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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AK95

Federal Employees Health Benefits Program: Discontinuance of Health Plan in an Emergency

AGENCY: Office of Personnel Management.

ACTION: Final Regulation.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to amend the Federal Employees Health Benefits (FEHB) regulations regarding discontinuance of a health plan to include situations in which a health plan becomes incapacitated, either temporarily or permanently, as the result of a disaster.

EFFECTIVE DATE: February 16, 2007.

FOR FURTHER INFORMATION CONTACT: For further information contact Edward M. DeHarde, Center for Employee and Family Support Policy, Strategic Human Resources Policy Division, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415; or call him at 202–606–0004.

SUPPLEMENTARY INFORMATION: OPM currently has regulations dealing with the discontinuance of a health plan in whole or part. The regulations apply when a plan goes out of business or withdraws from the FEHB Program. Enrollees in such plans are notified that they need to change plans. The regulations also allow the automatic transfer of the enrollment of annuitants who do not change plans.

In light of the devastation wrought by Hurricane Katrina, OPM has expanded the discontinuation of a health plan to include situations in which a plan becomes incapable of providing services, either on a permanent or temporary basis, because of a disaster. In such a situation enrollees are now allowed to change health plans. However, depending on the nature of the disaster, it may not be possible to locate enrollees to notify them of the need to change health plans. To ensure there is no loss of coverage, any enrollee who is not able to make a change in these circumstances will be transferred automatically to the standard option of the nationwide Blue Cross and Blue Shield Service Benefit Plan. To the extent practical, OPM will work together with carriers and agencies to notify affected individual employees, and OPM will make general notification or announcement on its Web site.

Invoking the provisions of these final regulations will be at OPM's discretion. OPM will provide whatever notification is feasible, if a disaster necessitates enrollment changes under these provisions.

It should be noted that, although one of the regulatory sections being amended, § 890.301, refers to employees who do not participate in premium conversion, under the premium conversion regulations at § 892.207 these provisions would also apply to employees who do participate in premium conversion.

A proposed rule was published to amend 5 CFR part 890 in the **Federal Register** at 71 FR 11287, March 7, 2006. OPM requested comments by May 8, 2006. We received one comment by that date, from an FEHB Program carrier. The issues raised by this commenter are discussed below.

The commenter suggested the regulations are unfair to affected carriers as it could force them to incur lost revenue; the commenter indicated that the proposed regulations do not define terms such as incapacitated, discontinuance, and disaster; the commenter suggested that the regulations do not provide a clear process for OPM to make determinations, enforce rules or communicate with members and plans; and the commenter suggested that the regulations give overly broad discretion to OPM.

The intent of the regulations is that Federal employees can receive coverage for services in the event of a disaster, even if the employee's health plan is incapable of providing coverage. The regulations do not affect any health plan that could still provide benefit coverage to affected enrollees. Loss of coverage due to the discontinuation of a health plan is a longstanding part of FEHB Program regulations. The proposed rule adds discontinuation due to disaster to the list of possible causes for the discontinuation of a health plan.

Under existing regulations, annuitants who do not change health plans when a plan is discontinued are deemed to have enrolled in the nationwide Blue Cross and Blue Shield Service Benefit Plan; however, employees who do not change health plans are deemed to have cancelled their coverage. Under the new rule, employees receive the same protection as annuitants when their health plan is discontinued due to disaster. This will ensure that no enrollee loses coverage because of a disaster. The rule requires wide latitude in its application since no one can accurately predict disaster or its aftermath. OPM is committed to protecting the health and safety of the Federal workforce. Therefore, for the reasons supplied in the proposed rule, we are adopting the proposed rule as the final rule without change.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation only affects health benefits of Federal employees and retirees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Lists of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending part 890 of title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.303 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599 C of Pub. L 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251; and section 721 of Pub. L. 105–261, 112 Stat. 2061 unless otherwise noted.

■ 2. In § 890.301 add new paragraph (i)(4)(iv) to read as follows:

§ 890.301 Opportunities for employees who are not participants in premium conversion to enroll or change enrollment; effective dates.

* * * * *

(i) * * *

(4) * * *

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an employee must change the enrollment within 60 days of the disaster, as announced by OPM. If an employee does not change the enrollment within the time frame announced by OPM, the employee will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

* * * * *

■ 3. In § 890.306 add new paragraph (1)(4)(v) to read as follows:

§ 890.306 When can annuitants or survivor annuitants change enrollment or reenroll and what are the effective dates?

* * * * *

(1) * * *

(4) * * *

(v) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, an annuitant must change the enrollment within 60 days of the disaster, as announced by OPM. If an annuitant does not change the enrollment within the time frame announced by OPM, the annuitant will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

* * * * *

■ 4. In § 890.806 add new paragraph (j)(4)(iv) to read as follows:

§ 890.806 When can former spouses change enrollment or reenroll and what are the effective dates?

* * * * *

(j) * * *

(4) * * *

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the former spouse must change the enrollment within 60 days of the disaster, as announced by OPM. If the former spouse does not change the enrollment within the time frame announced by OPM, the former spouse will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

* * * * *

■ 5. In § 890.1108 add new paragraph (h)(4)(iv) to read as follows:

§ 890.1108 Opportunities to change enrollment; effective dates.

* * * * *

(h) * * *

(4) * * *

(iv) If the discontinuance of the plan, whether permanent or temporary, is due to a disaster, the enrollee must change the enrollment within 60 days of the disaster, as announced by OPM. If the enrollee does not change the enrollment within the time frame announced by OPM, the enrollee will be considered to be enrolled in the standard option of the Blue Cross and Blue Shield Service Benefit Plan. The effective date of enrollment changes under this provision will be set by OPM when it makes the announcement allowing such changes.

* * * * *

[FR Doc. E7–533 Filed 1–16–07; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0117]

Pine Shoot Beetle; Additions to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pine shoot beetle regulations by adding counties in Illinois, Indiana, Iowa, New Jersey, New York, and Ohio to the list of quarantined areas and by designating the States of Michigan, Minnesota, and Pennsylvania, in their entirety, as quarantined areas based on their decision not to enforce intrastate movement restrictions. The interim rule also added the States of Connecticut and Rhode Island, in their entirety, to the list of quarantined areas based on projections of the natural spread of pine shoot beetle that make it reasonable to believe that the pest is present in those States. The interim rule was necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

DATES: Effective on January 17, 2007, we are adopting as a final rule the interim rule published at 71 FR 58243–58246 on October 3, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle (PSB) into noninfested areas of the United States.

In an interim rule [1] effective and published in the **Federal Register** on October 3, 2006 (71 FR 58243–58246, Docket No. APHIS–2006–0117), we amended the regulations by adding Jo Daviess and Stark Counties, IL; Dearborn County, IN; Dubuque and Scott Counties, IA; Bergen, Hunterdon, Passaic, Sussex, and Warren Counties, NJ; Columbia, Orange, and Ulster Counties, NY; and Highland, Jackson, Ross, and Scioto Counties, OH, to the list of quarantined areas in § 301.50–3(c). In addition, we designated the States of Michigan, Minnesota, and Pennsylvania, in their entirety, as quarantined areas based on their decision not to enforce intrastate movement restrictions. Finally, we added the States of Connecticut and Rhode Island, in their entirety, to the

[1] To view the interim rule, go to *http://www.regulations.gov,* click on the ''Advanced Search'' tab, and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0117, then click ''Submit.'' Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

list of quarantined areas based on projections of the natural spread of PSB that make it reasonable to believe that the pest is present in those States.

Comments on the interim rule were required to be received on or before December 4, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 58243–58246 on October 3, 2006.

Done in Washington, DC, this 10th day of January 2007.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–505 Filed 1–16–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA92

Fees for Rice Inspection Services

AGENCY: Grain Inspection Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations governing the sampling, inspection, weighing, and certification for rice by increasing certain fees charged for the services by approximately 18 percent. Further, the rice fees increase an additional 3 percent each year through fiscal year 2010 and establish a stowage examination fee. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing these services under the Agricultural Marketing Act of 1946 (AMA).

EFFECTIVE DATE: February 16, 2007.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact John Giler, Deputy Director, Field Management Division, at his E-mail address: *john.c.giler@usda.gov* or by telephone (202) 720–0228. For information concerning fee development contact, contact Ms. Patricia Donohue-Galvin, Director, Budget and Planning Staff, at her E-mail address: *patricia.donohue-galvin@usda.gov* or by telephone (202) 690–0231.

SUPPLEMENTARY INFORMATION:

Background

The AMA authorizes official inspection and weighing services, on a user-fee basis, of rice (7 U.S.C. 1622(h)). The AMA provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered.

The regulations in 7 CFR 868 list user fees for inspection and weighing services provided by the Grain Inspection, Packers and Stockyards Administration (GIPSA or Agency). This final rule amends the schedule for fees and charges for inspection and weighing services that GIPSA provides to the rice industry to reflect the costs necessary to operate the program.

GIPSA receives no directly appropriated funds to provide inspection and weighing services. Our ability to provide these services depends on user fees.

For our user fees to cover our costs so that we can continue to provide services and to inform our customers of user fees in time for advance planning, we proposed to set user fees for our inspection and weighing services for fiscal years 2007 through 2010.

GIPSA regularly reviews its user fee programs to determine if the fees are adequate. While GIPSA continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency 3-month operating reserve.

The cost of operating the rice program was $4.4 million during fiscal year 2006 and will increase to approximately $4.8 million by fiscal year 2010. These cost increases are due to estimated annual cost of living adjustments for employee salaries and benefits, equipment replacement, and information technology upgrades. Replacing aging rice inspection equipment will cost approximately $50,000. An information technology upgrade to improve certification efficiency and program management will cost approximately $300,000. The estimated costs incorporate plans to introduce program changes that will better control increases in long-term costs.

We designed the revised fee structure to fund the rice program this fiscal year and future fiscal years to avoid a continued program deficit. The combination of the initial 18 percent increase and the subsequent annual 3 percent increases will ultimately cover the program's operating cost and replenish the 3-month retained earnings balance.

We are also establishing a new fee for stowage examination services that we will provide as a service upon request.

In the April 11, 2006 **Federal Register** (71 FR 18231–18236), we invited comments on our proposed rule identifying changes to the user fees we charge for rice inspection and weighing services. We solicited comments concerning our proposal for 60 days ending June 12, 2006. By the close of the comment period, we received two comments; one from representatives of a rice mill and one from a rice industry organization. Both commenters opposed the fee increases. The issues raised in these comments are discussed below.

The comments, one from a rice industry trade organization and one from a rice mill, both opposed the fee increases. The trade organization stated that the fee increase was excessive and would lead to a reduction in service requested from the industry, resulting in a continuing cycle of fee increases. It also said that the fee increase was preemptive and premature considering the continuing nature of discussion on privatization.

The trade organization indicated that GIPSA should eliminate costs, redesign its delivery system in certain locations, and it offered to work with GIPSA to evaluate options.

The rice mill stated that the fees charged by GIPSA were much higher than private industry and that the increase would force the industry to look for alternatives. The mill also questioned a statement in the proposed rule concerning the voluntary nature of the inspection service, because GIPSA is the only agency issuing USDA Rice Inspection Certificates.

We disagree with these comments.

The rice inspection program is authorized under the AMA of 1946 and funded by user fees. The rice fees were last revised in 2003. Since that time, costs have increased and retained earnings have been depleted. Without

the fee increase, the program will continue at a deficit.

We have adopted cost savings measures; however some aspects of the program required upgrades, as previously discussed. In fact, we have already adopted program changes that involved a realignment of staff to better control rising personnel costs in the future. Further, program costs and revenues have been projected out through 2010 with fee adjustments on a fiscal year basis. This will minimize the impact of the needed fee increase and will provide the industry a template to take into account future rice program fees and stabilize program finances.

While the agency has implemented appropriate cost savings measures, we have also completed our feasibility study that considered restructuring the program as part of a government-wide initiative designed to improve efficiency and cost effectiveness (see OMB Circular A–76). Specifically, our feasibility study determined that the A–76 action, which could include the use of private vendors to deliver inspection services, would not result in any savings to the rice inspection program or any long term savings to the rice industry. Therefore, a revision to the user fees is necessary now in order to run the inspection program without a deficit.

Contrary to one of the commenter's statements, rice inspection is a voluntary service. Applicants in fact may choose to receive non-federal inspection services. While it is true that GIPSA is the only entity that issues USDA Rice Inspection Certificates, such certificates are not mandatory.

Finally, we will continue to work with the rice industry, as appropriate, concerning this program.

Miscellaneous Changes

We made the following minor miscellaneous changes in the regulation to add clarity. In Table 2 of 7 CFR 868.91, the fees listed as (a) and (b) under Stowage Examination are the same, so we added the actual fee in row (b) instead of implying it and only listing it in row (a). In footnote 2 of Table 2, we added a reference to the GIPSA Web site as an alternative source for field office information. We moved the text of footnote 3 in Table 2 to the introductory text of section 868.91 because it refers the reader back to the fees in Table 1. As a result, we renumbered footnote 4 in Table 2 as footnote 3.

Therefore, for the reasons given in this proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes noted in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, the Office of Management and Budget (OMB) has not reviewed it.

As required by the Regulatory Flexibility Act (RFA); we have considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

We are making these regulatory changes because additional user fee revenues are needed to cover the costs of providing current and future program operations and services.

There are approximately 135 applicants who receive rice inspection and weighing services. A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201).

GIPSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined under the RFA because the majority of applicants that apply for services do not meet the requirements of small entities. Rice inspection and weighing services are provided upon request and the fees charged to users of these services vary with usage. However, the impact on all businesses, including small entities, is very similar. Further, the rice industry businesses are under no obligation to use these services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

GIPSA regularly reviews its user fee financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce its costs.

GIPSA's cost of operating the rice program was $4.4 million during fiscal year 2006 and will gradually escalate to approximately $4.8 million by fiscal year 2010. These cost increases through fiscal year 2010 are due to employee salaries and benefits coupled with estimated annual cost of living adjustments, the future costs of approximately $50,000 to replace aging rice inspection equipment in the offices, and the need to fund approximately $300,000 for an information technology upgrade to improve certification efficiency and program management.

The fees cover the GIPSA administrative and supervisory costs for the performance of official services, including personnel compensation and benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

The 18 percent fee increase will initially increase the revenue of the program. The 3 percent annual increase through fiscal year 2010 is expected to cover the program's operating cost and replenish the 3-month reserve balance. To minimize the impact of a fee increase, GIPSA has decided to establish fee rates that will collect sufficient revenue over time to cover operating expenses, while striving to create a 3-month operating reserve by FY 2010. The following table reflects GIPSA's financial rice program projections through fiscal year 2010. GIPSA will evaluate the financial status of the rice program on a continuous basis to determine if it is meeting the goal of obtaining a 3-month operating reserve by FY 2010, and to determine if other adjustments are necessary.

TABLE 1.—RICE PROGRAM FY06 ACTUAL AND PROJECTIONS

[Million dollars]*

	FY06	FY07	FY08	FY09	FY10
Revenue	$4.0	$4.6	$5.0	$5.1	$5.3
Obligations	4.4	4.4	4.5	4.6	4.8
Projected Reserve (Retained Earnings)	(0.5)	(0.3)	0.2	0.7	1.2
Target Reserve (Retained Earnings) (3-months operating obligations)	1.1	1.1	1.2	1.2	1.2

*Figures may not sum due to rounding.

GIPSA is also establishing a new fee for stowage examination services that we will provide as a service upon request.

There is no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this final rule.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements included in this final rule have been approved by OMB under control number 0580–0013.

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 12988

We reviewed this final rule under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities, Reporting and recordkeeping requirements, Rice.

■ For reasons set out in the preamble, amend 7 CFR Part 868 as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

■ 1. Revise the authority citation for part 868 to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Revise section 868.91 to read as follows:

§ 868.91 Fees for certain Federal rice inspection services.

The fees shown in Tables 1 and 2 apply to Federal rice inspection services. Fees for other services not referenced in Table 2 will be based on the non-contract hourly rate listed in § 868.91, Table 1.

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT

Service [1]	Regular workday (Monday–Saturday)	Nonregular workday (Sunday–Holiday)
Effective February 16, 2007		
Contract (per hour per Service representative)	$54.80	$76.00
Noncontract (per hour per Service representative)	66.80	92.10
Export Port Services (per hundredweight) [2]	0.066	0.066
Effective October 1, 2007		
Contract (per hour per Service representative)	$56.40	$78.30
Noncontract (per hour per Service representative)	68.80	94.80
Export Port Services (per hundredweight) [2]	0.068	0.068
Effective October 1, 2008		
Contract (per hour per Service representative)	$58.10	$80.70
Noncontract (per hour per Service representative)	70.90	97.70
Export Port Services (per hundredweight) [2]	0.070	0.070
Effective October 1, 2009		
Contract (per hour per Service representative)	$59.90	$83.10
Noncontract (per hour per Service representative)	73.00	100.60
Export Port Services (per hundredweight) [2]	0.072	0.072
Effective October 1, 2010		
Contract (per hour per Service representative)	$61.70	$85.60
Noncontract (per hour per Service representative)	75.20	103.60
Export Port Services (per hundredweight) [2]	0.074	0.074

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES SERVICE [1]

Effective February 16, 2007	
Inspection for quality (per lot, sublot, or sample inspection):	
(a) Rough rice	$41.90
(b) Brown rice for processing	36.00
(c) Milled rice	26.00
Factor analysis for any single factor (per factor):	
(a) Milling yield (per sample) (Rough or Brown rice)	32.50
(b) All other factors (per factor) (all rice)	15.60
Total oil and free fatty acid	50.80

TABLE 2.—UNIT RATES SERVICE [1]—Continued

Interpretive line samples: [2]	
(a) Milling degree (per set)	111.00
(b) Parboiled light (per sample)	27.20
Faxed and extra copies of certificates (per copy)	3.00
Stowage Examination (service-on-request) [3]	
(a) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(b) Subsequent ship examination (same as original) (minimum $151.50 per ship)	50.50
(c) Barge (per examination)	40.50
(d) All other carriers (per examination)	15.50
Effective October 1, 2007	
Inspection for quality (per lot, sublot, or sample inspection):	
(a) Rough rice	$43.20
(b) Brown rice for processing	37.10
(c) Milled rice	26.80
Factor analysis for any single factor (per factor):	
(a) Milling yield (per sample) (Rough or Brown rice)	33.50
(b) All other factors (per factor) (all rice)	16.10
Total oil and free fatty acid	52.30
Interpretive line samples: [2]	
(a) Milling degree (per set)	114.30
(b) Parboiled light (per sample)	28.00
Faxed and extra copies of certificates (per copy)	3.00
Stowage Examination (service-on-request) [3]	
(a) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(b) Subsequent ship examination (same as original) (minimum $151.50 per ship)	50.50
(c) Barge (per examination)	40.50
(d) All other carriers (per examination)	15.50
Effective October 1, 2008	
Inspection for quality (per lot, sublot, or sample inspection):	
(a) Rough rice	$44.50
(b) Brown rice for processing	38.20
(c) Milled rice	27.60
Factor analysis for any single factor (per factor):	
(a) Milling yield (per sample) (Rough or Brown rice)	34.50
(b) All other factors (per factor) (all rice)	16.60
Total oil and free fatty acid	53.90
Interpretive line samples: [2]	
(a) Milling degree (per set)	117.70
(b) Parboiled light (per sample)	28.80
Faxed and extra copies of certificates (per copy)	3.00
Stowage Examination (service-on-request) [3]	
(a) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(b) Subsequent ship examination (same as original) (minimum $151.50 per ship)	50.50
(c) Barge (per examination)	40.50
(d) All other carriers (per examination)	15.50
Effective October 1, 2009	
Inspection for quality (per lot, sublot, or sample inspection):	
(a) Rough rice	$45.80
(b) Brown rice for processing	39.40
(c) Milled rice	28.40
Factor analysis for any single factor (per factor):	
(a) Milling yield (per sample) (Rough or Brown rice)	35.50
(b) All other factors (per factor) (all rice)	17.10
Total oil and free fatty acid	55.50
Interpretive line samples: [2]	
(a) Milling degree (per set)	121.30
(b) Parboiled light (per sample)	29.70
Faxed and extra copies of certificates (per copy)	3.00
Stowage Examination (service-on-request) [3]	
(a) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(b) Subsequent ship examination (same as original) (minimum $151.50 per ship)	50.50
(c) Barge (per examination)	40.50
(d) All other carriers (per examination)	15.50
Effective October 1, 2010	
Inspection for quality (per lot, sublot, or sample inspection):	
(a) Rough rice	$47.20
(b) Brown rice for processing	40.60

TABLE 2.—UNIT RATES SERVICE [1]—Continued

(c) Milled rice	29.30
Factor analysis for any single factor (per factor):	
(a) Milling yield (per sample) (Rough or Brown rice)	36.60
(b) All other factors (per factor) (all rice)	17.60
Total oil and free fatty acid	57.20
Interpretive line samples: [2]	
(a) Milling degree (per set)	124.90
(b) Parboiled light (per sample)	30.60
Faxed and extra copies of certificates (per copy)	3.00
Stowage Examination (service-on-request) [3]	
(a) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(b) Subsequent ship examination (same as original) (minimum $151.50 per ship)	50.50
(c) Barge (per examination)	40.50
(d) All other carriers (per examination)	15.50

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Ambassador Drive, Kansas City, Missouri 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW., STOP 3630, Washington, DC 20250–3630 or from the GIPSA Web site (*http://www.gipsa.usda.gov*). The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor ''Parboiled Light'' rice.

[3] If performed outside of normal business hours, 1½ times the applicable unit fee will be charged.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 07–153 Filed 1–16–07; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. AMS–FV–06–0190; FV06–966–2 FR]

Tomatoes Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Florida Tomato Committee (Committee) for the 2006–07 and subsequent fiscal periods from $0.025 to $0.035 per 25-pound container or equivalent of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Assessments upon Florida tomato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* January 18, 2007.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or E-mail: *William.Pimental@usda.gov* or *Christian.Nissen@usda.gov*.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes beginning August 1, 2006, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2006–07 and subsequent fiscal periods from $0.025 to $0.035 per 25-pound container or equivalent of tomatoes handled.

