraft is performed in accordance with airworthiness requirements. Aviation safety is not limited to maintenance on air carriers.

However, commercial operators carrying passengers for compensation or hire are required to meet a higher level of safety than general aviation, which operates under part 91. Included in the higher level of safety is the requirement for regulated employers to conduct drug and alcohol testing.

Issues Outside the Scope of This Rulemaking

The FAA received a number of comments concerning: The repeal of the moonlighting exception to drug and alcohol testing; the Antidrug and Alcohol Misuse Prevention Program OpSpec requirement; revising the definitions of certain safety-sensitive functions to tie them to safety risk; drug and alcohol testing outside the United States and its Territories; drug and alcohol testing for manufacturers; and drug and alcohol testing for general aviation. These issues are outside the scope of the SNPRM. Therefore, we have not addressed them in this final rule.

Paperwork Reduction Act

This final rule contains information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3507(d)). No agency may conduct or sponsor and no person is required to respond to a collection of information unless it displays a currently valid OMB control number. In accordance with the Paperwork Reduction Act, documentation describing the information collection activities was submitted to the Office of Management and Budget (OMB) for review and approval. The FAA will publish the OMB control number for this information collection in the **Federal Register** after the Office of Management and Budget approves it.

This rule imposes additional reporting and recordkeeping requirements on regulated employers (part 121 and 135 certificate holders, and operators as defined in § 135.1(c)). This rulemaking indirectly affects contractors and subcontractors, including non-certificated maintenance contractors, performing maintenance and preventive maintenance for these regulated employers at any tier if they elect to obtain antidrug and alcohol misuse prevention programs.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is the FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. The FAA has determined this rule has benefits that justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

This rulemaking directly affects regulated employers (part 121 and 135 certificate holders, and operators as defined in § 135.1(c)). This rulemaking indirectly affects contractors and subcontractors, including non-certificated maintenance contractors, performing maintenance and preventive maintenance for these regulated employers at any tier. Approximately 300 non-certificated maintenance contractors will have to develop anti-drug and alcohol misuse prevention programs, affecting about 5,000 employees in 2006, rising to approximately 5,700 employees by 2015.

The FAA is not changing the current regulations, but is simply clarifying them. As such, there should be no additional costs. However, the FAA recognizes that, due to conflicting guidance, some companies may have to modify their current anti-drug and alcohol misuse prevention programs or implement such programs. The FAA does not know how many additional employees or contractor companies will be subject to anti-drug and alcohol misuse prevention programs, but has conservatively estimated that over 10 years, costs sum to $3.08 million and cost savings sum to $790,300, for net total costs of $2.29 million ($1.76 million, discounted).

The major benefit from this rulemaking will be the prevention of potential injuries and fatalities and property losses resulting from accidents attributed to neglect or error on the part of individuals whose judgment or motor skills may be impaired by the presence of drugs and/or alcohol. The FAA estimates 10-year benefits sum to $15.07 million ($10.59 million, discounted).

A full evaluation of the estimated costs and benefits associated with today's rule is provided in the final regulatory evaluation located in the docket.

Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For this rule, the small entity group is considered to be small part 121 and 135 certificate holders and operators under § 135.1(c) (North American Industry Classification System [NAICS] 481111). The FAA examined the annual revenues of all the certificated air carriers under part 121, 121/135, 135, as well as operators under § 135.1(c).

For the certificated air carriers under part 121, 121/135, and 135, annual revenue data is not available by 14 CFR part number, so the FAA used Forms 41 and 298C, available from the Bureau of Transportation Statistics (BTS), for this data. In these forms, BTS breaks down the different airplane operators that file Form 41, by revenue. Large certificated carriers (which includes Majors through Medium Regionals), which file Form 41, must fly aircraft with 60 seats or more or have a payload of at least 18,000 lbs.

Carriers reporting on Form 298C are classified as either ''Small Certificated'' (also known as Small Regionals) or ''Commuter'' air carriers. While neither of these types of carriers are defined by annual revenues, some small certificated carriers have more than $100 million in annual revenues.

Carriers that file Form 41 that have annual revenue over $20 million (Majors, Nationals, and Large Regionals) report revenue data quarterly, while carriers that File 41 that have annual revenue less than $20 million (Medium Regionals) report revenue data twice a year. All carriers that file Form 298C, report revenue data quarterly. Unfortunately, the data is not consistent as it is not available for some carriers for every reporting period. The FAA examined data from the last 3 years to identify the most recent consecutive four quarters or two half-year periods, whichever was applicable, for each carrier to be used as the relevant operating revenue for that carrier. Using this air carrier operator information, the FAA separated the carriers into part 121, part 121/135, and part 135 certificated carriers, and operators under § 135.1(c). The average annual revenue for these three categories is $1,686.60, $58.74, and $59.10, respectively, in millions of dollars.

The FAA used a different method to calculate the annual revenue for the operators under § 135.1(c), as this information is not collected by BTS. As shown in an earlier (2002) analysis, the FAA collected information on both part 135 and part 91 aircraft engaged in air tours. The FAA determined that the group that was most similar to the operators under § 135.1(c), in this analysis, was the core part 91 operators with the annual revenue per operator of $62,600.