The Florida tomato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida tomatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The

assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003–04 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on August 22, 2006, and unanimously recommended 2006–07 expenditures of $2,193,700 and an assessment rate of $0.035 per 25-pound container or equivalent of tomatoes. In comparison, last year's budgeted expenditures were $2,161,800. The assessment rate of $0.035 is $0.01 higher than the rate currently in effect. The increase in the assessment rate is needed to continue to support the increased budget for advertising and promotion started last season, while reducing the amount of funds drawn from the Committee's authorized reserve. Without the increase in the assessment rate, the Committee would need to utilize an additional $500,000 from the authorized reserve.

The major expenditures recommended by the Committee for the 2006–07 fiscal period include $1,000,000 for education and promotions, $445,900 for salaries, $320,000 for research, $67,000 for employee retirement, and $63,800 for employee health insurance. Budgeted expenses for these items in 2005–06 were $1,000,000, $428,000, $320,000, $65,000 and $63,800, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 50 million which should provide $1,750,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently around $700,000) will be kept within the maximum permitted by the order of not to exceed one fiscal period's expenses as stated in § 966.44.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2006–07 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of tomatoes in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2005–06 season was approximately $10.27 per 25-pound container or equivalent, and total fresh shipments for the 2005–06 season were 47,880,303 25-pound equivalent cartons of tomatoes. Committee data indicates that approximately 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average annual price of $10.27 per 25-pound container, about 75 percent of handlers could be considered small businesses under SBA's definition. In addition, based on production, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below $750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2006–07 and subsequent fiscal periods from $0.025 to $0.035 per 25-pound container or equivalent of tomatoes. The Committee unanimously recommended 2006–07 expenditures of $2,193,700 and an assessment rate of $0.035 per 25-pound container. The assessment rate of $0.035 is $0.01 higher than the 2005–06 rate. The quantity of assessable tomatoes for the 2006–07 season is estimated at 50 million cartons. Thus, the $0.035 rate should provide $1,750,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2006–07 fiscal period include $1,000,000 for education and promotions, $445,900 for salaries, $320,000 for research, $67,000 for employee retirement, and $63,800 for employee health insurance. Budgeted expenses for these items in 2005–06 were $1,000,000, $428,000, $320,000, $65,000, and $63,800, respectively.

As previously mentioned, the number of assessable containers during 2006–07 is estimated to be 50 million and the recommended assessment rate should generate $1,750,000 in income. The Committee's financial reserve is now estimated to be $700,000 and is available to cover the deficit in assessment income. The increase in the assessment rate is needed to continue to support the increased budget for advertising and promotion started last season, while reducing the amount of funds drawn from the Committee's authorized reserve. Without the increase in the assessment rate, the Committee would need to utilize an additional $500,000 from the authorized reserve.

The Committee reviewed and unanimously recommended 2006–07 expenditures of $2,193,700 which included increases in administrative and office salaries. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee,

Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the tomato industry. The assessment rate of $0.035 per 25-pound container of assessable tomatoes was determined by examining the anticipated expenses and expected shipments and considering available reserves. The assessment rate should generate $1,750,000 in income. Considering income from interest and other sources of $190,000, with assessments, total income should be approximately $253,700 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2006–07 season could range between $8.27 and $12.95 per 25-pound container or equivalent of tomatoes. Therefore, the estimated assessment revenue for the 2006–07 fiscal period as a percentage of total grower revenue could range between 0.3 and 0.4 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 22, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

A proposed rule concerning this action was published in the **Federal Register** on November 16, 2006 (71 FR 66702). Copies of the proposed rule were also mailed or sent via facsimile to all Florida tomato handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending December 1, 2006, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2006–07 fiscal period began on August 1, 2006, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Florida tomatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past fiscal periods. Also, a 15-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

■ For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 966.234 is revised to read as follows:

§ 966.234 Assessment rate.

On and after August 1, 2006, an assessment rate of $0.035 per 25-pound container or equivalent is established for Florida tomatoes.

Dated: January 11, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–149 Filed 1–11–07; 4:45 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FVO6–966–1 FR]

Tomatoes Grown in Florida; Partial Exemption to the Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule provides a partial exemption to the minimum grade requirements under the marketing order for tomatoes grown in Florida (order). The Florida Tomato Committee (Committee) locally administers the order. Under the order, Florida tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule exempts UglyRipe™ (UglyRipe) tomatoes from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of UglyRipe tomatoes that will meet the order requirements, and will help increase shipments and availability of these tomatoes for consumers.

EFFECTIVE DATE: This final rule becomes effective January 18, 2007.

FOR FURTHER INFORMATION CONTACT: William Pimental, Marketing Specialist, or Christian Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or e-mail: *William.Pimental@USDA.gov,* or *Christian.Nissen@usda.gov*.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in certain designated counties in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule provides a partial exemption to the minimum grade requirements prescribed under the order. The order's rules and regulations specify that Florida tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This rule exempts UglyRipe tomatoes from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of UglyRipe tomatoes that will meet the order requirements, and will help increase shipments and availability of these tomatoes for consumers. In addition, it is anticipated that this change will help promote continued innovation within the industry.

Section 966.52 of the order provides the authority for the establishment of grade and size requirements for Florida tomatoes. Form and shape represent part of the elements of grade. Section 966.323 of the order's rules and regulations specifies, in part, the minimum grade requirements for Florida tomatoes. The current minimum grade requirement for Florida tomatoes is a U.S. No. 2. The specifics of this grade requirement are listed under the U.S. Standards for Grades of Fresh Tomatoes (7 CFR 51.1855–51.1877).

The U.S. Standards for Grades of Fresh Tomatoes (Standards) specify the criteria tomatoes must meet to grade a U.S. No. 2, including that they must be reasonably well formed, and not more than slightly rough. These two elements relate specifically to the shape of the tomato. The definitions section of the Standards defines reasonably well formed as not decidedly kidney shaped, lopsided, elongated, angular, or otherwise decidedly deformed. The term slightly rough means that the tomato is not decidedly ridged or grooved. This rule amends § 966.323 to exempt UglyRipe tomatoes from these shape requirements as specified under the grade for a U.S. No. 2.

UglyRipe tomatoes are a trademarked tomato variety bred to look and taste like an heirloom-type tomato. One of the characteristics of this variety is its appearance. UglyRipe tomatoes are often shaped differently from other round tomatoes. Depending on the time of year and the weather, UglyRipe tomatoes are concave on the stem end with deep, ridged shoulders. They can also appear kidney shaped and lopsided. Because of this variance in shape and appearance, UglyRipe tomatoes can have difficulty meeting the shape requirements of the U.S. No. 2 grade.

This rule provides UglyRipe tomatoes with a partial exemption from the grade requirements under the order. UglyRipe tomatoes are only exempt from the shape requirements of the grade and are still required to meet all other aspects of the U.S. No. 2 grade. UglyRipe tomatoes also continue to be required to meet all other requirements under the marketing order, such as size, pack and container, and inspection.

Prior to the 1998–99 season, the Committee recommended that the minimum grade be increased from a U.S. No. 3 to a U.S. No. 2. Committee members agree that increasing the grade requirement has been very beneficial to the industry and in the marketing of Florida tomatoes. Further, some Committee members have stated that a large part of the volume of the standard commercial varieties of tomatoes which fail to make the grade are rejected because of their shape and appearance. Consequently, there was some industry concern that providing an exemption for UglyRipe tomatoes could result in the shipment of U.S. No. 3 grade tomatoes of other varieties, contrary to the objectives of the exemption and the order.

To address this concern, the producers of UglyRipe tomatoes pursued entry into USDA's Identity Preservation (IP) program. This program was developed by the Agricultural Marketing Service to assist companies in marketing products having unique traits. The program provides independent, third-party verification of the segregation of a company's unique product at every stage, from seed, production and processing, to distribution. UglyRipe tomatoes were granted positive program status in early 2006.

This partial exemption only extends to UglyRipe tomatoes covered under the IP program. As such, this should help ensure that only UglyRipe tomatoes are shipped under the exemption. In addition, this exemption is contingent upon UglyRipe tomatoes continuing to meet the requirements of the IP program.

This rule exempts UglyRipe tomatoes from the shape requirements associated with the U.S. No. 2 grade. This change increases the volume of UglyRipe tomatoes that will meet order requirements, and will help increase shipments and availability of these tomatoes. In addition, it is hoped that this change will help promote continued innovation within the industry.

Section 8e of the Act provides that when certain domestically produced commodities, including tomatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule provides a partial exemption to the minimum grade requirements under the domestic handling regulations, a corresponding change to the import regulations is also needed. A final rule providing the same partial exemption to the minimum grade requirements under the import regulations will be issued as a separate action.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of

business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of tomatoes in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2004–05 season was approximately $12.50 per 25-pound container, and fresh shipments totaled 53,025,915 25-pound cartons of tomatoes. Committee data indicates approximately 27 percent of the handlers handle 95 percent of the total volume shipped outside the regulated area. Based on the average price, about 75 percent of handlers could be considered small businesses under SBA's definition. In addition, based on production, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below $750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This final rule provides a partial exemption to the minimum grade requirements for tomatoes grown in Florida. Under the order, Florida tomatoes must meet at least a U.S. No. 2 grade before they can be shipped and sold outside the regulated area. This final rule exempts UglyRipe tomatoes from the shape requirements specified under the Standards for a U.S. No. 2 grade. This change increases the volume of UglyRipe tomatoes that will meet the order requirements, and will help increase shipments and availability of these tomatoes for consumers. This final rule amends the provisions of § 966.323. Authority for this action is provided in § 966.52 of the order.

This change represents a small increase in costs for producers and handlers of UglyRipe tomatoes, primarily from costs associated with developing and maintaining the IP program. However, the majority of facilities associated with UglyRipe tomatoes were involved with the IP program prior to this rule and have already received a successful audit. Therefore, the additional costs associated with this action are those costs related to maintaining and complying with the IP program. It is anticipated that these costs will be minimal and will be offset by the increased sales of UglyRipe tomatoes.

Finally, UglyRipe tomatoes are still required to meet the majority of the requirements for a U.S. No. 2 grade, and are usually priced higher than U.S. No. 2 graded standard commercial variety tomatoes. Therefore, this action should not have a price depressing effect on standard varieties, and because of the difference in price, this exemption should not have a significant impact on the market share for standard commercial varieties of Florida tomatoes.

One alternative to this action that was considered was to not provide an exemption from shape requirements for UglyRipe tomatoes. This option would not have allowed for an increase in the volume of UglyRipe tomatoes that would meet the order requirements, and would not help increase shipment and availability of these tomatoes. Therefore, this alternative was rejected.

This final rule provides a partial exemption to the minimum grade requirements under the Florida tomato marketing order. Accordingly, this rule will not impose any additional reporting or recordkeeping requirements on either small or large tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

A proposed rule concerning this action was published in the **Federal Register** on June 29, 2006 (71 FR 37014). Copies of the rule were mailed or sent via facsimile to all Committee members and tomato handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending August 28, 2006, was provided to allow interested persons to respond to the proposal.

Eighty-eight comments were received during the comment period in response to the proposal. Of the comments received, 79 were in support of the regulation and 9 were in opposition. One comment was received after the close of the comment period.

The comments in support of the proposal expressed appreciation for the taste of UglyRipe tomatoes, and supported a greater market availability for UglyRipe tomatoes. Several commenters stated that UglyRipe tomatoes compared favorably with homegrown tomatoes. Other commenters compared the taste as being equal to local tomatoes, even in winter when local tomatoes were not available. Several of the comments stated that good taste was of greater importance than appearance. Commenters also expressed that they have had difficulty in finding UglyRipe tomatoes available for purchase and supported this rule and its efforts to increase availability.

Nine comments were received in opposition to the proposed rule. Of these comments, five expressed concerns regarding this proposal's impact on orderly marketing. Four commenters stated that the current marketing order requirements provide stability to the industry. One commenter stated that the standards established under the order are key to the establishment of an orderly market for Florida growers and that this rule will weaken the industry's ability to maintain an orderly market. Another commenter stated that the proposed rule does not establish, maintain, or support orderly marketing conditions, but does the exact opposite.

One of the main goals of marketing orders is to establish orderly marketing conditions for those commodities covered under marketing orders. As previously noted, this partial exemption only extends to UglyRipe tomatoes. Further, this rule only provides UglyRipe tomatoes with a partial exemption from the shape requirements of the U.S. No. 2 grade. UglyRipe tomatoes are still subject to the requirements for maturity, ripeness, softness, development, decay, and damage as specified under the Standards for a U.S. No. 2 grade. Even with this partial exemption, the requirements for UglyRipe tomatoes are still significantly higher than those for U.S. No. 3 grade tomatoes.

Because this partial exemption is narrowly defined, the vast majority of the tomatoes shipped from Florida will still meet the requirements for a U.S. No. 2 grade. Therefore, this change will not diminish the overall benefits of the established grade standard.

Consequently, this change should not have an adverse impact on the orderly market for Florida tomatoes.

Five commenters stated that this change would allow UglyRipe tomatoes to circumvent the requirements of the order. Two comments declared that this rule would allow all UglyRipe tomatoes produced to be sold outside of the regulated area. Another comment stated that this rule would allow UglyRipe tomatoes to escape the standards applicable to all other tomatoes.

This partial exemption will not allow UglyRipe tomatoes to circumvent the requirements of the order, or allow all UglyRipe tomatoes produced in Florida to be shipped outside the regulated area. As stated above, UglyRipe tomatoes will still have to meet the majority of the requirements for U.S. No. 2 grade tomatoes, and will have to be inspected to ensure these requirements are met. UglyRipe tomatoes also continue to be required to meet all other requirements under the marketing order, such as size, pack and container, and assessment provisions. In addition, UglyRipe tomatoes must meet the requirements of the IP program.

Five commenters expressed concern that providing this exemption for the UglyRipe tomato will create a loophole, which will result in the shipment of U.S. No. 3 grade tomatoes of other varieties by other producers. One of the commenters stated that with this change, every farmer in Florida will be selling his off shaped fruit. Another commenter wrote that this action presents too many opportunities for domestic growers and importers to sell tomatoes of inferior quality. Another commenter stated that they had no doubt that efforts will be made to market U.S. No. 3 grade tomatoes that resemble UglyRipe tomatoes.

We disagree with these comments. There are safeguards in place to address these issues. In addition to the existing inspection requirements, and compliance efforts, this partial exemption only extends to UglyRipe tomatoes covered under the IP program. This program was developed by AMS and provides independent, third-party verification of the segregation of a company's product at every stage, from seed, production and processing, to distribution. This will help ensure that only UglyRipe tomatoes are shipped using this partial exemption, as only handlers covered under the IP program will be allowed to pack under the exemption. Further, USDA plans to closely monitor compliance with this exemption.

Three commenters stated that this rule will have a negative economic impact on the tomato industry. One commenter stated that this rule will cause a market share loss and loss of sales. Another comment states that this will increase supply, which will negatively affect price.

We disagree because this partial exemption is so narrowly defined, and only applies to UglyRipe tomatoes, it should not result in a significant increase in the overall supply of tomatoes. Also, this action should not have a significant impact on price. Prior to the 1998–99 season, the Committee recommended that the minimum grade be increased from a U.S. No. 3 to a U.S. No. 2. The reason for this action was that U.S. No. 3 grade tomatoes were having a price depressing effect on the market. This is because U.S. No. 3 grade tomatoes of standard commercial varieties sell at prices below those for U.S. No. 2 grade tomatoes. However, in the case of UglyRipe tomatoes, they are still required to meet the majority of the requirements for a U.S. No. 2 grade, and are usually priced higher than U.S. No. 2 graded standard commercial variety tomatoes. Therefore this action should not have a price depressing effect on standard varieties, and because of the difference in price this exemption should not have a significant impact on the market share for standard commercial varieties of Florida tomatoes.

Two commenters also stated that this regulation would have a negative impact on small growers. The commenters stated that when USDA did its initial regulatory flexibility analysis USDA only considered the impact on producers and handlers of UglyRipe tomatoes. The commenters stated that this rule would have a negative impact on small producers and handlers of standard commercial varieties.

In its initial regulatory flexibility analysis, USDA found that this change represents a small increase in costs for producers and handlers of UglyRipe tomatoes, primarily from costs associated with developing and maintaining the IP program. As discussed above, this rule should not significantly impact demand or price for standard commercial varieties. Consequently, we do not agree that this action will negatively impact growers and handlers of standard commercial varieties.

Accordingly, no changes will be made to the rule as proposed, based on comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the regulatory period will begin October 10, 2006. Also, a 60-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

■ For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Amend § 966.323, by adding a new paragraph (d)(5) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(d) * * *

(5) *For UglyRipe™ tomatoes.* UglyRipe™ tomatoes must meet all the requirements of this section: *Provided,* That UglyRipe™ tomatoes shall be graded and at least meet the requirements specified for U.S. No. 2 under the U.S. Standards for Grades of Fresh Tomatoes, except they are exempt from the requirements that they be reasonably well formed and not more than slightly rough, and *Provided,* Further that the UglyRipe™ tomatoes meet the requirements of the Identity Preservation program, Fresh Products Branch, Fruit and Vegetable Programs, AMS, USDA.

* * * * *

Dated: January 12, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–162 Filed 1–12–07; 11:58 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

8 CFR Part 236

[ICE 2355–05; DHS Docket No. ICE–2006–0012]

RIN 1653–AA53

Consular Notification for Aliens Detained Prior to an Order of Removal

AGENCY: Bureau of Immigration and Customs Enforcement, DHS.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Homeland Security (DHS) regulations governing the detention of aliens prior to an order of removal. The rule updates the list of countries in 8 CFR 236.1(e), which, based on existing treaties, requires immediate communication with consular or diplomatic officers when nationals of listed countries are detained in the United States. The rule adds Algeria, Tunisia, and Zimbabwe to the list of countries and removes Albania and South Korea from the list of countries. In addition, the rule clarifies provisions related to treaties that the United States has with China, Hong Kong, and Poland. Finally, the rule updates the list with Antigua and Barbuda's official name and by adding clarifying language about provisions governing U.S.S.R. successor states.

DATES: This final rule is effective January 17, 2007.

FOR FURTHER INFORMATION CONTACT: Lisa Hoechst, Bureau of Immigration and Customs Enforcement, Department of Homeland Security, 425 I Street, NW., Washington, DC 20536, telephone 202–732–2868.

SUPPLEMENTARY INFORMATION:

I. Background

Bilateral treaties between the United States and many countries require immediate communication with a consular or diplomatic officer of such a country whenever one of their nationals is arrested or detained in the United States. The immediate communication must occur, regardless of whether the alien requests such communication and even if the alien requests that no such communication be undertaken on his or her behalf.

There are three states that are party to such a treaty with the United States but are not included in the current list of countries in 8 CFR 236.1(e). Those states are Algeria, Tunisia, and Zimbabwe. The relevant portions of the bilateral treaties with those states are provided below.

• The Consular Convention with the Democratic and Popular Republic of Algeria, Jan. 12, 1989, U.S.-Alg., art. 33(1), S. Treaty Doc. No. 101–13, provides:

> The consular post of the sending State shall be informed without delay of any measure taken to deprive one of its nationals of his liberty and the motivating circumstances.

• The Consular Convention with the Republic of Tunisia, May 12, 1988, U.S.-Tunis., art. 39(1), S. Treaty Doc. No. 101–12, provides:

> The competent authorities of the receiving State shall, without delay, inform the appropriate consular post whenever a national of the sending state is the subject of an arrest or of any form of restriction on his personal freedom. For the purpose of this article, the term ''without delay'' contemplates that this notification will be made within three days following restriction on the freedom of nationals of the sending State, or in cases where the notification cannot be made within three days because of communications or other difficulties, as soon as possible thereafter.

• The Consular Convention with the United Kingdom, June 6, 1951, U.S.–U.K., art. 16(2), 3 U.S.T. 3426, which has continued to apply to Zimbabwe since it became independent, provides:

> A consular officer shall be informed immediately by the appropriate authorities of the territory when any national of the sending state is confined in prison awaiting trial or is otherwise detained in custody within his district.* * *

In addition, there are two countries currently on the list in 8 CFR 236.1(e) that are not covered by such a treaty: Albania and South Korea. There is currently no bilateral consular convention in force between the United States and Albania. The multilateral Vienna Convention on Consular Relations (VCCR), April 24, 1963, art. 36(1)(b), 21 U.S.T. 77, 101, 596 U.N.T.S. 261, 292 governs the notification of consular officials when Albanian nationals are detained in the United States. It provides that:

> *[I]f he so requests,* the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner.* * * [Emphasis added.]

Consular notification is not mandatory—it is at the request of the detained person.

The Consular Convention with the Republic of Korea, January 8, 1963, U.S.-S. Korea, art. 5(2), 14 U.S.T. 1637, also does not require mandatory consular notification. It states:

> The appropriate authorities of the receiving state shall, *at the request* of any national of the sending state who is under arrest or otherwise detained in custody, immediately inform a consular officer of the sending state. * * * [Emphasis added.]

Any detained South Korean national has the discretion to decide whether his or her consulate will be notified of the detention.

II. Provisions of the Rule

This rule amends 8 CFR 236.1(e) to add Algeria, Tunisia, and Zimbabwe to the list of foreign countries having a bilateral treaty that requires consular notification when their nationals are detained in the U.S. The rule also removes Albania and South Korea from the list.

The rule also makes several changes with regard to China. The rule states, in a footnote to ''China'' in the list of countries, that consular notification is not mandatory for any person who carries a ''Republic of China'' passport issued by Taiwan. Such persons are not covered by any consular convention that provides for mandatory consular notification.

In addition, the rule removes Hong Kong from the list of British dependencies in the footnote to ''United Kingdom.'' It adds ''Hong Kong'' to the list of countries and adds a footnote to the entry for ''Hong Kong.'' The footnote discusses the reversion of Hong Kong to Chinese sovereignty and to the requirement that United States officials notify Chinese consular officials whenever the bearer of a Hong Kong passport is arrested or detained in the United States. The latter requirement is contained in the Agreement Regarding the Maintenance of the United States Consulate General in the Hong Kong Special Administrative Region, March 25, 1997, U.S.-China, 33 U.S.T. 2973, para. 3(f)(2):

> If a national of the sending State is arrested or placed under any form of detention within the consular district, the competent authorities of the receiving State shall immediately, but no later than within four days from the date of arrest or detention, notify the consulate of the sending State. If it is not possible to notify the consulate of the sending State within four days because of communications difficulties, they should try to provide notification as soon as possible. * * *

This provision is identical to article 35(2) of the Consular Convention with China, Sept. 17, 1980, U.S.-China, 33 U.S.T. 2973.

The rule also adds a footnote to ''Poland'' in the list of countries, stating

that mandatory consular notification does not apply to any Polish national who has been admitted to permanent residence in the United States. The Consular Convention with Poland, May 31, 1972, U.S.-Pol., art. 29(2), 24 U.S.T. 1231, states:

> The appropriate authorities of the receiving State shall immediately inform a consular officer of the sending State of the detention or arrest of any national of the sending State who has not been admitted to permanent residence in the receiving State. In the case of the detention or arrest of a national of the sending State who has been admitted to permanent residence in the receiving State, the appropriate authorities of the receiving State, *on the request of such national,* shall immediately inform a consular officer of the sending State of such detention or arrest. [Emphasis added.]

Finally, the rule changes ''Antigua'' in the list of countries to ''Antigua and Barbuda,'' the official name of that country. It also adds language to the footnote to ''U.S.S.R.,'' which clarifies that mandatory consular notification applies to a national of any of its successor states who is still traveling on a U.S.S.R. passport.

It is crucial that DHS make these changes, especially the addition of Algeria, Tunisia, and Zimbabwe to the list of countries whose consular or diplomatic officials must, under treaty, be notified if their nationals are detained in the United States. The failure to list these countries has led to complaints from those countries' governments that DHS has not always notified consular officials as required under treaty. It could lead such governments to not honor their treaty obligation to notify officials of the United States when United States nationals are detained. Accordingly, DHS is inserting this language to help assure that such governments honor their treaty obligation to notify officials of the United States when United States nationals are detained.

III. Regulatory Analyses

A. Administrative Procedure Act

This rule is exempt from requirements for notice and comment rulemaking under 5 U.S.C. 553(a)(1), because it relates to a foreign affairs function of the United States. Moreover, the rule does not implement any additional rights or responsibilities incumbent upon the general public, but merely consolidates a list of provisions of treaties currently in force. Accordingly, DHS has determined that the rulemaking provisions of the Administrative Procedure Act do not apply and that this rule is effective immediately upon publication in the **Federal Register**.

B. Regulatory Flexibility Act

Since no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (March 22, 1995) (2 U.S.C. 1502 *et seq.*).

D. Small Business Regulatory Enforcement Fairness Act of 1996

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

E. Executive Order 12866

This rule is exempt from Executive Order 12866 review, and is therefore not subject to OMB review, because it ''pertains to a military or foreign affairs function of the United States.'' *See* section 2(d)(2) of Executive Order 12866.

F. Executive Order 13132

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement under section 6 of Executive Order 13132.

G. Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements as described in the Paperwork Reduction Act, 44 U.S.C. 3507. Therefore, DHS does not need to submit any such requirement to the Office of Management and Budget (OMB) for review and approval.

List of Subjects in 8 CFR Part 236

Administrative practice and procedure, Aliens, Foreign relations, Immigration, Treaties.

■ Accordingly, part 236 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 236–APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

■ 1. The authority citation for part 236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

■ 2. Section 236.1(e) is amended by revising the list of countries, and the accompanying footnotes, to read as follows:

§ 236.1 Apprehension, custody, and removal.

* * * * *

(e) * * *

Algeria [1]
Antigua and Barbuda
Armenia
Azerbaijan
Bahamas, The
Barbados
Belarus
Belize
Brunei
Bulgaria
China (People's Republic of) [2]
Costa Rica
Cyprus
Czech Republic
Dominica
Fiji
Gambia, The
Georgia
Ghana
Grenada
Guyana
Hong Kong [3]

[1] Arrangements with the countries listed in 8 CFR 236.1(e) provide that U.S. authorities shall notify responsible representatives within 72 hours of the arrest or detention of one of their nationals.

[2] Notification is not mandatory in the case of any person who carries a ''Republic of China'' passport issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office (''TECRO''), the unofficial entity representing Taiwan's interests in the United States, can be notified at their request.

[3] Hong Kong reverted to Chinese sovereignty on July 1, 1997, and is now officially referred to as the Hong Kong Special Administrative Region, or

Hungary
Jamaica
Kazakhstan
Kiribati
Kuwait
Kyrgyzstan
Malaysia
Malta
Mauritius
Moldova
Mongolia
Nigeria
Philippines
Poland [4]
Romania
Russian Federation
St. Kitts and Nevis
St. Lucia
St. Vincent/Grenadines
Seychelles
Sierra Leone
Singapore
Slovak Republic
Tajikistan
Tanzania
Tonga
Trinidad and Tobago
Tunisia
Turkmenistan
Tuvalu
Ukraine
United Kingdom [5]
U.S.S.R. [6]
Uzbekistan
Zambia
Zimbabwe

* * * * *

''S.A.R.'' Under paragraph 3(f)(2) of the March 25, 1997, U.S.-China Agreement on the Maintenance of the U.S. Consulate General in the Hong Kong Special Administrative Region, U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as is required for bearers of Chinese passports—i.e., immediately, and in any event, within four days of the arrest or detention.

[4] Consular communication is not mandatory for any Polish national who has been admitted for permanent residence in the United States. Such notification should only be provided upon request by a Polish national with permanent residency in the United States.

[5] United Kingdom includes England, Scotland, Wales, Northern Ireland and Islands and the British dependencies of Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

[6] All U.S.S.R. successor states are covered by this agreement. They are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Although the U.S.S.R. no longer exists, the U.S.S.R is listed here, because some nationals of its successor states may still be traveling on a U.S.S.R. passport. Mandatory consular notification applies to any national of such a state, including one traveling on a U.S.S.R. passport.

Dated: January 9, 2007.

Michael Chertoff,

Secretary.

[FR Doc. 07–137 Filed 1–11–07; 2:27pm]

BILLING CODE 4410–10–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 2007–02]

RIN 1550–AC06

Subordinated Debt Securities and Mandatorily Redeemable Preferred Stock

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: This final rule updates OTS regulations that require a savings association to obtain approval (or non-objection) before it may include subordinated debt securities or mandatorily redeemable preferred stock in supplementary (tier 2) capital. The final rule removes several unnecessary or outdated requirements and conforms certain provisions, such as maturity period requirements and purchaser restrictions, to the rules issued by the other federal banking agencies. The final rule also reconciles conflicting rules, adds appropriate statutory cross-references, and rewrites the rule in plain language.

DATES: This rule is effective April 1, 2007.

FOR FURTHER INFORMATION CONTACT: David W. Riley, Senior Analyst, (202) 906–6669; Capital Policy, Karen Osterloh, Special Counsel, (202) 906–6639, Regulations and Legislation Division, or Gary Jeffers, Senior Attorney, (202) 906–6457, Business Transactions Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Discussion

A savings association must obtain OTS approval (or non-objection) before it may include subordinated debt securities or mandatorily redeemable preferred stock in supplementary (tier 2) capital. OTS rules at 12 CFR 563.81 address application and notice procedures, requirements that securities must meet to be included in supplementary capital, conditions for OTS approval (or non-objection), and other requirements.

On July 3, 2006, OTS proposed to update 12 CFR 563.81 to delete unnecessary or outdated requirements and conform certain provisions, such as maturity period requirements and purchaser restrictions, to the rules issued by the other federal banking agencies. In addition, OTS proposed to reconcile 12 CFR 563.81 with conflicting OTS rules, add appropriate statutory cross-references, and rewrite the rule in plain language.[1]

OTS received comments from two trade associations in support of the proposed rule. Both commenters observed that the proposed rule is a much-needed update to the existing provisions. They noted that the proposed rule clarifies the existing requirements, is more consistent with the rules issued by other federal banking agencies, is less burdensome than the current rule, and provides greater flexibility to savings associations.

Commenters suggested only a few revisions to the proposed rule. These suggestions are discussed below. Unless otherwise noted, OTS has adopted the proposed rule without substantive change.

A. Processing and Review of Applications and Notices—Final § 563.81(b) and (d)

The proposed rule amended the existing rules governing OTS processing and review of applications and notices seeking approval of, or non-objection to, the inclusion of subordinated debt securities or mandatorily redeemable preferred stock in supplementary capital. These revisions deleted outdated rules that overlapped or duplicated 12 CFR part 516 (Application Processing Guidelines), and substituted appropriate cross-references to that part.

Commenters generally supported these revisions. One commenter, however, noted that proposed § 563.81(a) stated that a savings association may file its application or notice before or after it issues the covered securities, but may not include the covered securities in supplementary capital until OTS approves the application or does not object to the notice. This commenter urged OTS to establish a 30-day time limit on OTS's ability to object to a notice. The commenter argued that this change would provide a savings association with certainty that the covered securities that were the subject of a notice could be treated as tier 2 capital without further OTS action.

[1] 71 FR 37862 (July 3, 2006).

This issue is already addressed by proposed § 563.81(d)(1), which states that OTS will review all applications and notices under 12 CFR part 516, subpart E. Under part 516, subpart E, if a savings association has appropriately filed a notice with OTS under the expedited treatment, it is permitted to engage in the proposed activity 30 days after the filing date, unless OTS takes certain specified actions before the expiration of that time period. See 12 CFR 516.200 (2006). OTS has not included the requested clarification in the final rule.

B. Mandatory Prepayment of Principal—Final § 563.81(c)(3)

The proposed rule at § 563.81(c)(3) restated the current rules regarding mandatory prepayment of subordinated debt.[2] Specifically, the proposed rule stated that subordinated debt securities may not provide events of default or contain other provisions that could result in a mandatory prepayment of principal, other than events of default that:

- Relate to bankruptcy, insolvency, receivership, or similar events.
- Arise from the savings association's failure to make timely payment of interest or principal.
- Arise from its failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures for publicly offered debt securities.

The proposed rule also continued to state that any acceleration of payment of principal on a subordinated debt security by a savings association that fails to meet certain capital requirements is subject to OTS prior approval.

In the preamble to the proposed rule, OTS noted that all of the banking agencies allow for the mandatory prepayment or acceleration of principal upon events of default related to bankruptcy, insolvency, receivership, and similar events,[3] but there is no uniform approach with respect to prepayment or acceleration upon other events of default.[4] OTS sought public comment on whether it should make additional revisions to this section. OTS specifically asked commenters to address whether the other banking agency rules more appropriately address the events of default that may trigger mandatory prepayment or acceleration of principal.

One commenter addressed this subject. This commenter generally supported the proposed restatement of the current rule, which limits mandatory prepayment to specific events of default. The commenter urged OTS not to make additional revisions to this rule. The commenter noted that there is no evidence cited that these events of default have created a problem for savings associations in the past. In light of these comments, OTS has not included any further revisions to this provision.

C. Indenture Requirements—Final § 563.81(c)(4)

The current rules require a savings association to use an indenture for subordinated debt securities. Moreover, where the aggregate amount of subordinated debt securities that are publicly offered[5] exceeds certain thresholds in the Trust Indenture Act of 1939 (TIA),[6] the current rules require the indenture to provide for the appointment of a trustee other than the savings association or its affiliate, and for the collective enforcement of security holders' rights and remedies.[7] The proposed rule retained this provision, but updated the thresholds to reflect statutory changes to the TIA.

The preamble observed that the TIA requires indentures for most debt instruments, but does not require an indenture where the underlying securities are exempt from registration under the Securities Act of 1933 (Securities Act).[8] OTS indicated that it was considering exempting certain issuances from the indenture requirements and sought comment on this possible change. OTS noted, for example, that offerings made solely to accredited investors are exempt under the Securities Act.[9] OTS specifically asked whether it should exempt offerings to accredited investors that are holding companies of the issuer (or their subsidiaries) from the indenture requirement, and whether it should also exempt offerings to unaffiliated accredited investors. Both commenters urged OTS to adopt an accredited investor exemption.

Under the Securities Act and the TIA, ''accredited investors'' include such entities as: Brokers or dealers registered under the Securities Exchange Act of 1934; insurance companies as defined in the Securities Act; investment companies registered under the Investment Company Act of 1940; certain employee benefit plans; directors, executive officers, or general partners of the issuer; natural persons with income or net worth in excess of specified limits; and certain trusts with assets in excess of specified limits.[10] These investors are considered to have sufficient financial and professional resources and sophistication to analyze the offering, make informed decisions, and defend and exercise their rights.

The final rule exempts issuances solely to accredited investors from the indenture requirement. This change will make the indenture requirement more consistent with the TIA, which recognizes the presumed sophistication of these types of investors. This position will also reduce the regulatory burden of the rules. To provide appropriate protection to non-accredited investors, the final rule requires a savings association to have an indenture in place before any debt securities, for which an exemption from the indenture requirement is claimed, are transferred to any non-accredited investor. If an issuer relies on this exemption from the indenture requirement, it must place a legend on the debt securities indicating that an indenture must be in place before the debt securities are transferred to any non-accredited investor.

II. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

III. Unfunded Mandates Reform Act of 1995

Today's final rule revises an existing rule to delete unnecessary, outdated, and conflicting requirements, to add appropriate statutory cross-references, and to rewrite the rule in plain language. Accordingly, OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more and that a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601), the Director certifies that

[2] 12 CFR 563.81(b)(3)(2006).

[3] 12 CFR 250.166(b)(2)(FRB); and 12 CFR part 325, Appendix A, § I.A.2.(c)(2) and (d)(FDIC). *See* Comptroller's Licensing Manual, Subordinated Debt (November 2003), pp 15–16.

[4] 12 CFR 250.166 (FRB); 12 CFR part 325, Appendix A, § I.A.2.(d)(FDIC); and 12 CFR part 3, Appendix A, § 2(b)(4) and Comptroller's Licensing Manual, Subordinated Debt (November 2003)(OCC).

[5] Public offering includes sales in a nonpublic offering defined in 12 CFR 563g.4.

[6] 15 U.S.C. 77aaa *et seq.*

[7] 12 CFR 563.81(d)(4)(2006).

[8] 15 U.S.C. 77ddd.

[9] 15 U.S.C. 77d(6).

[10] 17 CFR 230.501(a). *See* 15 U.S.C. 77(a)(15).

this final rule will not have a significant economic impact on a substantial number of small entities. The final rule merely revises an existing rule to delete unnecessary, outdated, and conflicting requirements, to add appropriate statutory cross-references, and to rewrite the rule in plain language.

V. Paperwork Reduction Act of 1995

The information collection requirements in the existing OTS rules at 12 CFR 563.81 were previously approved under OMB control number 1550–00xx. The final continues to incorporate these requirements and does not make any substantive changes that affect the overall burden of compliance.

List of Subjects in 12 CFR Part 563

Accounting, Administrative practice and procedure, Advertising, Conflict of interest, Crime, Currency, Holding companies, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bond.

■ Accordingly, the Office of Thrift Supervision amends 12 CFR part 563 as set forth below:

PART 563—SAVINGS ASSOCIATIONS—OPERATIONS

■ 1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831o, 3806; 31 U.S.C. 5318; 42 U.S.C. 4106.

■ 2. Revise § 563.81 to read as follows:

§ 563.81 Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as supplementary capital.

(a) *Scope.* A savings association must comply with this section in order to include subordinated debt securities or mandatorily redeemable preferred stock (''covered securities'') in supplementary capital under 12 CFR 567.5(b). If a savings association does not include covered securities in supplementary capital, it is not required to comply with this section.

(b) *Application and notice procedures.* (1) A savings association must file an application or notice under 12 CFR part 516, subpart A seeking OTS approval of, or non-objection to, the inclusion of covered securities in supplementary capital. The savings association may file its application or notice before or after it issues covered securities, but may not include covered securities in supplementary capital until OTS approves the application or does not object to the notice.

(2) A savings association must also comply with the securities offering rules at 12 CFR part 563g by filing an offering circular for a proposed issuance of covered securities, unless the offering qualifies for an exemption under that part.

(c) *Securities requirements.* To be included in supplementary capital, covered securities must meet the following requirements:

(1) *Form.* (i) Each certificate evidencing a covered security must:

(A) Bear the following legend on its face, in bold type: ''This security is *not* a savings account or deposit and it is *not* insured by the United States or any agency or fund of the United States;''

(B) State that the security is subordinated on liquidation, as to principal, interest, and premium, to all claims against the savings association that have the same priority as savings accounts or a higher priority;

(C) State that the security is not secured by the savings association's assets or the assets of any affiliate of the savings association, as defined in 12 CFR 583.2;

(D) State that the security is not eligible collateral for a loan by the savings association;

(E) State the prohibition on the payment of dividends or interest at 12 U.S.C. 1828(b) and, in the case of subordinated debt securities, state the prohibition on the payment of principal and interest at 12 U.S.C. 1831o(h);

(F) For subordinated debt securities, state or refer to a document stating the terms under which the savings association may prepay the obligation; and

(G) State or refer to a document stating that the savings association must obtain OTS approval before the voluntarily prepayment of principal on subordinated debt securities, the acceleration of payment of principal on subordinated debt securities, or the voluntarily redemption of mandatorily redeemable preferred stock (other than scheduled redemptions), if the savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized as described in § 565.4(b) of this chapter, fails to meet the regulatory capital requirements at 12 CFR part 567, or would fail to meet any of these standards following the payment.

(ii) A savings association must include such additional statements as OTS may prescribe for certificates, purchase agreements, indentures, and other related documents. OTS will prescribe the text of these additional statements in its Application Processing Handbook.

(2) *Maturity requirements.* Covered securities must have an original weighted average maturity or original weighted average period to required redemption of at least five years.

(3) *Mandatory prepayment.* Subordinated debt securities and related documents may not provide events of default or contain other provisions that could result in a mandatory prepayment of principal, other than events of default that:

(i) Arise from the savings association's failure to make timely payment of interest or principal;

(ii) Arise from its failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures for publicly offered debt securities; or

(iii) Relate to bankruptcy, insolvency, receivership, or similar events.

(4) *Indenture.* (i) Except as provided in paragraph (c)(4)(ii) of this section, a savings association must use an indenture for subordinated debt securities. If the aggregate amount of subordinated debt securities publicly offered (excluding sales in a non-public offering as defined in 12 CFR 563g.4) and sold in any consecutive 12-month or 36-month period exceeds $5,000,000 or $10,000,000 respectively (or such lesser amount that the Securities and Exchange Commission shall establish by rule or regulation under 15 U.S.C. 77ddd), the indenture must provide for the appointment of a trustee other than the savings association or an affiliate of the savings association (as defined at 12 CFR 583.2) and for collective enforcement of the security holders' rights and remedies.

(ii) A savings association is not required to use an indenture if the subordinated debt securities are sold only to accredited investors, as that term is defined in 15 U.S.C. 77d(6). A savings association must have an indenture that meets the requirements of paragraph (c)(4)(i) of this section in place before any debt securities for which an exemption from the indenture requirement is claimed, are transferred any non-accredited investor. If a savings association relies on this exemption from the indenture requirement, it must place a legend on the debt securities indicating that an indenture must be in place before the debt securities are transferred to any non-accredited investor.

(d) *OTS review.* (1) OTS will review notices and applications under 12 CFR part 516, subpart E.

(2) In reviewing notices and applications under this section, OTS will consider whether:

(i) The issuance of the covered securities is authorized under

applicable laws and regulations and is consistent with the savings association's charter and bylaws.

(ii) The savings association is at least adequately capitalized under § 565.4(b) of this chapter and meets the regulatory capital requirements at § 567.2 of this chapter.

(iii) The savings association is or will be able to service the covered securities.

(iv) The covered securities are consistent with the requirements of this section.

(v) The covered securities and related transactions sufficiently transfer risk from the Deposit Insurance Fund.

(vi) OTS has no objection to the issuance based on the savings association's overall policies, condition, and operations.

(3) OTS approval or non-objection is conditioned upon no material changes to the information disclosed in the application or notice submitted to OTS. OTS may impose such additional requirements or conditions as it may deem necessary to protect purchasers, the savings association, OTS, or the Deposit Insurance Fund.

(e) *Amendments.* If a savings association amends the covered securities or related documents following the completion of OTS review, it must obtain OTS approval or non-objection under this section before it may include the amended securities in supplementary capital.

(f) *Sale of covered securities.* The savings association must complete the sale of covered securities within one year after OTS approval or non-objection under this section. A savings association may request an extension of the offering period by filing a written request with OTS. The savings association must demonstrate good cause for the extension and file the request at least 30 days before the expiration of the offering period or any extension of the offering period.

(g) *Reports.* A savings association must file the following information with OTS within 30 days after the savings association completes the sale of covered securities includable as supplementary capital. If the savings association filed its application or notice following the completion of the sale, it must submit this information with its application or notice:

(1) A written report indicating the number of purchasers, the total dollar amount of securities sold, the net proceeds received by the savings association from the issuance, and the amount of covered securities, net of all expenses, to be included as supplementary capital;

(2) Three copies of an executed form of the securities and a copy of any related documents governing the issuance or administration of the securities; and

(3) A certification by the appropriate executive officer indicating that the savings association complied with all applicable laws and regulations in connection with the offering, issuance, and sale of the securities.

Dated: November 28, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. E7–475 Filed 1–16–07; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25670; Directorate Identifier 2006–NM–027–AD; Amendment 39–14868; AD 2006–26–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A300 B2 and B4 series airplanes. This AD requires revising the airplane flight manual (AFM) to include procedures for resetting the trim and pitch trim levers after each landing, determining which servomotor moves the pitch trim control wheel, and doing applicable other specified actions. This AD also provides for optional terminating actions for those requirements. This AD results from a report of a sudden nose-up movement after disengagement of the autopilot in cruise. We are issuing this AD to ensure that the flightcrew is aware of the procedures for resetting the trim and pitch trim levers after each landing and to prevent failure of the servomotors of the pitch trim systems during flight. Failure of the servomotors of the pitch trim systems could result in uncommanded nose-up movement of the control surface of the pitch trim systems after disengagement of the autopilot in cruise.