This rule will cost $2.29 million over 10 years ($1.76 million, discounted). The annualized cost is about $800 for each of the approximately 300 contractors to put together an antidrug and alcohol misuse prevention program and then implement it. These

contractors will absorb some of these costs, while the rest will be passed on to both the companies at the other tiers that they are contracting for or with as well as to the regulated employers. Given such low annualized costs, the FAA does not believe that most of the costs will be passed on to companies at other tiers. However, the FAA assumes that all of the additional NCMS cost is passed along to the regulated employers in order to estimate the maximum impact of this regulation on regulated employers.

For this analysis, the FAA considers each part 135 certificate holder and operator under § 135.1(c) to be a small entity, and some of the part 121 and 121/135 certificate holders to also be small entities. The FAA examined the costs of this rule two different ways:

a. The costs are shared equally by all regulated employers; and

b. In order to determine the maximum impact of this rule, the entire cost is borne by one regulated employer.

a. Given 2,562 air carrier certificate holders and 250 operators under § 135.1(c), the cost borne by each regulated employer would equal about $800 ($600, discounted). Using the same capital recovery rate yields an annualized cost of about $100. The costs to each air carrier certificate holder would be less than 0.0002% of their annual revenues, while the costs to each operator under § 135.1(c) would be less than 0.15% of their annual revenues. Given that the majority of § 135.1(c) operators usually has one or two aircraft, and operates in and out of one airport, it is unlikely that they would interact with multiple subcontractors in the regular course of business operations. Therefore, it is unlikely that their annualized costs as a percentage of annual revenues would be much higher than 0.15%.

b. Under this scenario, with the entire cost being borne by one regulated employer that is not a small entity, the costs sum to $2.29 million over 10 years ($1.76 million, discounted). It is highly unlikely that one or a small number of regulated employers would bear the costs of this rule exclusively because the regulated employers vary in size, number of aircraft, and geographic location. The smaller the operator, the fewer aircraft that operator would use, hence the smaller the number of subcontractors that operator would use for safety-sensitive maintenance. Therefore, this scenario would not be applicable to many small entities, including many part 135 operators or any operator under § 135.1(c).

Using the same capital recovery rate yields an annualized cost of about $251,200. Even if one regulated employer absorbed all the costs, these costs would be less than 0.5% of annual median revenue. Clearly, no regulated employer is going to absorb all, or even most, of the costs to the exclusion of the other regulated employers, so the impact on their revenues will be much less than 0.5% of annual median revenue. In addition, it is highly unlikely that all of the additional costs to the NCMS will be passed along to these regulated employers.

Under both scenarios, the economic impact is minimal. Therefore, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this NPRM and has determined that it would have only a domestic impact and therefore no affect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined it is not a ''significant energy action'' under Executive Order 13211 because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Alcoholism, Aviation Safety, Charter flights, Drug abuse, Drug Testing, Safety, Transportation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 121 of Title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 2. Amend appendix I to part 121 by revising the introductory text to section III.

Appendix I to Part 121—Drug Testing Program

* * * * *

III. *Employees Who Must be Tested.* Each employee, including any assistant, helper, or individual in a training status, who performs

a safety-sensitive function listed in this section directly or by contract (including by subcontract at any tier) for an employer as defined in this appendix must be subject to drug testing under an antidrug program implemented in accordance with this appendix. This includes full-time, part-time, temporary, and intermittent employees regardless of the degree of supervision. The safety-sensitive functions are:

* * * * *

■ 3. Amend appendix J to part 121 by revising paragraph A introductory text of section II.

Appendix J To Part 121—Alcohol Misuse Prevention Program

* * * * *

II. Covered Employees

A. Each employee, including any assistant, helper, or individual in a training status, who performs a safety-sensitive function listed in this section directly or by contract (including by subcontract at any tier) for an employer as defined in this appendix must be subject to alcohol testing under an alcohol misuse prevention program implemented in accordance with this appendix. This includes full-time, part-time, temporary, and intermittent employees regardless of the degree of supervision. The safety-sensitive functions are:

* * * * *

Issued in Washington, DC, on December 22, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 06–205 Filed 1–9–06; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
January 10, 2006

Part V

The President

Notice of January 6, 2006—Notice of Intention To Enter Into a Free Trade Agreement With Peru

Federal Register
Vol. 71, No. 6
Tuesday, January 10, 2006

Presidential Documents

Title 3—

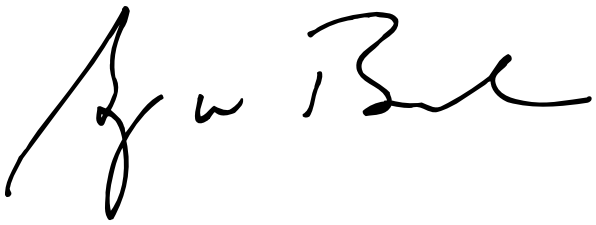
The President

Notice of January 6, 2006

Notice of Intention To Enter Into a Free Trade Agreement With Peru

Consistent with section 2105(a)(1)(A) of the Trade Act of 2002, I have notified the Congress of my intention to enter into a free trade agreement with the Republic of Peru.

Consistent with section 2105(a)(1)(A) of that Act, this notice shall be published in the **Federal Register**.



THE WHITE HOUSE,
Washington, January 6, 2006.

[FR Doc. 06–261
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