DATES: This AD becomes effective February 21, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 21, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Thomas Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A300 B2 and B4 series airplanes. That NPRM was published in the **Federal Register** on August 23, 2006 (71 FR 49385). That NPRM proposed to require revising the airplane flight manual (AFM) to include procedures for resetting the trim and pitch trim levers after each landing, determining which servomotor moves the pitch trim control wheel, and doing applicable other specified actions. That NPRM also provided for optional terminating actions for those requirements.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Include Procedures From the Temporary Revision

ASTAR Air Cargo (ASTAR) requests that paragraph (f) of the NPRM be revised to include the AFM procedures specified in French airworthiness directive F–2003–291 R1, issued July 6, 2005. ASTAR notes that paragraph (f) of

the NPRM requires revising the AFM by ''including the information in Airbus A300 Temporary Revision (TR) 4.03.00/04, Issue 02, dated November 18, 2003.'' ASTAR states that TR 4.03.00/04 may not be considered active nor accessible from Airbus, and that the procedures are not included in its A300 United States AFM.

We agree with ASTAR's request for the stated reasons. We have revised paragraphs (f) and (g) of this AD accordingly.

Request To Incorporate by Reference Service Information in the NPRM

The Modification and Replacement Parts Association (MARPA) requests that all service information referenced in the NPRM be incorporated by reference during the NPRM phase of the rulemaking. MARPA states that, when a service document is incorporated by reference, it loses its private, protected status and becomes itself a public document. MARPA contends that public laws such as ADs must be made public because operators cannot comply with ADs referencing private writings. MARPA expresses concern that failing to incorporate by reference essential service information could result in a court decision invalidating the AD.

We do not agree that service information should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register (OFR) requires that service information that is necessary to do the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the service information necessary for doing the requirements of this AD. Further, we point out that while service information that is incorporated by reference does become public information, it does not lose its copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

Request To Post Service Information on the Docket Management System (DMS)

MARPA also requests that incorporated by reference service information be posted on the DMS. MARPA states that the OFR's stated purpose of incorporating by reference service information in the **Federal Register** is brevity; to keep from expanding the **Federal Register** needlessly by publishing service information already in the hands of the affected individuals. MARPA also states that affected individuals has traditionally meant aircraft owners and operators who are generally provided service information by the manufacturer. MARPA points out that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now done by specialty shops instead of repair organizations, component servicing and repairs shops, etc. MARPA further points out that distributing service information only to aircraft owners who are possibly a financing or leasing company, may not actually reach the person responsible for doing the AD.

In regard to MARPA's request that service information be made available to the public by publication in the **Federal Register,** we agree that incorporation by reference was authorized to reduce the volume of material published in the **Federal Register** and the Code of Federal Regulations. However, as specified in the Federal Register Document Drafting Handbook, the Director of the OFR decides when an agency may incorporate material by reference. As MARPA is aware, the OFR files service information for public inspection on the workday before the date of publication of the AD at its office in Washington, DC. As stated in the Federal Register Document Drafting Handbook, when service information is filed for public inspection, anyone may inspect or copy file service information during the OFR's hours of business. Further questions regarding publication of service information in the **Federal Register** or incorporation by reference should be directed to the OFR.

In regard to MARPA's request to post service information on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service information on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate per hour is $80.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM revision	1	None	$80	23	$1,840
Determination if pitch trim control wheel moves.	1	None	80	23	1,840.
Optional replacement	3	$264	504	23	11,592.
Optional repetitive preventative maintenance tasks.	3	None	240, per task cycle	23	5,520, per task cycle.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2006–26–10 Airbus: Amendment 39–14868. Docket No. FAA–2006–25670; Directorate Identifier 2006–NM–027–AD.

Effective Date

(a) This AD becomes effective February 21, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 airplanes; certificated in any category; except the following airplanes:

(1) Model A300 B4–220, A300 B4–203, and A300 B2–203 airplanes in a forward facing crew cockpit certified configuration;

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes;

(3) Model A300 B4–605R and B4–622R airplanes;

(4) Model A300 F4–605R and F4–622R airplanes; and

(5) Airbus Model A300 C4–605R Variant F airplanes.

Unsafe Condition

(d) This AD results from a report of a sudden nose-up movement after disengagement of the autopilot in cruise. We are issuing this AD to ensure that the flightcrew is aware of the procedures for resetting the trim and pitch trim levers after each landing and to prevent failure of the servomotors of the pitch trim systems during flight. Failure of the servomotors of the pitch trim systems could result in uncommanded nose-up movement of the control surface of the pitch trim systems after disengagement of the autopilot in cruise.

Compliance

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

Revision of Airplane Flight Manual (AFM)

(f) Within 14 days after the effective date of this AD, do the action specified in paragraph (f)(1) or (f)(2) of this AD.

(1) Revise the Normal Procedures section of the Airbus A300 Flight Manual to include the information in Airbus A300 Temporary Revision (TR) 4.03.00/04, Issue 02, dated November 18, 2003, as specified in the TR.

Note 1: This may be done by inserting a copy of TR 4.03.00/04, Issue 02, in the AFM. When the TR or the statement specified in paragraph (f)(2) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in the TR or paragraph (f)(2) of this AD.

(2) Revise the Normal Procedures section of the Airbus A300 Flight Manual to include the following operational procedure. This may be done by inserting a copy of this AD in the AFM.

''APPROACH AND LANDING''

PITCH TRIM

—Set TRIM to 1° UP
—Set both PITCH TRIM levers to OFF

Note: Check pitch trim wheel and report any movement to maintenance.''

Determination if Pitch Trim Control Wheel Moves

(g) Following accomplishment of the AFM revision required by paragraph (f) of this AD: After each landing and before shutting down the engines, do the AFM procedures specified in Airbus A300 TR 4.03.00/04, Issue 02, dated November 18, 2003, or paragraph (f)(2) of this AD.

Determination if Servomotor Moves

(h) Before further flight after any movement reported in accordance with paragraph (g) of this AD, determine which servomotor moves the pitch trim control wheel, and do applicable other specified actions in accordance with Airbus A300 TR 22–001, dated April 11, 2003, to Chapter 22–23–00 of the Airbus A300 Fault Isolation Manual.

Note 2: Airbus A300 TR 22–001 contains a typographical error. The TR incorrectly refers to ''MM 22–23–39'' as the appropriate source of service information for replacing the pitch trim actuator; the correct reference is ''MM 22–23–29.''

Optional Replacement of the Pitch Trim Servomotors

(i) Replace the pitch trim servomotors in the attachment area of the horizontal and vertical stabilizers with new servomotors, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–22–0119, dated May 13, 2005.

Note 3: Airbus Service Bulletin A300–22–0119, dated May 13, 2005, refers to Thales Service Bulletin V1AM–22–005, Revision 01, dated July 27, 2005, as an additional source of service information for doing the replacement.

Repetitive Preventative Maintenance Tasks

(j) Within 12,000 flight hours after replacing one or both servomotors in accordance with paragraph (h) or (i) of this AD, or within 6 months after the effective date of this AD, whichever occurs later, do the preventative maintenance task of the pitch trim servomotor(s), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–22–0120, excluding Appendix 01, dated May 13, 2005. Repeat the preventative maintenance task thereafter at intervals not to exceed 12,000 flight hours.

Note 4: Airbus Service Bulletin A300–22–0120, dated May 13, 2005, refers to Thales Service Bulletin V1AM–22–006, Revision 01, dated July 26, 2005, as an additional source of service information for doing the preventative maintenance task.

Removal of AFM Revision

(k) After accomplishing the actions specified in paragraph (i) and the initial task in paragraph (j) of this AD, the AFM revision required by paragraph (f) of this AD may be removed, and the requirements of paragraphs (g) and (h) of this AD are no longer required.

No Reporting

(l) Although Airbus Service Bulletin A300–22–0120, dated May 13, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to

which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(n) French airworthiness directives F–2003–291 R1, dated July 6, 2005, and F–2005–109, dated July 6, 2005, also address the subject of this AD.

Material Incorporated by Reference

(o) You must use the service information in Table 1 of this AD to do the actions that are required by this AD, unless the AD specifies otherwise. If the optional replacement is done, you must use the service information in Table 2 of this AD to do the replacement. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE FOR REQUIRED ACTIONS

Service information	Revision/issue level	Date
(1) Airbus A300 Temporary Revision 22–001 to Chapter 22–23–00 of the Airbus A300 Fault Isolation Manual.	Original	April 11, 2003.
(2) Airbus A300 Temporary Revision 4.03.00/04 to Airbus 300 Flight Manual	Issue 02	November 18, 2003.
(3) Airbus Service Bulletin A300–22–0120, excluding Appendix 01	Original	May 13, 2005.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE FOR OPTIONAL ACTIONS

Service information	Revision level	Date
Airbus Service Bulletin A300–22–0119	Original	May 13, 2005.

Issued in Renton, Washington, on December 21, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–399 Filed 1–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–111–FOR]

West Virginia Abandoned Mine Lands Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: We (OSM) are announcing the approval of an amendment to the West Virginia Abandoned Mine Lands Reclamation (AMLR) Plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment makes numerous revisions throughout the State's AMLR Plan, and it is intended to update and improve the effectiveness of the West Virginia AMLR Plan.

DATES: *Effective date:* January 17, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Abandoned Mine Lands Reclamation 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 Abandoned Mine Lands Reclamation Program

The West Virginia AMLR Program was established by Title IV of SMCRA (*30 U.S.C. 1201 et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mined lands. The West Virginia AMLR Plan was approved by OSM effective February 23, 1981. You can find additional information about the West Virginia AMLR Plan at 30 CFR 948.20, 948.25, and 948.26.

II. Submission of the Amendment

By letter dated June 27, 2006 (Administrative Record Number WV–1469), the West Virginia Department of Environmental Protection (WVDEP), Office of Abandoned Mine Lands and Reclamation submitted an amendment to its AMLR Plan under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of numerous changes throughout the AMLR Plan, some of which concern the AML Enhancement Rule. In its submittal of the amendment, the WVDEP stated that the revision incorporates the AML Enhancement Rule at 30 CFR Parts 707 and 874, as published by OSM in the **Federal Register** on Friday, February 12, 1999 (64 FR 7470–7483).

In its submittal letter, the State noted that the amendment also contains minor organizational and operational changes. Minor changes, such as organizational changes, re-numbering of sections, updating the name of departments or agencies, deletion of historical narrative, and the correction of typographical and grammatical errors, are non-substantive changes that do not affect the basis of the original approval of the West Virginia AMLR Plan. Therefore, we did not identify such non-substantive changes in our published proposed rule notice.

We announced receipt of the proposed amendment in the September 18, 2006, **Federal Register** (71 FR

54601), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 18, 2006. We did not hold a hearing or meeting, because no one requested one. We received comments from three Federal agencies and one State agency.

III. OSM's Findings

Following are the findings we made concerning the amendment. OSM's standard for comparison of State AMLR amendments with SMCRA and the Federal regulations is found in Directive STP–1, Appendix 11. This policy provides that ''in accordance with 30 CFR 884.14(a), the proposed plan must meet all applicable requirements of the Federal statute and rules. That is, a State's statutes, rules, policy statements, procedures, and similar materials must compare, altogether, with applicable requirements of the Federal statute and rules, to ensure that the State's plan, as a whole, meets all Federal requirements.'' In addition, any amendments to AMLR plans must be approved in accordance with the procedures set out in 30 CFR 884.14.

A. Minor Revisions to West Virginia's AMLR Plan Provisions

West Virginia proposed numerous minor organizational and operational changes, re-numbering of sections, updating the name of departments or agencies, and the correction of typographical and grammatical errors. Because the changes to these previously approved plan provisions are minor, we find that they meet the requirements of the Federal regulations and the Act and are hereby approved.

B. Revisions to West Virginia's AMLR Plan Provisions That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations and the Act

West Virginia proposed revisions to the following plan provisions. The State AMLR Plan revisions contain language that is the same as, or similar to, the corresponding sections of the Federal regulations and are hereby approved.

B.1. Introduction B; 30 CFR 884.13(d); description of the organization.

B.2. Section I; 30 CFR 884.13(a); designation by the Governor.

B.3. Section I; 30 CFR 884.13(b); legal opinion by State Attorney General.

B.4. Section III A; 30 CFR 884.13(c)(2); description of procedures for identifying projects.

B.5. Section III B; 30 U.S.C. 1233(a) and 30 CFR 884.13(c)(2); factors considered for prioritizing reclamation projects.

B.6. Section III B item 6(e); 30 CFR 707.5; Abandoned Mine Lands Reclamation Enhancement Rule, definitions.

B.7. Section III item 6(e)(i); 30 CFR 874.17(a); consultation with Title V regulatory authority, with the noted exceptions that the Code of State Regulations (CSR) 38–2–3.31.a and 3.31.c have not been fully approved by OSM.

B.8. Section III B item 6(e)(i)(I); 30 CFR 707.5; definition of government financed construction.

B.9. Section III B item 6(e)(i)(II); 30 CFR 707.5 and 874.17(a); agency procedures for less than 50 percent government funding.

B.10. Section III B item 6(e)(i)(III); 30 CFR 874.17(b); concurrence with Title V regulatory authority.

B.11. Section III B item 6(e)(i)(IV); 30 CFR 874.17(c); documentation.

B.12. Section III B item 6(e)(i)(V); 30 CFR 874.17(d); special requirements.

B.13. Section III B item 6(e)(i)(VI); 30 CFR 874.17(e); limitation.

B.14. Section III B item 8; 30 CFR 884.13(c)(2); project tracking system.

B.15. Section IV item 3; 30 CFR 884.13(c)(3); coordination of reclamation among abandoned mine lands programs.

B.16. Section VIII; 30 CFR 884.13(c)(7); public participation and involvement.

B.17. Section IX A; 30 CFR 884.13(d)(1); organization of the designated agency.

B.18. Section IX B; 30 CFR 705 and 884.13(d)(2); personnel staffing policies, including restrictions on financial interests by State employees.

B.19. Section IX C; 30 CFR 884.13(d)(3); purchasing and procurement systems.

B.20. Section IX D; 30 CFR 884.13(d)(4); accounting system.

C. Revisions to West Virginia's AMLR Plan Provisions That Are Not the Same as the Corresponding Provisions of the Federal Regulations and the Act

C.1. Section II. Purposes of the State Reclamation Program. Language is deleted and added to clarify that expenditures from the AMLR reclamation fund are selected on the basis of the priorities identified at W. Va. Code 22–2–4. The priorities identified at W. Va. Code 22–2–4(b)(1)(A) through (F) are substantively identical to the priorities identified in SMCRA at section 403(a)(1) through (a)(5) with one exception. The priority identified at W. Va. Code 22–2–4(b)(1)(D), concerning expenditures for research and demonstration projects relating to the development of surface-mining reclamation and water quality control program methods and techniques, is not authorized by SMCRA as a priority for expenditures from the AMLR fund. This provision was formerly codified at section 403(4) of SMCRA, but it was deleted on October 24, 1992.

However, we note that the State has also amended the AMLR Plan at Section III. B. concerning the prioritization of problems. Amendments to section III B and B(4) also address the AMLR Fund priority requirements. The first paragraph at section III B that is being amended references the priority requirements at W. Va. Code 22–2–4. Section III B is amended by deleting item III B.(4) concerning funding priority for research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques. Therefore, it appears that expenditures for research and demonstration projects will not be considered as priority for which AMLR expenditures can be made. Taken as a whole, therefore, we understand that the West Virginia AMLR Plan will not provide expenditures from the AMLR Fund for research and development projects and, therefore, is consistent with the priorities identified in SMCRA at section 403(a). We are approving the amendments to sections II and III B. and III B. 4 with that understanding.

C.2. Section III B. Item 6.(e). The existing language is deleted concerning waiving any requirement that a reclamation contractor obtain a reclamation permit to extract or remove coal if the waiver will facilitate removal of coal and the mining is incidental to the project. The deleted language was not consistent with section 528 of SMCRA concerning surface mining operations not subject to the Act, nor consistent with the definition of surface coal mining operations at 30 CFR 700.5. Section 528 provides that the following activities are not subject to the Act: (1) The extraction of coal by a landowner for his/her own noncommercial use from land owned or leased by him/her; and (2) the extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction under regulations established by the regulatory authority. The definition of surface coal mining operations at section 701(28)(A) of SMCRA and 30 CFR 700.5 also exclude from the definition of surface coal mining operations activities that include the extraction of other minerals, where coal does not exceed 16⅔ percent of the

tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 512 of SMCRA. Because the deleted language excluded reclamation projects from the definition of ''surface coal mining operations'' even though those projects should not have been excluded, we are approving the deletion.

C.3. Section III B Item 6(g). The existing language concerning the recovery of coal from refuse piles, impoundments, or abandoned mine workings containing coal is deleted. The deleted language allowed coal removal incidental to a proposed reclamation project. The Federal regulations at 30 CFR part 707 and 30 CFR 874.17 exempt the extraction of coal which is incidental only to government-financed construction from the requirements of SMCRA and the Federal regulations, if that extraction meets specified criteria which ensure that the construction is government-financed and that the extraction of coal is incidental to it. We find that the deletion removes language that is not consistent with applicable requirements of SMCRA and the Federal regulations, and it can be approved. We must note that the removal of existing abandoned coal refuse piles within the State is also regulated pursuant to CSR 38–2–3.14.

C.4. Section VI H, contractor's responsibilities regarding waste and borrow areas outside the construction limits. The State deleted four items at the end of paragraph H. concerning waste sites on private land that are used in conjunction with an abandoned mine land project. Contractor responsibilities regarding waste and borrow areas outside of construction limits continued to be specified at paragraph H (1) through (5). We find that the deletion does not render the West Virginia AMLR Plan less effective than 30 CFR 884.13(c) concerning policies and procedures for conducting a reclamation program, or 30 CFR 884.13(c)(6) concerning policies and procedures for rights of entry and can be approved.

C.5. Section IX C. Purchasing and Procurement. The existing language concerning the procedures concerning design consultant services and construction contracts is deleted and replaced with language detailing the procedures to be followed for projects greater than $250,000, projects less than $250,000, and definitions. The Plan also includes a reference to the State of West Virginia Purchasing Handbook: W. Va. Code 5G–1, 59–3–1, and 5A–3, and Legislative Rule 148 CSR 1.

The Federal regulations at 43 CFR 12.76 concerning procurement, provide, at subsection 12.76(a), that when procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. Further, the State shall ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Subsection 12.76(b) also provides that grantees and sub-grantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and standards identified in this section. Furthermore, 30 CFR 886.20 requires the State to follow administrative procedures governing accounting, payment, property and related requirements contained in 43 CFR Part 12, subpart C. The State procedures described above are from the State of West Virginia Purchasing Handbook, which, in conjunction with WVDEP's own administrative procedures have been determined to comply with Federal procurement requirements and 30 CFR Part 886. Therefore, because the State's AMLR Plan provisions remain consistent with the Federal purchasing and procurement requirements at 30 CFR 884.13(d)(3), we are approving these amendments.

C.6. State Emergency Program

B. Legal Opinion from State Attorney General Regarding Emergency Program Administration. In the second sentence, the citation ''WV Code Section 22–3'' is deleted. This citation is deleted because the West Virginia AMLR Act provisions are located at W. Va. Code 22–2. Accordingly, in the third sentence, the citation ''Chapter 22–3–4(b)(1)(A)'' is changed to ''Chapter 22–2–4(b)(1)(A).'' In the language that follows, a reference to Title ''38'' is deleted and a reference to Title ''59'' is added in its place because Title 59–1 is the State's AMLR Rule. We find that with these revisions to the West Virginia AMLR Plan, the Plan remains consistent with the Federal regulations at 30 CFR 884.13(b) concerning legal authority under State law to conduct the AMLR program. Therefore, we are approving these revisions.

C.7. C. Policies and Procedures Regarding the Emergency Reclamation Program. Existing Item 6, which concerns a public meeting for a previous amendment to the AMLR Plan, is being deleted. Because the deleted language only concerns a public meeting for a previous amendment to the AMLR Plan, that language is no longer necessary. Public participation concerning the current amendment and any future revisions to the State's AMLR Plan is discussed in Section VIII. We find that the public participation provisions of the West Virginia AMLR Plan remain consistent with the Federal requirements at 30 CFR 884.13(c)(7). Therefore, we are approving this deletion.

C.8. D. Item 2. Administrative and Managerial Structure. The following language is being deleted at the beginning of Item 2:

> Six of the positions assigned to the Emergency Group of the Abandoned Mine Lands and Reclamation Section consist of technical personnel. These positions include 5 inspectors and 2 engineers.

The deleted language quoted above was inconsistent and unnecessary. The inaccuracy stems from the reference to six positions consisting of 5 inspectors and two engineers. Subsequent paragraphs continue to clarify that engineers and inspectors for the Emergency Program are located at each field office in the northern and southern part of the State. However, the exact number of these positions is not specified to provide WVDEP added flexibility to satisfy future program demands. The engineers must be mining and/or civil engineers with the technical expertise to render plans and specifications for correction of abandoned mine problems. The inspectors will monitor all day-to-day construction activities on emergency projects. These provisions are consistent with the Federal regulations at 30 CFR 884.13(d)(2) concerning personnel staffing policies. Therefore, the deletion of the quoted language is approved.

C.9. The last sentence of the existing second paragraph is also being deleted. That sentence stated that ''[t]hese are all newly created positions.'' This deleted language is unnecessary and no longer accurate. Therefore, the deletion of that language can be approved. Additionally, the last two sentences in the existing third paragraph (the second sentence contains a reference to page 75) are being deleted. In their place, a new sentence is added which states that ''This procedures (*sic*) is in compliance to [with] the Department of Administration, Division of Purchasing.'' As discussed above under Finding C.5, the Federal regulations at 43 CFR 12.76 concerning procurement provide that when procuring property and services under a grant, a State will follow the same policies and procedures it used for procurements from its non-Federal funds. Therefore, because we find both the deletion and the new language to be consistent with the Federal requirements at 30 CFR

884.13(d)(3) regarding purchasing and procurements systems, they can be approved.

C.10. Item 3. Under paragraph (c) Immediate Follow-up, at (ii), the phrase ''[a]n engineer, realty specialist, and other'' is deleted and replaced with the term ''[a]ppropriate personnel.'' Also, language is being deleted which provides that ''[t]his visit will be coordinated with the Federal Office of Surface Mining Reclamation and Enforcement.'' As amended, subparagraph (ii) reads as follows:

> (ii) Appropriate personnel will be dispatched to the site as soon as possible if a valid emergency situation exists.

The language concerning the requirement to coordinate the site visit with OSM is being deleted because that requirement already exists at Item 3(a)(i). Specifically, Item 3(a) provides that the investigator's tasks for investigations of potential emergency situations are as follows: at (i), ''Coordinate Site visit with Office of Surface Mining as needed.'' More importantly, Item 3(c)(i) requires the OSM Field Office Director to make the final determination that an emergency exists or does not exist. Therefore, we are approving the deletion.

C.11. At paragraph (iv), the words ''color'' and ''slides'' are being deleted as a form of documentation of damage by realty personnel to show abandoned mine land problems and impacts, including structural damage. As revised, ''photos'' are required for such documentation. We find that this revision is acceptable, because it acknowledges that digital photography has largely replaced slide photography as a means of documentation. Therefore, we are approving the deletion.

C.12. F. Emergency Purchases, Item 6. This item is being deleted. The deleted language reads as follows:

> 6. In addition to the above stated procedure, at the time of this writing an open end or bilateral contract for construction services is being assembled which may be utilized for emergency services.
>
> The following page shows the technical evaluation sheet used to assist in selecting consultants. The factors may be revised in the future to reflect different needs.

The State has chosen not to implement the open end or bilateral contract for construction services and, therefore, the deleted language is not needed. We are approving the deletion, because the State's regular purchasing and procurement systems for emergency projects are consistent with 30 CFR 884.13(d)(3).

C.13. G. Emergency Reclamation Activities

Language is being deleted that relates to the number of emergency projects completed between 1979 and 1986. The deleted information is historical information that was useful in making decisions regarding a previous amendment to the West Virginia AMLR Plan. The revised AMLR Plan continues to provide information concerning the probable number and types of emergencies that are likely to occur in the State on an annual basis. This information is used in the development of the West Virginia Abandoned Mine Land Performance Agreement, which is negotiated between OSM and the State approximately every two years and determines which State AML activities are evaluated by OSM on an annual basis. Therefore, we are approving the deletion of the historical information, because it is no longer relevant.

C.14. Water Supply Amendment; Target areas for AML assistance. Item (3). In the second paragraph, the words ''and submitted to the Federal Office of Surface Mining for funding approval'' are deleted from the end of the first sentence. As revised, the sentence reads as follows: ''After a pool of eligible projects is determined, potential projects are selected.'' However, the State Plan continues to seek OSM approval prior to initiating a project. In the last paragraph, the State AMLR Plan states that ''WVDEP will request an ''Authorization to Proceed'' (ATP) from OSM prior to initiating a project.'' In addition, all National Environmental Policy Act (NEPA) compliance documentation is required prior to the initiation on any new water supply project. Therefore, we are approving the deletion.

C.15. Revision to West Virginia's AMLR Plan Reflecting Amendments to Title IV of the SMCRA

A. Expanded Eligibility Criteria. Item (2). In the second paragraph, the citation ''45 FR 14810–14819 March 6, 1980'' is being deleted and replaced by the following citation: ''66 FR 31250–31258, June 11, 2001.'' The June 11, 2001, **Federal Register** notice contains the revised guidelines for abandoned mine land reclamation programs and projects. Therefore, we are approving the citation change.

C.16. B. State Acid Mine Drainage Treatment and Abatement Program

Language is being amended concerning coordination between the State and the Natural Resources Conservation Service (NRCS). The State has deleted references to the Rural Abandoned Mine Program and to the U.S. Bureau of Mines. As amended, the language is as follows:

> After consultation with the NRCS, the State may reclaim certain areas that are severely impacted by acid mine drainage. (This coordination will continue the already present cooperative effort between the State and the NRCS).

The Bureau of Mines no longer exists and, therefore, the reference to the Bureau of Mines can be deleted. Also, consultation and coordination between the State and the NRCS in abating acid mine drainage will continue after these revisions are approved. Therefore, we are approving the amendments.

IV. Summary and Disposition of Comments

Public Comments

We published a **Federal Register** notice on September 18, 2006, and asked for public comments on the proposed amendments to the West Virginia AMLR Plan (Administrative Record Number WV–1474). The public comment period closed on October 18, 2006. No comments were received from the public, but one State agency and three Federal agencies commented on the proposed revisions.

State Agency Comments

The West Virginia Division of Culture and History reviewed the West Virginia AMLR Plan to determine its effects on cultural resources, and submitted comments as required by section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulations at 36 CFR Part 800 (Administrative Record Number WV–1478).

The Division of Culture and History stated that under Subsection III.B, Prioritization of Problems, the document lists the protection of historic or cultural resources as a benefit that will be considered in reclamation projects. The Division of Culture and History reminded WVDEP that this should be an alternative that is regularly considered during the planning phases of a project.

We must note that this portion of the WVAMLR Plan that the Division of Culture and History has commented on has not been revised by WVDEP. Nevertheless, this part of the Plan does contain some of the planning requirements for AML projects. Therefore, as suggested, the WVDEP is obligated to regularly consider historic or cultural resources in selecting and planning AML projects.

The Division of Culture and History commented that under section VI, Reclamation of Private Land, subsection H, Contractors responsibilities regarding waste and borrow areas outside the construction limits, the document states that the contractor must observe NEPA regulations when selecting and utilizing offsite borrow and/or waste disposal areas. Because NEPA provides for the identification and protection of cultural resources, the Division of Culture and History asked that borrow and waste areas be submitted for their review.

Again, we must point out that this portion of the AMLR Plan has not been revised by WVDEP. However, under the existing State AMLR Plan, contractors that use waste and borrow areas outside the construction limits must get all required clearances, including the protection of cultural resources, prior to creating any offsite disturbances at waste or borrow areas. Waste and borrow areas created by AML reclamation activities must be conducted in accordance with applicable State and Federal reclamation requirements. If possible, waste and borrow areas should be located on the reclamation project site. Offsite waste and borrow areas should be used only when no onsite area is available, and it is necessary to protect public health and safety. In addition, adverse impacts to waste and borrow areas should be minimized by disturbing the smallest possible area, protecting any historic or cultural values that may be present, and reclaiming the site upon completion of the AML project.

In its final comment, the Division of Culture and History stated that it was its understanding that exploratory drilling occurs prior to its review. The Division of Culture and History went on to say, it has been its experience that this can cause damage to cultural resources that may be considered eligible for inclusion in the National Register of Historic Places. The Division of Culture and History concluded that in order to prevent future damages to cultural resources, it request the opportunity to review project plans as they relate to exploratory drilling locations.

We agree that unregulated exploratory drilling can cause damage to historic and cultural resources. State and Federal reclamation requirements prohibit such unauthorized activity. Exploratory drilling can only be authorized when it is part of an approved AML project. Because all AML projects are subject to review by the Division of Culture and History, no exploratory drilling should be conducted as part of an approved State AML project that would result in damage to historic or cultural resources.

Federal Agency Comments

Under 30 CFR 884.14(a)(2) and 884.15(a), on September 8, 2006, we requested comments on the amendment from various other Federal agencies with an actual or potential interest in the West Virginia AMLR Plan (Administrative Record Number WV–1473). The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) responded on September 21, 2006, and stated that it had no comments (Administrative Record Number WV–1475).

The U.S. Department of the Interior, National Park Service (NPS) responded with comments (Administrative Record Number WV–1477). The NPS commented on language in section III B, concerning factors considered for reclamation project consideration. Specifically, the NPS stated that language at section III B. 3, and throughout this section of the revised AMLR Plan, appears to provide the WVDEP with the final decision making authority in the reclamation design without consideration of the landowner or adjacent land owner, whether public or private. In particular, the NPS stated, the various land management agencies may have resource protection mandates that do not coincide with reclamation decisions made by the WVDEP. Therefore, the NPS suggested, wording should be included in the revised AMLR Plan to indicate that where adverse impacts are not being mitigated through reclamation, or where the proposed reclamation appears to be adverse to a land owner or land management agency (State or Federal), a joint approval process should be implemented between the WVDEP and the affected owner or agency.

We must note that section III B. 3 has not been revised by the State. However, under SMCRA at section 405(d), West Virginia was granted exclusive responsibility and authority to implement the provisions of its approved AMLR program. We believe that the West Virginia AMLR Plan appropriately addresses the NPS's concern for participation in the following ways. The AMLR Plan provides for public participation and agency review. In section VIII, the AMLR Plan provides that all proposed AML projects will include a NEPA environmental assessment. State and Federal agencies will have an opportunity to provide input concerning the NEPA document for projects which relate to their areas of expertise. In addition to listing the names of several agencies who may review the environmental assessments, the AMLR Plan provides that other agencies may be asked to comment on the environmental assessments. At section III B. 7, the Plan also requires the WVDEP to consider the acceptability of post-reclamation land uses in terms of compatibility with land uses in the surrounding area, consistent with applicable State, regional, and local use plans and laws, and the needs and desires of the community in which the project is located.

The NPS commented that section III B. 6(c) provides that if the WVDEP determines that the coal or another mineral resource is or may be economical to mine, the WVDEP shall decide whether to approve or proceed with the proposed reclamation project, or to defer reclamation until it can be accomplished during the process of future mining. The NPS stated that it is concerned that this process places coal economics above reclamation needs. The NPS stated that it believes that the ranking of reclamation projects should not include any assumed value of in-place coal.

While section III B. 6(c) has not been revised by the State, we disagree that this provision places coal economics above reclamation needs. Rather, this provision provides the WVDEP with the flexibility to consider, among other factors, whether coal or other mineral resource is economical to mine. The provision does not place the economic consideration above all others. While it is a factor of consideration, it is not the most important factor. For example, consideration of the economic value of the coal would not override specific benefits of reclamation such as protection of human life, health, and safety. In addition, section III.B. 6(d) provides that any decision to defer reclamation until future mining occurs may be reconsidered by the WVDEP whenever the WVDEP determines that reclamation should be accomplished sooner.

The NPS commented that at section III B. 6(f), the provision provides that if the mineral estate under the area to be reclaimed contains other seams that are currently uneconomical to mine, provisions should be made allowing the coal to be mined in the future. The NPS stated that abandoned mine reclamation needs should take precedent over providing access to coal that may or may not be economic to mine at a future date.

Section III B. 6(f) was not revised by the State. However, we note that this provision does not provide that reclamation must be prevented or even

delayed to provide for coal removal at a later date. Rather, this provision essentially directs AMLR Program planners to prepare for that eventuality by establishing provisions to allow for any coal, which is currently uneconomical to mine, to be mined in the future. If the coal is mined in the future, a permit would be required and the site would be reclaimed after mining.

Finally, the NPS stated that the revised AMLR Plan should include a provision for notification of affected land owners or land managers of the anticipated prioritization and scheduling of reclamation to be performed. This could be done, the NPS stated, through private and public announcements as is currently practiced with active mining permits.

The AMLR Plan provides public participation and agency review provisions at section VIII. That section provides that prior to submission of non-emergency construction projects to OSM for the issuance of an Authorization to Proceed (ATP), the WVDEP will conduct at least one public meeting in Charleston, West Virginia, to describe the project submittal's contents. All public meetings will be announced via news releases and legal advertisements. Legal ads will be placed in newspapers with circulations in the locations of the proposed projects. Section VIII also provides that a NEPA environmental assessment document will be included for each project. The AMLR Plan provides that environmental assessments may be reviewed by the agencies listed in section VIII, and other agencies besides those listed may be asked to comment on the environmental assessments. We suggest that NPS contact the WVDEP to discuss the level of participation that NPS seeks or for those specific projects that it may be interested in receiving notification about in the future.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 884.14(a)(2) and 884.15(a), we also requested comments on the amendment from EPA (Administrative Record Number WV–1473). EPA responded by letter dated September 27, 2006, and stated that it had not identified any apparent inconsistencies with the Clean Water Act, Clean Air Act, or other statutes and regulations under EPA's jurisdiction (Administrative Record Number WV–1476). EPA stated that it did not have any other comments.

V. OSM's Decision

Based on the above findings, we are approving the AMLR Plan amendment dated June 16, 2006, as submitted by West Virginia on June 27, 2006 (Administrative Record Number WV–1469).

To implement this decision, we are amending the Federal regulations at 30 CFR 948.20 and 948.25, which codify decisions concerning the West Virginia AMLR Plan amendments. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 405(d) of SMCRA requires that the State have a program that is in compliance with the procedures, guidelines, and requirements established under the Act. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

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 or Tribal abandoned mine land reclamation plans and plan amendments because each program is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

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 abandoned mine land reclamation programs. 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 405(d) of SMCRA requires State abandoned mine land reclamation programs to be in compliance with the procedures, guidelines, and requirements established under 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 rule does not involve or affect Indian Tribes in any way.

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

No environmental impact statement is required for this rule because agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

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 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.*). The State submittal, which is the subject of this rule, is 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.

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 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 was not considered a major rule.

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 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.

List of Subjects in 30 CFR Part 948

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 1, 2006.

H. Vann Weaver,

Acting Regional Director, Appalachian Region.

■ For the reasons set out in the preamble, 30 CFR part 948 is amended as set forth below:

PART 948—West Virginia

■ 1. The authority citation for part 948 continues to read as follows:

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

■ 2. Section 948.20 is amended by revising the heading and paragraph (b) as follows:

§ 948.20 Approval of State abandoned mine lands reclamation plan.

* * * * *

(b) West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and Reclamation, 601 57th Street SE., Charleston, West Virginia 25304–2345, Telephone (304) 926–0485.

■ 3. Section 948.25 is amended by revising the heading, and adding in the table a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 948.25 Approval of West Virginia abandoned mine lands reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
June 27, 2006	January 17, 2007	Amendment includes AML enhancement requirements and other revisions to West Virginia's AMLR Plan dated June 16, 2006.

[FR Doc. E7–455 Filed 1–16–07; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL–8269–6]

Delegation of Authority to the States of Iowa, Missouri and Nebraska for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP); and Maximum Achievable Control Technology (MACT) Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The states of Iowa, Missouri and Nebraska have submitted updated regulations for delegation of EPA authority for implementation and enforcement of NSPS, NESHAP, and MACT. The submissions cover new EPA standards and, in some instances, revisions to standards previously delegated. EPA's review of the pertinent regulations shows that they contain adequate and effective procedures for the implementation and enforcement of these Federal standards. This action informs the public of delegations to the above-mentioned agencies.

DATES: This document is effective on January 17, 2007. The dates of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Copies of documents relative to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

Effective immediately, all notifications, applications, reports, and other correspondence required pursuant to the newly delegated standards and revisions identified in this document must be submitted with respect to sources located in the jurisdictions identified in this document, to the following addresses:

Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Urbandale, Iowa 50322

Missouri Department of Natural Resources, Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102–0176

Nebraska Department of Environmental Quality, Air Quality Division, 1200 ''N'' Street, Suite 400, PO Box 98922, Lincoln, NE 68509

Duplicates of required documents must also continue to be submitted to

the EPA Regional Office at the above address.

FOR FURTHER INFORMATION CONTACT: Gwen Yoshimura at (913) 551–7073, or by e-mail at *yoshimura.gwen@epa.gov*.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What does this action do?
What is the authority for delegation?
What does delegation accomplish?
What has been delegated?
What has not been delegated?
List of Delegation Tables
Table I—NSPS, 40 CFR part 60
Table II—NESHAP, 40 CFR part 61
Table III—NESHAP, 40 CFR part 63

What does this action do?

The EPA is providing notice of an update to its delegable authority for implementation and enforcement of the Federal standards shown in the tables below to the states of Iowa, Missouri and Nebraska. This action updates the delegation tables previously published at 70 FR 36515 (June 24, 2005). The EPA has established procedures by which these agencies are automatically delegated the authority to implement the standards when they adopt regulations which are identical to the Federal standards. We then periodically provide notice of the new and revised standards for which delegation has been given.

What is the authority for delegation?

1. Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS are codified at 40 CFR part 60.

2. Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorize the EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63, respectively.

What does delegation accomplish?

Delegation confers primary responsibility for implementation and enforcement of the listed standards to the respective state and local air agencies. However, EPA also retains the concurrent authority to enforce the standards.

What has been delegated?

Tables I, II, and III below list the delegated standards. Each item listed in the Subpart column has two relevant dates listed in each column for each state. The first date in each block is the reference date to the CFR contained in the state rule. In general, the state or local agency has adopted the applicable standard through the date as noted in the table. The second date is the most recent effective date of the state agency rule for which the EPA has granted the delegation. This notice specifically addresses revisions to the columns for Iowa, Missouri, and Nebraska.

What has not been delegated?

1. The EPA regulations effective after the first date specified in each block have not been delegated, and authority for implementation of these regulations is retained solely by EPA.

2. In some cases, the standards themselves specify that specific provisions cannot be delegated. In such cases, a specific section of the standard details what authorities can and cannot be delegated. You should review the applicable standard in the CFR for this information.

3. In some cases, the state rules do not adopt the Federal standard in its entirety. Each state rule (available from the respective agency) should be consulted for specific information.

4. In some cases, existing delegation agreements between the EPA and the agencies limit the scope of the delegated standards. Copies of delegation agreements are available from the state agencies, or from this office.

5. With respect to 40 CFR part 63, subpart A, General Provisions (see Table III), the EPA has determined that sections 63.6(g), 63.6(h)(9), 63.7(e)(2)(ii) and (f), 63.8(f), and 63.10(f) cannot be delegated. Additional information is contained in an EPA memorandum titled ''Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies'' from John Seitz, Director, Office of Air Quality Planning and Standards, dated July 10, 1998.

List of Delegation Tables

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
A	General Provisions	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
D	Fossil-Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
Da	Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
Db	Industrial-Commercial-Institutional Steam Generating Units	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
Dc	Small Industrial-Commercial-Institutional Steam Generating Units	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
E	Incinerators	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
Ea	Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989, and on or before September 20 1994.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
Eb	Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994, or for Which Modification or Reconstruction is Commenced After June 19, 1996.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction Commenced after June 20, 1996.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
F	Portland Cement Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
G	Nitric Acid Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
H	Sulfuric Acid Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
I	Hot Mix Asphalt Facilities	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
J	Petroleum Refineries	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
Kb	Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	10/15/03 12/14/04
L	Secondary Lead Smelters	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
M	Secondary Brass and Bronze Production Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
N	Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
Na	Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
O	Sewage Treatment Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
P	Primary Copper Smelters	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
Q	Primary Zinc Smelters	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
R	Primary Lead Smelters	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
S	Primary Aluminum Reduction Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
Y	Coal Preparation Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
Z	Ferroalloy Production Facilities	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983.	02/22/05 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983.	02/22/05 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
BB	Kraft Pulp Mills	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	
CC	Glass Manufacturing Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
DD	Grain Elevators	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
EE	Surface Coating of Metal Furniture	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
GG	Stationary Gas Turbines	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/08/04 05/07/05
HH	Lime Manufacturing Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
KK	Lead-Acid Battery Manufacturing Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
LL	Metallic Mineral Processing Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
MM	Automobile and Light Duty Truck Surface Coating Operations	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
NN	Phosphate Rock Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
PP	Ammonium Sulfate Manufacture	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
QQ	Graphic Arts Industry: Publication Rotogravure Printing	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
RR	Pressure Sensitive Tape and Label Surface Coating Operations	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
SS	Industrial Surface Coating: Large Appliances	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
TT	Metal Coil Surface Coating	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
UU	Asphalt Processing and Asphalt Roofing Manufacture	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
WW	Beverage Can Surface Coating Industry	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
XX	Bulk Gasoline Terminals	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
AAA	New Residential Wood Heaters	12/19/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
BBB	Rubber Tire Manufacturing Industry	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
DDD	Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
FFF	Flexible Vinyl and Urethane Coating and Printing	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
GGG	Equipment Leaks of VOC in Petroleum Refineries	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
HHH	Synthetic Fiber Production Facilities	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) AIR Oxidation Unit Processes.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
JJJ	Petroleum Dry Cleaners	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
KKK	Equipment Leaks of VOC from Onshore Natural Gas Processing Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
LLL	Onshore Natural Gas Processing: SO2 Emissions	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
NNN	Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
OOO	Nonmetallic Mineral Processing Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
PPP	Wool Fiberglass Insulation Manufacturing Plants	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
SSS	Magnetic Tape Coating Facilities	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
UUU	Calciners and Dryers in Mineral Industries	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
VVV	Polymeric Coating of Supporting Substrates Facilities	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
WWW	Municipal Solid Waste Landfills	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001.	02/27/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04
DDDD	Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999.	.....	.....	07/01/03 12/14/04	07/01/03 12/14/04
EEEE	Other Solid Waste Incineration Units for Which Construction Commenced After December 9, 2004 or Modification or Reconstruction Commenced On or After June 16, 2006.	12/16/05 08/23/06	.....	.....	.....

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
FFFF	Other Solid Waste Incineration Units that Commenced Construction On or Before December 9, 2004.	.....	.....	.....	.....

TABLE II.—DELEGATION OF AUTHORITY—PART 61 NESHAP—REGION 7

Subpart	Source Category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
B	Radon Emissions from Underground Uranium Mines.	.....	07/01/03 12/03/04	.....	.....	.....	.....
C	Beryllium	12/11/03 12/15/04	7/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
D	Beryllium Rocket Motor Firing	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
E	Mercury	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
F	Vinyl Chloride	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
L	Benzene Emissions from Coke By-Product Recovery Plants.	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
M	Asbestos	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
N	Inorganic Arsenic Emissions from Glass Manufacturing Plants.	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
O	Inorganic Arsenic Emissions From Primary Copper Smelters.	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
Q	Radon Emissions From Department of Energy Facilities.	.....	07/01/03 12/03/04	.....	.....	.....	.....
R	Radon Emissions From Phosphogypsum Stacks.	.....	07/01/03 12/03/04	.....	.....	.....	.....
T	Radon Emissions From the Disposal of Uranium Mill Tailings.	.....	07/01/03 12/03/04	.....	.....	.....	.....
V	Equipment Leaks (Fugitive Emission Sources).	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
W	Radon Emissions From Operating Mill Tailings.	.....	07/01/03 12/03/04	.....	.....	.....	.....
Y	Benzene Emissions From Benzene Storage Vessels.	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
BB	Benzene Emissions From Benzene Transfer Operations.	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03
FF	Benzene Waste Operations	12/11/03 12/15/04	07/01/03 12/03/04	06/30/03 11/30/05	07/01/01 07/10/02	07/01/92 07/31/01	07/01/01 04/18/03

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
B	Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Section 112(g) and (j).	02/16/06 08/23/06	07/01/03 12/03/04	12/31/00 11/20/02	07/01/03 12/14/04	.....	04/05/02 04/18/03 (112(g) only)
D	Compliance Extensions for Early Reductions of Hazardous Air Pollutants.	02/16/06 08/23/06	07/01/03 12/03/04	12/31/00 09/30/02	07/01/03 12/14/04	11/21/94 07/31/01	12/29/92 04/18/03
F	Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
G	Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
H	Organic Hazardous Air Pollutants for Equipment Leaks.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
I	Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
J	Polyvinyl Chloride and Copolymers Production.	02/16/06 08/23/06	07/01/03 12/03/04	.....	.....	.....	.....
L	Coke Oven Batteries	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	.....	.....	.....
M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
N	Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/19/04 09/25/05	07/01/00 07/31/01	07/01/01 04/18/03
O	Ethylene Oxide Emissions Standards for Sterilization Facilities.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
Q	Industrial Process Cooling Towers	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
R	Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/98 04/18/03
S	Pulp and Paper Industry	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
T	Halogenated Solvent Cleaning	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
U	Polymers and Resins Group I	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
W	Epoxy Resins Production and Non-Nylon Polyamides Production.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
X	Secondary Lead Smelting	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
Y	Marine Tank Vessel Loading Operations	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	.....	.....	.....
AA/BB	Phosphoric Acid/Phosphate Fertilizers	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
CC	Petroleum Refineries	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/81/97 07/31/01	07/01/01 04/18/03
DD	Off-Site Waste and Recovery Operations	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
EE	Magnetic Tape Manufacturing Operations	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
GG	Aerospace Manufacturing and Rework Facilities.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
HH	Oil and Natural Gas Production Facilities	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
II	Shipbuilding and Ship Repair (Surface Coating).	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	.....	.....	.....
JJ	Wood Furniture Manufacturing Operations	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
KK	Printing and Publishing Industry	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
LL	Primary Aluminum Reduction Plants	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Along Semichemical Pulp Mills.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	.....	07/01/01 04/18/03
OO	Tanks-Level 1	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
PP	Containers	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
QQ	Surface Impoundments	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
RR	Individual Drain Systems	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
TT	Equipment Leaks—Control Level 1 Standards.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
UU	Equipment Leaks—Control Level 2 Standards.	02/16/06 08/23/06	.....	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
VV	Oil-Water Separators and Organic-Water Separators.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
WW	Storage Vessel (Tanks)—Control Level 2	02/16/06 08/23/06	.....	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.	02/16/06 08/23/06	.....	.....	.....	.....	.....
YY	Generic Maximum Achievable Control Technology Standards.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
CCC	Steel Pickling-HCL Process Facilities and Hydrochloric Acid Regeneration Plants.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
DDD	Mineral Wool Production	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
EEE	Hazardous Waste Combustors	12/19/05 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	.....
GGG	Pharmaceutical Production	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
HHH	Natural Gas Transmission and Storage Facilities.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
III	Flexible Polyurethane Foam Production	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
JJJ	Polymers and Resins Group IV	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
LLL	Portland Cement Manufacturing Industry	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
MMM	Pesticide Active Ingredient Production	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
NNN	Wool Fiberglass Manufacturing	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
OOO	Manufacture of Amino/Phenolic Resins	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
PPP	Polyether Polyols Production	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
QQQ	Primary Copper Smelting	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	.....	.....	.....
RRR	Secondary Aluminum Production	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	09/03/04 09/25/05	.....	07/01/01 04/18/03
TTT	Primary Lead Smelting	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
UUU	Petroleum Refineries	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	.....	.....
VVV	Publicly Owned Treatment Works	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	.....	07/01/01 04/18/03
XXX	Ferroalloys Production	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	07/01/00 07/31/01	07/01/01 04/18/03
AAAA	Municipal Solid Waste Landfills	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	.....	.....
CCCC	Manufacturing of Nutritional Yeast	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	.....	07/01/01 04/18/03
DDDD	Plywood and Composite Wood Products	02/16/06 08/23/06	.....	.....	07/01/03 09/25/05	.....	.....
EEEE	Organic Liquids Distribution (Non-Gasoline).	02/16/06 08/23/06	.....	.....	07/01/03 09/25/05	.....	.....
FFFF	Misc. Organic Chemical Manufacturing	02/16/06 08/23/06	.....	.....	07/01/03 09/25/05	.....	.....
GGGG	Solvent Extraction for Vegetable Oil Production.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	09/01/04 09/25/05	.....	07/01/01 04/18/03
HHHH	Wet Formed Fiberglass Mat Production	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	.....	.....
IIII	Surface Coating of Automobiles and Light-Duty Trucks.	02/16/06 08/23/06	.....	.....	07/01/03 09/25/05	.....	.....
JJJJ	Paper and Other Web Coating	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04	.....	.....

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
KKKK	Surface Coating of Metal Cans	02/16/06 08/23/06	07/01/03 12/03/04		07/01/03 09/25/05		
MMMM	Surface Coating of Misc. Metal Parts and Products.	02/16/06 08/23/06			07/01/03 09/25/05		
NNNN	Surface Coating of Large Appliances	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
OOOO	Printing, Coating and Dyeing of Fabrics and Other Textiles.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
PPPP	Surface Coating of Plastic Parts and Products.				07/01/03 09/25/05		
QQQQ	Surface Coating of Wood Building Products.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
RRRR	Surface Coating of Metal Furniture	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
SSSS	Surface Coating of Metal Coil	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
TTTT	Leather Finishing Operations	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
UUUU	Cellulose Products Manufacturing	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
VVVV	Boat Manufacturing	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
WWWW	Reinforced Plastic Composites Production	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
XXXX	Rubber Tire Manufacturing	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
YYYY	Stationary Combustion Turbines	02/16/06 08/23/06			07/01/03 09/25/05		
ZZZZ	Stationary Reciprocating Internal Combustion Engines.				07/01/03 09/25/05		
AAAAA	Lime Manufacturing Plants				07/01/03 09/25/05		
BBBBB	Semiconductor Manufacturing	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05			
CCCCC	Coke Ovens: Pushing, Quenching, and Battery Stacks.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05			
DDDDD	Industrial, Commercial and Institutional Boilers and Process Heaters.	02/16/06 08/23/06		06/30/03 11/30/05	07/01/03 09/25/05		
EEEEE	Iron and Steel Foundries	02/16/06 08/23/06			07/01/03 09/25/05		
FFFFF	Integrated Iron and Steel Manufacturing Facilities.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
GGGGG	Site Remediation	02/16/06 08/23/06			07/01/03 09/25/05		
HHHHH	Misc. Coating Manufacturing	02/16/06 08/23/06	07/01/03 12/03/04		07/01/03 09/25/05		
IIIII	Mercury Cell Chlor-Alkali Plants	02/16/06 08/23/06	07/01/03 12/03/04				
JJJJJ	Brick and Structural Clay Products Manufacturing.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
KKKKK	Clay Ceramics Manufacturing	02/16/06 08/23/06		06/30/03 11/30/05	07/01/03 12/14/04		
LLLLL	Asphalt Processing and Asphalt Roofing Manufacturing.	02/16/06 08/23/06	07/01/03 12/03/04		07/01/03 12/14/04		
MMMMM	Flexible Poly-urethane Foam Fabrication Operation.	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
NNNNN	Hydrochloric Acid Production	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
PPPPP	Engine Test Cells/Stands	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05	07/01/03 12/14/04		
QQQQQ	Friction Materials Manufacturing Facilities	02/16/06 08/23/06	07/01/03 12/03/04	06/30/03 11/30/05			
RRRRR	Taconite Iron Ore Processing	02/16/06 08/23/06					
SSSSS	Refractory Products Manufacturing	02/16/06 08/23/06	07/01/03 12/03/04		07/01/03 12/14/04		
TTTTT	Primary Magnesium Refining	02/16/06 08/23/06					

Summary of This Action

All sources subject to the requirements of 40 CFR parts 60, 61, and 63 are also subject to the equivalent requirements of the above-mentioned state or local agencies.

This notice informs the public of delegations to the above-mentioned agencies of the above-referenced Federal regulations.

Authority: This notice is issued under the authority of sections 101, 110, 112, and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: January 6, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–527 Filed 1–16–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. 2001–11213, Notice No. 10]

RIN 2130–AA81

Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2007

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of determination.

SUMMARY: Using data from Management Information System annual reports, FRA has determined that the 2005 rail industry random testing positive rates were 0.73 percent for drugs and 0.17 percent for alcohol. Because 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, 2007, through December 31, 2007, will remain at 25 percent of covered railroad employees. In addition, because the industry-wide 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, 2007, through December 31, 2007.

DATES: This notice 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 (telephone 202 493–6313); or Kathy Schnakenberg, FRA Alcohol/Drug Program Specialist (telephone 816 561–2714).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 2007 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, 608.

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent of covered railroad employees 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. If the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year, FRA will return the minimum random drug testing rate to 50 percent of covered railroad employees.

If the industry-wide random alcohol violation rate is less than 1.0 percent but greater than 0.5 percent, the minimum random alcohol testing rate will be 25 percent of covered railroad employees. FRA will raise the minimum random rate to 50 percent of covered railroad employees if the industry-wide random alcohol violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent of covered railroad employees 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, 2007, through December 31, 2007, because the industry random drug testing positive rate was below 1.0 percent for the last two years (.073 in 2005 and .094 in 2004). The minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2007, through December 31, 2007, because the industry-wide violation rate for alcohol has remained below 0.5 percent for the last two years (.017 in 2005 and .018 in 2004). Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC on January 9, 2007.

Joseph H. Boardman,

Administrator.

[FR Doc. E7–470 Filed 1–16–07; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 72, No. 10
Wednesday, January 17, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26585; Directorate Identifier 2006–NE–44–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–10E Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for General Electric Company (GE) CF34–10E series turbofan engines. This proposed AD would require revising the combustor case published life limit and removing combustor cases from service before reaching a reduced life limit. This proposed AD results from GE's evaluation of the effects to the combustor case due to installing version 5.10 software in the full-authority digital electronic control (FADEC), and revising the combustor case published life limit. We are proposing this AD to prevent uncontained combustor case failure resulting in an in-flight engine shutdown and possible damage to the airplane.

DATES: We must receive any comments on this proposed AD by March 19, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7773; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–26585; Directorate Identifier 2006–NE–44–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DOT Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received, and any final disposition in person at the DOT Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Management Facility receives them.

Discussion

GE released version 5.10 software for FADECs installed in CF34–10E series turbofan engines. The software was released to change the engine's High Pressure Turbine Active Clearance Control. GE has since evaluated the effects of this software version release, and discovered that combustor cases are being adversely affected. The software release causes changes to thermal gradients and greater stresses to the combustor case, reducing its life. This condition, if not corrected, could result in uncontained combustor case failure resulting in an in-flight engine shutdown and possible damage to the airplane.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. However, since none of the affected combustor cases are near or above the proposed new life limit and are not expected to be for at least two years, we do not propose to mandate immediate replacement of combustor cases. Instead, we are proposing this AD which would require:

- Revising the published life limit in the Airworthiness Limitations Section of the CF34–10E Engine Manual, for combustor cases, part number (P/N) 2070M47G02 and P/N 2070M47G03, from 39,600 cycles-since-new (CSN) to 24,600 CSN; and
- Removing from service combustor cases, P/N 2070M47G02 and P/N 2070M47G03, before reaching 24,600 CSN.

Costs of Compliance

We estimate that this proposed AD would affect 42 CF34–10E series turbofan engines installed on airplanes of U.S. registry. This proposed combustor case removal does not impose any additional labor costs if

performed at the time of scheduled engine overhaul. The financial burden to the operators (prorate) is about $140,080 per engine due to the reduction in the life limit. Based on these figures, and on the prorating for the usage of the combustor cases, we estimate the cost of the proposed AD on U.S. operators to be $5,886,720.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2006–26585; Directorate Identifier 2006–NE–44–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by March 19, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–10E2A1, CF34–10E5, CF34–10E5A1, CF34–10E6, CF34–10E6A1, and CF34–10E7 turbofan engines. These engines are installed on, but not limited to, Embraer ERJ–190 and –195 airplanes.

Unsafe Condition

(d) This AD results from GE's evaluation of the effects to the combustor case due to installing version 5.10 software in the full-authority digital electronic control (FADEC), and revising the combustor case published life limit. We are issuing this AD to prevent uncontained combustor case failure resulting in an in-flight engine shutdown and possible damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within 30 days after the effective date of this AD, unless the actions have already been done.

(f) Revise the published life limit in the Airworthiness Limitations Section of the CF34–10E Engine Manual, for combustor cases, part number (P/N) 2070M47G02 and P/N 2070M47G03, from 39,600 cycles-since-new (CSN) to 24,600 CSN.

(g) Remove from service combustor cases, P/N 2070M47G02 and P/N 2070M47G03, before reaching 24,600 CSN.

(h) The requirements of this AD have been met when the engine manual changes are made and operators have modified their continuous airworthiness maintenance plans to reflect the Engine Maintenance Program requirements specified in the GE CF34–10E Engine Manual.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7773, fax (781) 238–7199; e-mail: *tara.chaidez@faa.gov* for more information about this AD.

Issued in Burlington, Massachusetts, on January 10, 2007.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–499 Filed 1–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

RIN 2120–AA64

[Docket No. FAA–2005–22430; Directorate Identifier 2005–NE–34–AD]

Airworthiness Directives; Turbomeca Arrius 2 F Turboshaft Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Turbomeca Arrius 2 F turboshaft engines. That AD currently requires removing from service certain serial number (SN) fuel control units (FCUs) or replacing the constant delta pressure diaphragm in those FCUs. This proposed AD would require replacing all FCUs not incorporating modification Tf 55 with FCUs that incorporate modification Tf 55. This proposed AD results from the European Aviation Safety Agency (EASA) and Turbomeca expanding the applicability to the full population of FCUs installed on Arrius 2 F turboshaft engines. FCUs not incorporating modification Tf 55 are susceptible to having an improperly assembled constant delta pressure (delta P) diaphragm. We are proposing this AD to prevent an uncommanded engine in-flight shutdown on a single-engine helicopter, resulting in a forced autorotation landing or an accident.

DATES: We must receive any comments on this proposed AD by March 19, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Turbomeca, 40220 Tarnos, France; telephone +33 05 59 74 40 00, fax +33 05 59 74 45 15, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–22430; Directorate Identifier 2005–NE–34–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and any final disposition in person at the DMS Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On September 9, 2005, the FAA issued AD 2005–19–10, Amendment 39–14275 (70 FR 54622, September 16, 2005). That AD requires removing from service certain SN FCUs or replacing the constant delta P diaphragm in those FCUs. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, notified us that an unsafe condition may exist on Turbomeca Arrius 2 F turboshaft engines. EASA advises that the Arrius 2 F engine fleet is susceptible to having an improperly assembled constant delta pressure (delta P) diaphragm (pre-modification Tf 55) in the FCU.

Actions Since AD 2005–19–10 Was Issued

Since AD 2005–19–10 was issued, EASA issued AD No. 2006–0237, dated August 9, 2006, which expands the applicability to the full population of FCUs installed on Arrius 2 F turboshaft engines that have not incorporated modification Tf 55. Also, Turbomeca issued Mandatory Service Bulletin No. 319 73 4055, Update No. 1, dated March 17, 2006, to introduce modification Tf 55 to all Arrius 2 F FCUs. Modification Tf 55 upgrades the FCU with a constant delta P diaphragm that cannot be improperly assembled.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, EASA kept us informed of the situation described above. We have examined the findings of EASA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require replacing FCUs that do not incorporate modification Tf 55, with FCUs that do.

Costs of Compliance

We estimate that this proposed AD would affect 46 Arrius 2 F turboshaft engines installed on helicopters of U.S. registry. We also estimate that it would take about 3 work-hours per engine to perform the proposed FCU replacement and that the average labor rate is $80 per work-hour. Required parts would cost about $25,480 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,183,120.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14275 (70 FR 54622, September 16, 2005) and by adding a new airworthiness directive, to read as follows:

Turbomeca: Docket No. FAA–2005–22430; Directorate Identifier 2005–NE–34–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by March 19, 2007.

Affected ADs

(b) This AD supersedes AD 2005–19–10, Amendment 39–14275.

Applicability

(c) This AD applies to Turbomeca Arrius 2 F turboshaft engines with fuel control units (FCUs) not incorporating modification Tf 55. These engines are installed on, but not limited to, Eurocopter EC120B helicopters.

Unsafe Condition

(d) This AD results from the European Aviation Safety Agency (EASA) and Turbomeca expanding the applicability to the full population of FCUs installed on Arrius 2 F turboshaft engines. FCUs not incorporating modification Tf 55 are susceptible to having an improperly assembled constant delta pressure (delta P) diaphragm. We are issuing this AD to prevent an uncommanded engine in-flight shutdown on a single-engine helicopter, resulting in a forced autorotation landing or an accident.

Compliance

(e) You are responsible for having the actions required by this AD performed as soon as practicable after the effective date of this AD but no later than July 31, 2007, unless the actions have already been done.

(f) Replace all FCUs not incorporating modification Tf 55 with FCUs that incorporate modification Tf 55.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Contact Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7175, fax (781) 238–7199; e-mail: *christopher.spinney@faa.gov* for more information about this AD.

(i) EASA AD No. 2006–0237, dated August 9, 2006, addresses the subject of this AD.

(j) Turbomeca Mandatory Service Bulletin, Update No. 1, dated March 17, 2006, pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on January 10, 2007.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–494 Filed 1–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

RIN 2120–AA64

[Docket No. FAA–2006–25896; Directorate Identifier 2006–NE–33–AD]

Airworthiness Directives; General Electric Company CF34–10E Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for General Electric Company (GE) CF34–10E series turbofan engines. That AD currently requires removing the fuel inlet strainer from main fuel pump (MFP) part number (P/N) 2043M12P03, installing a certain replacement flange as an interim repair, remarking the MFP to P/N 2043M12P04, and performing initial and repetitive visual inspections of the main fuel filter. This proposed AD would require removing MFPs, P/N 2043M12P03 and 2043M12P04 from service and installing an improved MFP with a different P/N. This proposed AD results from GE determining that the cause of MFP fuel strainer failure is a design problem with the strainer. We are proposing this AD to prevent engine in-flight shutdown due to MFP malfunctions.

DATES: We must receive any comments on this proposed AD by March 19, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tara Fitzgerald, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone: (781) 238–7130, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–25896; Directorate Identifier 2006–NE–33–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA

personnel concerning this proposed AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and any final disposition in person at the DMS Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On September 21, 2006, we issued AD 2006–20–06, Amendment 39–14775 (71 FR 60663, October 16, 2006). That AD requires removing the MFP inlet strainer from the MFPs, installing a certain replacement flange as an interim repair, remarking the MFP to P/N 2043M12P04, and performing initial and repetitive visual inspections of the main fuel filter. That AD was the result of three reports of release of the tripod support legs on the MFP inlet strainer, leading to engine in-flight shutdown. That condition, if not corrected, could result in engine in-flight shutdown due to MFP malfunctions.

Actions Since AD 2006–20–06 Was Issued

Since AD 2006–20–06 was issued, GE determined that the cause of MFP fuel inlet strainer failure is a design problem with the strainers installed in the MFPs. GE has introduced MFP P/N 2043M12P05, which has a more robust design fuel inlet strainer.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would require removing MFPs, P/N 2043M12P03 and 2043M12P04 from service and installing an improved MFP, not later than April 30, 2007.

Costs of Compliance

We estimate that this proposed AD would affect 50 CF34–10E series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 3 work-hours per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $4,226 per engine to upgrade the MFP to a different P/N to make it serviceable. Based on these figures, we estimate the total upgrade cost of the proposed AD to U.S. operators to be $223,300.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14775 (71 FR 60663, October 16, 2006) and by adding a new airworthiness directive to read as follows:

General Electric Company: Docket No. FAA–2006–25896; Directorate Identifier 2006–NE–33–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by March 19, 2007.

Affected ADs

(b) This AD supersedes AD 2006–20–06, Amendment 39–14755.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–10E2A1, –10E5, –10E5A1, –10E6, –10E6A1, and –10E7 turbofan engines, with main fuel pump (MFP) part number (P/N) 2043M12P03 or P/N 2043M12P04, installed. These engines are installed on, but not limited to, Embraer ERJ 190–100–STD, ERJ 190–100–LR, and ERJ 190–100–IGW airplanes.

Unsafe Condition

(d) This AD results from GE determining that the cause of MFP fuel strainer failure is a design problem with the strainer. We are issuing this AD to prevent engine in-flight shutdown due to MFP malfunctions.

Compliance

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

MFP Removal and Installation

(f) Not later than April 30, 2007, remove MFPs, P/N 2043M12P03 and 2043M12P04, from service and install a serviceable MFP.

Definition

(g) For the purpose of this AD, a serviceable MFP is one that does not have P/N 2043M12P03 or 2043M12P04.

Recommended Actions

(h) We recommend that operators avoid performing the actions in this AD on both

engines installed on the same airplane at the same time, if at all possible.

Alternative Methods of Compliance

(i) The Manager, Engine Certification Office, FAA, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) GE Service Bulletin No. CF34–10E S/B 73–0013, dated December 15, 2006, pertains to the subject of this AD.

(k) Contact Tara Fitzgerald, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7138, fax (781) 238–7199; e-mail: *tara.fitzgerald@faa.gov* for more information about this AD.

Issued in Burlington, Massachusetts, on January 10, 2007.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–498 Filed 1–16–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 2005P–0121]

Orthopedic Devices; Reclassification of Non-Invasive Bone Growth Stimulator

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of panel recommendation.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment the recommendation of the Orthopaedic and Rehabilitation Devices Panel to deny a petition to reclassify the non-invasive bone growth stimulator from class III to class II. The Panel made this recommendation after reviewing the reclassification petition submitted by RS Medical Corp., as well as consideration of presentations made at the Panel meeting by the petitioner, FDA, and members of the public. FDA is also issuing for public comment its findings on the Panel's recommendation. After considering any public comments on the Panel's recommendation and FDA's findings, FDA will approve or deny the reclassification petition by order in the form of a letter to the petitioner. FDA's decision on the reclassification petition will be announced in the **Federal Register**.

DATES: Submit written or electronic comments by April 17, 2007.

ADDRESSES: You may submit comments, identified by Docket No. 2005P–0121, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No. 2005P–0121 for this notice. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michel Janda, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3600.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et. seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

Reclassification of classified postamendments devices is governed by section 513(f)(3) of the act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for the issuance of an order classifying the device in class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for

reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under section 513(f)(3)(B)(i) of the act, the Secretary may, for good cause shown, refer a petition to a device classification panel. The Panel shall make a recommendation to the Secretary respecting approval or denial of the petition. Any such recommendation shall contain (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the petition was filed.

II. Regulatory History of the Device

In accordance with section 513(f)(1) of the act, the non-invasive bone growth stimulators were automatically classified into class III because they were not introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, and have not been found substantially equivalent to a device placed in commercial distribution after May 28, 1976, which was subsequently classified or reclassified into class II or class I. Therefore, the device can not be placed in commercial distribution unless it is reclassified under section 513(f)(3), or subject to an approved premarket approval application (PMA) under section 515 of the act (21 U.S.C. 360e).

In a petition dated February 7, 2005, that was received by FDA on February 9, 2005, RS Medical Corp. requested that FDA reclassify the non-invasive bone growth stimulator from class III to class II. (Ref. 1) The petition was submitted under section 513(e) of the act but FDA is reviewing the petition under section 513(f)(3) of the act because that section contains the appropriate procedures for reclassification of postamendments devices. FDA requested additional information and the petitioner amended the petition on August 1, 2005. In accordance with the act and the regulations, FDA referred the petition as amended to an FDA Advisory Committee, the Orthopedic and Rehabilitation Devices Panel (the Panel) for its recommendations on the requested reclassification.

III. Description of Device Proposed for Reclassification

The Petitioner identified the device as follows:

A non-invasive bone growth stimulator is a device that provides stimulation through electrical and/or magnetic fields to facilitate the healing of nonunion fractures and lumbar spinal fusions. The stimulation may be delivered through capacitive coupling (CC) with electrodes placed directly over the treatment site or through pulsed electromagnetic fields (PEMF) with treatment coils placed into a brace or over a cast at the treatment site. The device is intended for use: (1) For the treatment of established nonunion fractures acquired secondary to trauma (excluding vertebrae and flat bone), and (2) as an adjunct to the treatment of lumbar spinal fusion surgery for one or two levels. The device consists of an output waveform generator, either battery-powered or AC-powered; a user interface with visual and/or audible alarms; and electrodes or coils to deliver the stimulation.

IV. Recommendations of the Panel

On June 2, 2006, the Panel deliberated on information in RS Medical's petition; the presentations made by RS Medical, FDA, and members of the public; and their own experience with non-invasive bone growth stimulators (Ref. 2). The Panel voted four to two to recommend that non-invasive bone growth stimulators be retained in class III.

V. Risks to Health

The Panel identified the following risks to health associated with the non-invasive bone growth stimulator:

A. Electric Shock

A patient or health care professional could be shocked from the use and operation of the device via an AC line voltage exposure during charging, circuitry malfunction, connection/disconnection of electrodes or coils, control circuit failure, damaged channel jacks, defective electrodes/coil delivering inappropriate output, faulty lead wires, inappropriate output, poor connection between electrodes/coils and lead wires, poor solder on circuit board, reposition of electrodes/coils during treatment, and use of AC current source during treatment.

B. Burn

A patient or health care professional could be burned from the use and operation of the device via an AC line voltage exposure during charging, connection/disconnection of the electrodes/coils or control unit while receiving treatment, defective electrodes/coil delivering inappropriate output, incorrect electrode/coil size or alteration, inappropriate output, use of AC current source for treatment, and use of control unit and battery charger while sleeping.

C. Skin Irritation and/or Allergic Reaction

A patient could experience skin irritation and/or allergic reaction associated with the use and operation of the device via the use of non-biocompatible device materials and/or non-biocompatible electrode gel.

D. Inconsistent or Ineffective Treatment

A patient could receive inconsistent or ineffective treatment via battery deterioration, control circuit failure, defective electrode/coils, device damage from dropping or bumping, device short circuits, driver circuit failure, electromagnetic interference (EMI) or radio frequency interference (RFI), failure to follow prescribed use, hardware failure, improper position of electrodes/coil, inappropriate output, incorrect battery/battery charger, ineffective output, low battery voltage, poor interface between electrodes/coil and patient, and switch failure.

E. Adverse Interaction with Electrical Implants

A patient with electrically-powered implants (such as cardiac pacemakers, cardiac defibrillators, and neuro-stimulators) could experience an adverse interaction with an implanted electrical device via EMI or RFI.

F. Internal/External Fixation Devices

A patient with internal or external fixation devices could receive inconsistent or ineffective treatment due to interaction of the device with the metallic fixation devices via interference with treatment field through magnetic field interaction and/or electrical inductance within metallic device.

G. Biological Risks: Carcinogenicity, Genotoxicity, Mutagenicity, and Teratology

A patient may experience adverse biologic affects resulting from prolonged exposure to the treatment signal via biologic interaction with the treatment signal at a cellular level.

VI. Summary of Reasons for Recommendation

The Panel believes that the non-invasive bone growth stimulator should be retained in class III because there is insufficient information in this petition

to establish that special controls in association with general controls would provide a reasonable assurance of the safety and effectiveness of the device.

VII. Summary of Data Upon Which the Panel Recommendation is Based

The petitioner provided the following information:

A. Reports on Non-Unions

The petitioner submitted 35 articles (5 describing capacitive coupling devices and 30 describing the use of pulsed electromagnetic field devices) reporting outcomes for over 5,600 patients. According to the petitioner, these studies indicate the device's ability to promote osteogenesis in patients with an established non-union, which may include previously failed surgical attempts to establish union.

B. Reports on Adjunctive Lumbar Spinal Fusion

The petitioner has submitted eight articles (one utilizing capacitive coupling devices and seven utilizing pulsed electromagnetic field devices) reporting outcomes for over 1,100 patients. According to the petitioner, these studies indicate the device's ability to promote osteogenesis in patients as an adjunct to the treatment of lumbar spinal fusion for one or two levels.

C. Reports on Preclinical Findings

The petitioner has cited 21 articles in the petition amendment describing studies in animal models. The animal studies described in the petition amendment were designed to evaluate new signals, dose/response relationships, and the potential pathways of bone repair processes. In addition, 14 articles were presented that describe studies in cell culture systems designed to examine the mechanism(s) of action of various electrical stimuli in bone. These studies, conducted at the cellular level, were intended to investigate the sequence of events that occur as a result of electrical stimulation, the interaction of the fields at the level of the cell membrane with regard to ion channels and receptor interaction, and signal transduction; and to identify cell types that do or do not respond to electrical stimulation.

The Panel recommended that the proposed special controls (Ref 1.) were sufficient to control for the risk of electric shock, burn, skin irritation, and/or allergic reaction; adverse interaction with electrical implants; adverse interaction with internal/external fixation devices; and biological risks (carcinogenicity, genotoxicity, mutagenicity and teratology). However, the Panel believed that there was insufficient evidence presented by the petitioner to control for the risk of inconsistent or ineffective treatment because there is a lack of knowledge about how waveform characteristics (e.g., pulse duration, amplitude, power, frequency) affect the clinical response to treatment. This concern was also expressed by the Panel regarding potential modifications made to the device. It is not known how a change to the device output due to device modifications may impact the clinical response to treatment. The Panel requested additional clinical data and/or special controls to control for the risk of inconsistent or ineffective treatment that may occur as the result of device modifications (Ref. 2).

VIII. FDA's Findings

FDA believes that certain device modifications are unlikely to adversely affect device safety and effectiveness and such changes could be adequately validated using bench-top testing. However, FDA also believes that there was not adequate evidence in the petition to establish that the petitioner's proposed special controls could be used to adequately mitigate the risk of inconsistent or ineffective treatment. Additional evidence is required to establish special controls, including preclinical test methods, to mitigate the risk of inconsistent or ineffective treatment.

Because FDA has concerns about the ability of the petitioner's proposed special controls to control the risk of inconsistent and ineffective treatment, FDA is unable to conclude that general controls and the petitioner's proposed special controls would provide a reasonable assurance of safety and effectiveness for this device type. Therefore, based on the currently available information, FDA concurs with the Panel's recommendation to retain the non-invasive bone growth stimulator as a class III device.

IX. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment, nor an environmental impact statement is required.

X. Analysis of Impacts

FDA has examined the impacts of this notice under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this reclassification petition denial, if finalized, is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. If FDA accepts the Panel recommendation and denies the petition for reclassification, the regulatory status of the device will remain the same as it is now. Because this action, if finalized, will maintain the status quo, the agency certifies that the reclassification petition denial will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this reclassification petition action to result in any 1-year expenditure that would meet or exceed this amount.

XI. Federalism

FDA has analyzed this action in accordance with the principles set forth in Executive Order 13132. FDA has determined that the action, if finalized, would not contain policies that would 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. Accordingly, the agency concludes that the action does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

XII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this notice. Submit a single copy of electronic comments or two paper copies of mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

XIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Reclassification petition from RS Medical Corp., dated February 7, 2005, and amendment dated November 30, 2005.

2. Orthopedic and Rehabilitation Devices Panel Meeting Transcript, June 2, 2006.

Dated: January 5, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–476 Filed 1–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 292

RIN 1076–AE81

Gaming on Trust Lands Acquired After October 17, 1988

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document reopens the comment period for the proposed rule published on December 4, 2006 (71 FR 70335), which establishes procedures that an Indian tribe must follow in seeking to conduct gaming on lands acquired after October 17, 1988.

DATES: Comments must be received on or before February 1, 2007.

ADDRESSES: You may submit comments identified by the number 1076–AE81, by any of the following methods:

- *Federal rulemaking portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax*: 202–273–3153.
- *Mail*: Mr. George Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, 1849 C Street, NW., Mail Stop 3657–MIB, Washington, DC 20240.
- *Hand Delivery*: Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, 1849 C Street, NW., Mail Stop 3657–MIB, Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: George Skibine, Office of Indian Gaming, Acting Deputy Assistant Secretary—Policy and Economic Development, Mail Stop 3657–MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: On October 5, 2006 (71 FR 58769), the Bureau of Indian Affairs (BIA) published a proposed rule to establish procedures that an Indian tribe must follow in seeking to conduct gaming on lands acquired after October 17, 1988. The Indian Gaming Regulatory Act allows Indian tribes to conduct class II and class III gaming activities on land acquired after October 17, 1988, only if the land meets certain exceptions. This proposed rule establishes a process for submitting and considering applications from Indian tribes seeking to conduct class II or class III gaming activities on lands acquired in trust after October 17, 1988.

On December 4, 2006, the BIA published a notice making corrections to the proposed rule and extended the comment period until December 19, 2006. Eighteen comments were received after December 19, 2006. Several of these comments raise substantive issues that may result in modification of the proposed rule. The comment period is reopened to allow consideration of the comments received after December 19, 2006, and to allow additional time for comment on the proposed rule. Comments must be received on or before February 1, 2007.

Dated: January 11, 2007.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–511 Filed 1–16–07; 8:45 am]

BILLING CODE 4310–4N–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–KY–0004–200609; FRL–8269–4]

Approval and Promulgation of Implementation Plans; Kentucky: Performance Testing and Open Burning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Kentucky Department of Air Quality (KDAQ), on September 6, 2005. The revisions include changes to Kentucky Administrative Regulations (KAR) Title 401, Chapters 50:045, ''Performance tests,'' and 63:005, ''Open burning.'' The changes included in the proposed SIP revisions are part of Kentucky's strategy to attain and maintain the 8-hour ozone and fine particulate ($PM_{2.5}$) national ambient air quality standards (NAAQS) by reducing emissions of $PM_{2.5}$ and precursors to ozone. EPA is proposing to approve Kentucky's SIP revisions pursuant to section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before February 16, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number, ''EPA–R04–OAR–2005–KY–0004,'' by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. E-mail: *hou.james@epa.gov*.
3. Fax: 404–562–9019.
4. Mail: ''EPA–R04–OAR–2005–KY–0004,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. Hand Delivery or Courier: James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID Number, ''EPA–R04–OAR–

2005–KY–0004.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8965. Mr. Hou can also be reached via electronic mail at *hou.james@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposed Action

On September 6, 2005, KDAQ submitted to EPA proposed SIP revisions for review and approval into the Kentucky SIP. The proposed revisions include changes made by the Commonwealth of Kentucky to its performance test and open burning regulations, found at 401 KAR 50:045 and 401 KAR 63:005, respectively. These changes became state effective on July 13, 2005. The rule changes were made to update Kentucky's regulations on performance testing, and to establish additional requirements to reduce emissions from open burning.

Kentucky's performance testing rule, 401 KAR 50:045, provides guidelines for the methodology, testing conditions, and reporting requirements necessary for sources to demonstrate compliance with air emissions limitations and standards. Corresponding federal rules on performance tests, promulgated by EPA pursuant to Part D of title I of the CAA (''Plan Requirements for Nonattainment Areas''), are found at 40 Code of Federal Regulations (CFR) part 63. These federal rules were incorporated by reference into the Kentucky SIP on July 12, 1982 (47 FR 30059). Kentucky recently made changes to its rules such that the rule previously containing the performance test requirements, 401 KAR 50:016, is being repealed, and the performance test requirements from that rule are being placed in 401 KAR 50:045. Because 401 KAR 50:016 was not part of the Kentucky SIP, EPA is not addressing Kentucky's repeal of that rule. Rather, today's action proposes approval of 401 KAR 50:045, which now includes the performance testing provisions previously found in 401 KAR 50:016. As part of the movement of the performance test provisions to 401 KAR 50:045, Kentucky made minor, non-substantive, changes to the rule. Kentucky's performance testing rule is consistent with applicable federal law. The proposed SIP revision regarding performance testing is therefore approvable pursuant to section 110 of the CAA.

Kentucky's open burning rule, 401 KAR 63:005, establishes restrictions on open burning designed to reduce emissions from such activities. This rule was first approved into the Kentucky SIP on July 12, 1982 (47 FR 30059). The rule is structured such that open burning in general is prohibited unless specified conditions are met. The conditions are described in sections 3 and 4 of 401 KAR 63:005; section 5 also includes such restrictions but applies only to open burning for fire training. Kentucky revised its open burning rule, effective July 13, 2005, in order to better control open burning of potentially hazardous household garbage. This rule is part of Kentucky's strategy to attain and maintain the 8-hour ozone and PM2.5 NAAQS by reducing emissions of PM2.5 and ozone precursors resulting from open burning.

The open burning rule changes made by Kentucky are intended to protect air quality in areas where open burning is occurring. The rule changes clarify instances when open burning of household garbage is permitted and allow open burning of wood waste or clean lumber by municipal and county governments. The changes added definitions for ''clean lumber,'' and ''land clearing,'' and modified the definition of ''household rubbish.'' The modification made to the definition of ''household rubbish'' now excludes from the definition any ''other hazardous waste materials.'' The changes also included a new section, section 5, which specifically addresses restrictions to open burning for fire training. Among the new requirements are that substances being burned for training purposes not contain hazardous or asbestos containing materials (see, sections 5(3) and 5(4)). The changes made to section 5 are at least as stringent as the previous regulation. As a result, the SIP revision is approvable pursuant to section 110 of the CAA.

II. Proposed Action

EPA is proposing to approve the SIP revisions submitted by Kentucky on September 6, 2005. The revisions include changes to two state rules: 401 KAR 50:045, ''Performance tests,'' and 401 KAR 63:005, ''Open burning.'' The SIP revisions include changes to rules that are part of Kentucky's strategy to attain and maintain the NAAQS by reducing emissions of particulate matter, volatile organic compounds, nitrogen oxides, and hazardous air pollutants.

III. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. As a result, it does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: January 3, 2007.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. E7–531 Filed 1–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0892; FRL–8269–3]

Redesignation of Washington County, OH To Attainment for the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Ohio Environmental Protection Agency (Ohio EPA) submitted a request on September 22, 2006, and supplemented it on November 17, 2006, for redesignation of Washington County, Ohio (the Ohio portion of the Parkersburg-Marietta 8-hour ozone nonattainment area) to attainment for the 8-hour ozone standard. EPA is proposing to approve the several elements of this request. First, EPA is making a determination that complete, quality-assured ambient air quality data indicate that the Parkersburg-Marietta area has attained the 8-hour ozone standard. Furthermore, preliminary monitoring data for the 2006 ozone season show that the Parkersburg-Marietta area continues to attain the NAAQS. Second, EPA is proposing to approve, as revisions to the Ohio State Implementation Plan (SIP), the State's plans for maintaining the 8-hour ozone NAAQS through 2018. Third, EPA is proposing to redesignate Washington County to attainment for the 8-hour ozone standard, based on a finding that the requirements for this redesignation have been satisfied. Fourth, EPA finds adequate and is proposing to approve the State's 2018 Motor Vehicle Emission Budgets (MVEBs) for Washington County. Region 3 will address the West Virginia portion of the Parkersburg-Marietta area (Wood County) in a separate rulemaking action.

DATES: Comments must be received on or before February 16, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05-OAR–2006–0892, by one of the following methods:

- *http://www.regulations.gov/.* Follow the on-line instructions for submitting comments.
- E-mail: *mooney.john@epa.gov.*
- Fax: (312) 886–5824.
- Mail: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand delivery: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR–2006–0892. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless

you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Steve Marquardt, Environmental Engineer, at (312) 353–3214 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steve Marquardt, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3214, *marquardt.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

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

When submitting comments, remember to:

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

II. What Actions Is EPA Proposing To Take?

EPA is proposing to take several related actions. EPA is proposing to determine that the Parkersburg-Marietta nonattainment area has attained the 8-hour ozone standard. EPA is also proposing to approve Ohio's maintenance plan SIP revision for Washington County. The maintenance plan is designed to keep the Parkersburg-Marietta nonattainment area in attainment of the ozone NAAQS through 2018. EPA is proposing the Ohio portion of this area (Washington County) has met the requirements for redesignation under Section 107(d)(3)(E) of the Clean Air Act (CAA). EPA is thus proposing to approve Ohio's request to change the legal determination of Washington County from nonattainment to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). Finally, EPA is announcing its action on the Adequacy Process for the newly established 2018 MVEBs for the area. The adequacy comment period for the 2018 MVEBs began on November 20, 2006, with EPA's posting of the availability of these submittals on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*). The adequacy comment period for these MVEBs ended on December 20, 2006. EPA did not receive any requests for these submittals or adverse comments on these submittals during the adequacy comment period. Therefore, we find adequate and are proposing to approve the State's 2018 MVEBs for transportation conformity purposes.

III. What Is the Background for These Actions?

On September 22, 2006, and with supplemental information on November 17, 2006, Ohio requested that EPA redesignate Washington County to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the periods of 2002 through 2004 and 2003 through 2005, indicating that the 8-hour NAAQS for ozone had been attained for the Parkersburg-Marietta area. Furthermore, preliminary monitoring data for the 2006 ozone season show that the area continues to attain the NAAQS. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard, and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

IV. What Are the Criteria for Redesignation?

Section 107(d)(3)(E) of the CAA allows for redesignation from nonattainment to attainment provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the

CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in several guidance documents. A listing of pertinent documents is provided in other redesignation actions including a September 9, 2005 notice; 70 FR 53606.

V. Why Is EPA Proposing To Take These Actions?

On September 22, 2006, and with supplemental information provided on November 17, 2006, Ohio requested redesignation of Washington County to attainment for the 8-hour ozone standard. EPA believes that the area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA.

VI. What Is the Effect of These Actions?

Approval of the redesignation requests would change the official designation of Washington County for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Ohio SIP a plan for maintaining the 8-hour ozone NAAQS through 2018. The maintenance plans include contingency measures to remedy future violations of the 8-hour NAAQS. They also establish MVEBs for the year 2018 of 1.67 tons per day (tpd) volatile organic compounds (VOC) and 1.76 tpd oxides of nitrogen (NO_X) for Washington County.

These proposed actions pertain to the designation of Washington County for the 8-hour ozone NAAQS and to the emission controls in the County related to the attainment and maintenance of the 8-hour ozone NAAQS. If you own or operate a VOC or NO_X emissions source in this County or live in this County, this proposed rule may impact or apply to you. It may also impact you if you are involved in transportation planning or implementation of emission controls in this area.

VII. What Is EPA's Analysis of the Requests?

A. Attainment Determination and Redesignation

EPA is proposing to make a determination that the Parkersburg-Marietta area has attained the 8-hour ozone standard and that Washington County has met all other applicable section 107(d)(3)(E) redesignation criteria. The basis for EPA's determinations is as follows:

1. The Area Has Attained the 8-Hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make the determination that the Parkersburg-Marietta area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and part 50, appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. For each monitor in the area, EPA computes the 3-year average of each year's fourth-highest daily maximum 8-hour average ozone concentrations. The area is attaining the standard if all monitors have average concentrations at or below 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Ohio submitted ozone monitoring data for the 2002–2004 and the 2003–2005 ozone seasons. This submittal included data from both the Ohio and West Virginia portions of Parkersburg-Marietta. The Ohio EPA and the West Virginia Department of Environmental Protection quality assured the ambient monitoring data in accordance with 40 CFR part 58.10, and recorded it in the AIRS database, thus making the data publicly available. The data meet the completeness criteria in 40 CFR 50, Appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each three year period. A summary of the monitoring data is presented in Table 1 below.

TABLE 1.—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND 3-YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS

Area	Monitor	2002 4th high (ppm)	2003 4th high (ppm)	2004 4th high (ppm)	2005 4th high (ppm)	2002–2004 average (ppm)	2003–2005 average (ppm)
Parkersburg-Marietta-Vienna ..	Washington 39–167–0004	.095	.080	.077	.088	.084	.081
	Wood (WV) 54–107–1002	.095	.083	.069	.084	.082	.078

In addition, as discussed below with respect to the maintenance plans, Ohio has committed to continue operating an EPA-approved monitoring network in accordance with 40 CFR part 58. In summary, EPA finds that the data submitted by Ohio provide an adequate demonstration that the Parkersburg-Marietta area has attained the 8-hour ozone NAAQS.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Ohio has met all currently applicable SIP requirements for purposes of redesignation for Washington County under Section 110 of the CAA (general SIP requirements). We have also determined that the Ohio SIP meets all SIP requirements currently applicable for purposes of redesignation under Part D of Title I of the CAA (requirements specific to Subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, we have determined that the SIP is fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). In making these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. As discussed more fully below, SIPs must be fully approved only

with respect to currently applicable requirements of the CAA.

a. Washington County has met all applicable requirements under section 110 and part D of the CAA.

The September 4, 1992 Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993 Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

General SIP requirements. Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it includes enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provides for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provides for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; includes provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; includes criteria for stationary source emission control measures, monitoring, and reporting; includes provisions for air quality modeling; and provides for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO_X SIP Call (63 FR 57356), Clean Air Interstate Rule (CAIR) (70 FR 25162)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification.

EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. When the transport SIP submittal requirements are applicable to a state, they will continue to apply to the state regardless of the attainment designation of any one particular area in the state. Therefore, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation. Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh ozone redesignation (66 FR 50399, October 19, 2001).

As discussed above, we believe that section 110 elements which are not linked to the area's nonattainment status are not applicable for purposes of redesignation. Because there are no section 110 requirements linked to the part D requirements for 8-hour ozone nonattainment areas that have become due, as explained below, there are no Part D requirements applicable for purposes of redesignation under the 8-hour standard.

Part D Requirements. EPA has determined that the Ohio SIP meets applicable SIP requirements under part D of the CAA, since no requirements applicable for purposes of redesignation became due for the 8-hour ozone standard prior to Ohio's submission of the redesignation request for Washington County. Under part D, an area's classification determines the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Parkersburg-Marietta, which includes Washington County, Ohio, was classified as a subpart 1 nonattainment area, and, therefore, subpart 2 requirements do not apply.

Part D, Subpart 1 applicable SIP requirements. For purposes of evaluating these redesignation requests, the applicable part D, subpart 1 SIP requirements for Washington County are contained in sections 172(c)(1)–(9).

No 8-hour ozone planning requirements applicable for purposes of redesignation under part D became due prior to submission of the redesignation request, and, therefore, none are applicable to the area for purposes of redesignation. Since Ohio has submitted complete ozone redesignation requests for Washington County prior to the deadline for any submissions required for purposes of redesignation, we have determined that these requirements do not apply to Washington County for purposes of redesignation.

Section 176 conformity requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other federally-supported or funded projects (general conformity). State conformity revisions must be consistent with federal conformity regulations relating to consultation, enforcement and

enforceability, which EPA promulgated pursuant to CAA requirements.

EPA approved Ohio's general and transportation conformity SIPs on March 11, 1996 (61 FR 9646) and May 30, 2000 (65 FR 34395), respectively. In summary, Washington County has satisfied all applicable requirements under section 110 and part D of the CAA.

b. Washington County has a fully approved applicable SIP under section 110(k) of the CAA.

EPA has fully approved the Ohio SIP for Washington County under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. In approving a redesignation request, EPA may rely on prior SIP approvals plus any additional measures it may approve in conjunction with a redesignation action (See the September 4, 1992 John Calcagni memorandum, page 3, *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–990 (6th Cir. 1998), *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001)). Since the passage of the CAA of 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to Washington County under the 1-hour ozone standard. No Washington County SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions (Section 107(d)(3)(E)(iii))

EPA finds that Ohio has demonstrated that the observed air quality improvement in the Parkersburg-Marietta area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state-adopted measures.

In making this demonstration, the State has calculated the change in emissions between 2002 and 2004, one of the years the Parkersburg-Marietta area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Ohio has implemented.

a. Permanent and enforceable controls implemented.

The following is a discussion of permanent and enforceable measures that have been implemented in the area:

NO_X rules. In compliance with EPA's NO_X SIP call, Ohio developed rules to control NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. These rules required sources to begin reducing NO_X emissions in 2004. However, statewide NO_X emissions actually had begun to decline before 2004, as sources phased in emission controls needed to comply with the State's NO_X emission control regulations. From 2004 on, NO_X emissions from EGUs in the Eastern United States have been capped at a level well below pre-2002 levels, such that EGU emissions in the Parkersburg-Marietta area and elsewhere in Ohio and West Virginia can be expected to remain well below 2002 levels. Ohio expects that NO_X emissions will further decline as the State meets the requirements of EPA's Phase II NO_X SIP call (69 FR 21604 (April 21, 2004)).

Federal Emission Control Measures. Reductions in VOC and NO_X emissions have occurred statewide as a result of federal emission control measures, with additional emission reductions expected to occur in the future as the State implements additional emission controls. Federal emission control measures include: Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards. In addition, in 2004, EPA issued the Clean Air Non-road Diesel Rule (69 FR 38958 (July 29, 2004)). EPA expects this rule to reduce off-road diesel emissions through 2010, with emission reductions starting in 2008.

b. Emission reductions.

Ohio is using 2002 for the inventory and included area, mobile and point source emissions. Area sources were taken from the Ohio 2002 periodic inventory submitted to EPA. These projections were made from the United States Department of Commerce Bureau of Economic Analysis growth factors, with some updated local information. Mobile source emissions were calculated from MOBILE6.2 produced emission factors. Non-road emissions were generated using the EPA's National Mobile Inventory Model (NMIM) 2002 application. Point source information was compiled from Ohio's 2002 annual emission inventory database and the 2002 EPA Clean Air Markets Acid Rain database.

Based on the inventories described above, Ohio's submittal documents changes in VOC and NO_X emissions from 2002 to 2004. Summaries of emissions data are shown in Tables 2 through 4.

TABLE 2.—WASHINGTON COUNTY, OHIO AND WOOD COUNTY, WEST VIRGINIA: TOTAL VOC AND NO_X EMISSIONS FOR NONATTAINMENT YEAR 2002 (TPD)

	Washington		Wood		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Point	2.08	94.58	1.80	2.60	3.88	97.18
Area	2.97	0.21	7.60	0.70	10.57	0.91
Nonroad	1.25	5.33	2.80	4.90	4.05	10.23
Onroad	4.40	5.66	4.70	6.10	9.10	11.76
Total	10.70	105.78	16.90	14.30	27.60	120.08

TABLE 3.—WASHINGTON COUNTY, OHIO AND WOOD COUNTY, WEST VIRGINIA: TOTAL VOC AND NO_X EMISSIONS FOR ATTAINMENT YEAR 2004 (TPD)

	Washington		Wood		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Point	2.06	71.87	2.10	2.60	4.16	74.47
Area	2.92	0.22	7.80	0.70	10.72	0.92
Nonroad	1.17	5.00	2.80	6.20	3.97	11.20

TABLE 3.—WASHINGTON COUNTY, OHIO AND WOOD COUNTY, WEST VIRGINIA: TOTAL VOC AND NO_X EMISSIONS FOR ATTAINMENT YEAR 2004 (TPD)—Continued

	Washington		Wood		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Onroad	3.40	4.85	4.00	5.70	7.40	10.55
Total	9.55	81.94	16.70	15.20	26.25	97.14

TALBE 4.—WASHINGTON COUNTY, OHIO AND WOOD COUNTY, WEST VIRGINIA: COMPARISON OF 2002 AND 2004 VOC AND NO_X EMISSIONS (TPD)

Sector	VOC			NO_X		
	2002	2004	Net change (2002–2004)	2002	2004	Net change (2002–2004)
Point	3.88	4.16	+0.28	97.18	74.47	−22.71
Area	10.57	10.72	+0.15	0.91	0.92	+0.01
Nonroad	4.05	3.97	−0.08	10.23	11.20	+0.97
Onroad	9.10	7.40	−1.70	11.76	10.55	−1.21
Total	27.60	26.25	−1.35	120.08	97.14	−22.94

Table 4 shows that the area reduced VOC emissions by 1.35 tpd, and NO_X emissions by 22.94 tpd, between 2002 and 2004.

Based on the information summarized above, Ohio has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175a of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with its request to redesignate Washington County to attainment status, Ohio submitted SIP revisions to provide for the maintenance of the 8-hour ozone NAAQS in this area through 2018.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992 John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: The attainment VOC and NO_X emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

Ohio developed a baseline emissions inventory for 2004, one of the years used to demonstrate monitored attainment of the 8-hour NAAQS. The attainment level of emissions is summarized in Table 5, below.

TABLE 5.—WASHINGTON COUNTY, OHIO AND WOOD COUNTY, WEST VIRGINIA: TOTAL VOC AND NO_X EMISSIONS FOR ATTAINMENT YEAR 2004 (TPD)

	Washington		Wood		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X
Point	2.06	71.87	2.10	2.60	4.16	74.47
Area	2.92	0.22	7.80	0.70	10.72	0.92
Nonroad	1.17	5.00	2.80	6.20	3.97	11.20
Onroad	3.40	4.85	4.00	5.70	7.40	10.55
Total	9.55	81.94	16.70	15.20	26.25	97.14

c. Demonstration of Maintenance

Ohio submitted revisions to the 8-hour ozone SIP to include 12-year maintenance plans for Washington County, in compliance with section 175A of the CAA. Information was also provided regarding the West Virginia maintenance plan SIP revision. This demonstration shows maintenance of

the 8-hour ozone standard by assuring that current and future emissions of VOC and NO_X area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio is using projected inventories for the years 2009 and 2018. These emission estimates are presented in Table 6.

TABLE 6.—WASHINGTON COUNTY, OHIO AND WOOD COUNTY, WEST VIRGINIA: COMPARISON OF 2004–2018 VOC AND NO_X EMISSIONS (TPD)

Sector	VOC				NO_X			
	2004	2009	2018	Net Change 2004–2018	2004	2009	2018	Net Change 2004–2018
Point	4.16	3.68	4.40	+0.24	74.47	17.67	24.76	−49.71
Area	10.72	10.01	10.90	+0.18	0.92	0.94	1.05	+0.13
Nonroad	3.97	3.36	2.77	−1.20	11.20	8.57	7.39	−3.81
Onroad	7.40	5.59	3.57	−3.83	10.55	7.68	3.76	−6.79
Total	26.25	22.64	21.64	−4.61	97.14	34.86	36.96	−60.18

The emission projections show that Ohio does not expect emissions in the area to exceed the level of the 2004 attainment year inventory during the maintenance period. In the area, Ohio projects that VOC and NO_X emissions will decrease by 4.61 tpd and 60.18 tpd, respectively.

As part of its maintenance plan, the State elected to include a ''safety margin'' for the area. A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Ohio used 2004 as the attainment level of emissions for the area. In the maintenance plan, Ohio projected emission levels for 2018. The emissions from point, area, non-road, and mobile sources in 2004 equaled 26.25 tpd of VOC. Ohio projected VOC emissions for the year 2018 to be 21.64 tpd of VOC. The SIP submission demonstrates that the area will continue to maintain the standard. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 4.61 tpd of VOC for 2018. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network

Ohio currently operates one ozone monitor in Washington County. Ohio has committed to continue operating and maintaining an approved ozone monitor network in accordance with 40 CFR part 58. West Virginia has also made a similar commitment with respect to its monitor.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State's plan for verifying continued attainment of the 8-hour standard in the area consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58 and to consider monitoring data that West Virginia will be collecting. In addition, Ohio will periodically review and revise the VOC and NO_X emissions inventories for the area, as required by the Consolidated Emissions Reporting Rule (40 CFR part 51), to track levels of emissions in the future.

f. Contingency Plan

The contingency plan provisions of the CAA are designed to result in prompt correction or prevention of violations of the NAAQS that might occur after redesignation of an area to attainment of the NAAQS. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that might occur after redesignation. The maintenance plan must identify the contingency measures to be considered for possible adoption, a schedule and procedure for adoption and implementation of the selected contingency measures, and a time limit for action by the State. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the State will implement all measures with respect to control of the pollutant(s) that were included in the SIP before the redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted a contingency plan to address possible future ozone air quality issues. The contingency plan has two levels of actions/responses depending on whether a violation of the 8-hour ozone standard is only threatened (Warning Level Response) or has actually occurred or appears to be very imminent (Action Level Response).

A Warning Level Response will be triggered whenever an annual (1-year) fourth-high monitored 8-hour ozone concentration of 88 ppb occurs within the ozone maintenance area (Parkersburg-Marietta area). A Warning Level Response will consist of a study to determine whether the ozone value indicates a trend toward higher ozone concentrations or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend, taking into consideration ease and timing for implementation, as well as economic and social consideration. Implementation of necessary controls in response to a Warning Level Response triggering will take place as expeditiously as possible, but in no event later than 12 months from the conclusion of the most recent ozone season.

An Action Level Response will be triggered whenever a two-year average annual fourth-high monitored 8-hour ozone concentration of 85 ppb or greater occurs within the maintenance area

(Parkersburg-Marietta area). A violation of the 8-hour ozone standard (three-year average fourth-high value of 85 ppb or greater) will also prompt an Action Level Response. In the event that an Action Level Response is triggered and is not due to an exceptional event, malfunction, or noncompliance with a source permit condition or rule requirement, Ohio will determine the additional emission control measures needed to assure future attainment of the ozone NAAQS. Emission control measures that can be implemented in a short time will be selected in order to be in place within 18 months from the close of the ozone season that prompted the Action Level Response. Any new emission control measure that is selected for implementation will be given a public review. If a new emission control measure is already promulgated and scheduled to be implemented at the Federal or State level and that emission control measure is determined to be sufficient to address the increase in peak ozone concentrations, additional local measures may be unnecessary. Ohio will submit to the EPA an analysis to assess whether the proposed emission control measures are adequate to reverse the increase in peak ozone concentrations and to maintain the 8-hour ozone standard in the area. The selection of emission control measures will be based on cost-effectiveness, emission reduction potential, economic and social considerations, or other factors that Ohio deems to be appropriate. Selected emission control measures will be subject to public review and the State will seek public input prior to selecting new emission control measures.

The State's ozone redesignation request lists the following possible emission control measures as contingency measures in the ozone maintenance portion of the State's submittal:

i. Lower Reid vapor pressure gasoline requirements;

ii. Tighten RACT on existing source covered by USEPA Control Techniques Guidelines issued in response to the 1990 Clean Air Act;

iii. Apply RACT to smaller existing sources;

iv. One or more transportation control measures sufficient to achieve at least half a percent reduction in actual area wide VOC emissions. Transportation measures will be selected from the following, based upon the factors listed above after consultation with affected local governments;

a. Trip reduction programs, including, but not limited to, employer-based transportation management plans, area wide rideshare programs, work schedule changes, and telecommuting;

b. Traffic flow and transit improvements; and

c. Other new or innovative transportation measures not yet in widespread use that affects state and local governments deemed appropriate.

v. Alternative fuel and diesel retrofit programs for fleet vehicle operations.

vi. Controls on consumer products consistent with those adopted elsewhere in the United States.

vii. Require VOC and NO_X emissions offsets for new and modified major sources.

viii. Require VOC or NO_X emission offsets for new or modified minor sources.

ix. Increase the ratio of emission offsets required for new sources.

x. Require VOC or NO_X controls on new minor sources (less than 100 tons).

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, Ohio commits to submit to the EPA updated ozone maintenance plans eight years after redesignation to cover an additional 10-year period beyond the initial 10-year maintenance period. Ohio has committed to retain the control measures for VOC and NO_X emissions that were contained in the SIP before redesignation of the area to attainment, as required by section 175(A) of the CAA.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision has met the requirements of section 175A of the CAA.

B. Adequacy of Ohio's Motor Vehicle Emissions Budgets (MVEBs)

1. How Are MVEBs Developed and What Are the MVEBs for the Area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignation to attainment of the ozone standard. These emission control strategy SIP revisions (e.g., reasonable further progress SIP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the SIP that addresses emissions from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was codified in the

Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

Conformity in the Parkersburg-Marietta area is managed by establishing and adhering to separate budgets for Washington County, Ohio and Wood County, West Virginia. This rulemaking is addressing a budget that Ohio requested for its portion of the area. A separate rulemaking will address the adequacy of West Virginia's requested budget for the West Virginia portion of the area. The Washington County maintenance plan contains new VOC and NO_X MVEBs for the year 2018. The availability of the SIP submissions with these 2018 MVEBs was announced for public comment on EPA's Adequacy Web page on November 20, 2006, at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2018 MVEBs closed on December 20, 2006. No requests for these submittals or adverse comments on these submittals were received during the adequacy comment period. In a letter dated, December 28 2006, EPA informed Ohio that we had found the 2018 MVEBs to be adequate for use in transportation conformity analyses.

EPA, through this rulemaking, is proposing to approve the MVEBs for use in determining transportation conformity in Washington County because the EPA has determined that the area can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. Ohio has determined the 2009 MVEBs for Washington County to be 2.59 tpd VOC and 3.58 tpd of NO_X and the 2018 MVEBs for Washington County to be 1.67 tpd for VOC and 1.76 tpd for NO_X. Ohio decided to include 15 percent safety margins in the MVEBs to provide for mobile source growth not anticipated in the projected 2018 emissions.

2. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 6, the Parkersburg-Marietta area VOC and NO_X emissions are projected to have safety margins of 4.61 tpd for VOC and 60.18 tpd for NO_X in 2018 (the difference between the attainment year, 2004, emissions and the projected 2018 emissions for all sources in the Parkersburg-Marietta 8-hour ozone nonattainment area (Washington County, Ohio and Wood County, West Virginia). Even if emissions reach the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

VIII. What Actions Is EPA Taking?

EPA is proposing to make determinations that the Parkersburg-Marietta area has attained the 8-hour ozone NAAQS and EPA is proposing to approve Ohio's maintenance plan for assuring that the area will continue to attain this standard. EPA is also proposing to find that Washington County meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA, and on this basis, EPA is proposing to approve the redesignation of Washington County from nonattainment to attainment for the 8-hour ozone standard.

Finally, EPA is finding adequate and proposing to approve the 2018 VOC and NO_X MVEBs submitted by Ohio in conjunction with the redesignation request.

IX. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). Redesignation is an action that merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule also does not have tribal implications, as specified in Executive Order 13175, because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands. Thus, Executive Order 13175 does not apply to this rule.

Although Executive Order 13175 does not apply to this rule, EPA met with interested tribes in Michigan to discuss the redesignation process and the impact of a change in designation status of these areas on the tribes.

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

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air Pollution Control, Environmental protection, National parks, Wilderness areas.

Dated: January 4, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–520 Filed 1–16–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 262

[Docket No. FRA 2005–23774, Notice No. 1]

RIN 2130–AB74

Implementation of Program for Capital Grants for Rail Line Relocation and Improvement Projects

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Section 9002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005) amends chapter 201 of Title 49 of the United States Code by adding section 20154. Section 20154 authorizes—but does not appropriate—$350,000,000 per year for each of the fiscal years (FY) 2006 through 2009 for the purpose of funding a grant program to provide financial assistance for local rail line relocation and improvement projects. Section 20154 directs the Secretary of Transportation (Secretary) to issue regulations implementing this grant program, and the Secretary has delegated this responsibility to FRA. This NPRM proposes a regulation intended to carry out that statutory mandate. As of the publication of this NPRM, Congress had not appropriated any funding for the program for FY 2006 or FY 2007.

DATES: (1) *Written Comments:* Written comments must be received on or before March 5, 2007. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public Hearing:* Requests for a public hearing must be in writing and must be submitted to the Department of Transportation Docket Management System at the address below on or before March 5, 2007. If a public hearing is requested and scheduled, FRA will announce the date, location, and additional details concerning the hearing by separate notice in the **Federal Register**.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FRA 2005–23774 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John A. Winkle, Transportation Industry Analyst, Office of Railroad Development, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 13, Washington, DC 20590 (*John.Winkle@fra.dot.gov* or 202–493–6320); or Elizabeth A. Sorrells, Attorney-Advisor, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (*Betty.Sorrells@fra.dot.gov* or 202–493–6057).

SUPPLEMENTARY INFORMATION:

I. Background

Much of the economic growth of the United States can be linked directly to the expansion of rail service. As the nation moved westward, railroads expanded to provide transportation services to growing communities. No

event better illustrates this point than the ''golden spike'' ceremonies at Promontory Point, Utah in 1869 that ushered in transcontinental rail service. Travel times between the Atlantic and Pacific coasts were dramatically reduced opening numerous new markets for both passenger and freight operations. Municipalities throughout the country knew that their economic success rested on being served by the railroad and many offered incentives to railroads for the chance to be served. As a result, many communities' land use patterns are developed around the railroad lines that became an economic artery as important as ''Main Street.'' By 1916, rail expansion peaked as miles of road owned [1] reached 254,251.

Soon after the end of the Second World War, the railroads' competitors—the auto, truck, air, pipeline and modern barge industries—proved to be superior to the railroads in responding to many of the growing demands for speed, convenience and service quality that characterized the evolving economy of the 20th century. Mired in stifling economic over-regulation, railroads were unable to respond effectively to the competitive challenges facing them. These changes had a dramatic effect on rail's market share. From nearly 80 percent of the intercity freight market in the early 1920s, rail share fell to less than 37 percent in 1975. The decline was even more dramatic with regard to passenger service. The industry responded by cutting excess capacity, often through bankruptcy. By 1975, miles of road owned had fallen to 199,126, a 22 percent decline from 1916. The most current data from 2004 shows a further decline to 140,806 road miles or 45 percent fewer miles than was available in 1916.

By the early years of the 21st century up to the present time, however, the rail industry has made a significant turnaround. Beginning with rate deregulation ushered in by the Staggers Act in 1980, and a number of other favorable changes, railroads have introduced innovative services and modern pricing practices, and, as a result, have become profitable and have recaptured market share. Between 1985 and 2004, revenue ton-miles [2] nearly doubled from 876.9 billion to 1.7 trillion. Rail's market share of intercity revenue freight is approaching 45 percent. This growth is being accommodated on a system that shrunk in response to conditions noted above. The smaller physical plant is handling greater and greater freight volumes.

The clearest evidence of more intense use of the industry's plant is found in measuring ''traffic density.'' ''Traffic density'' is the millions of revenue ton-miles per owned mile of road. In 1985, this indicator stood at 6.02. By 2004, this figure had nearly tripled to 17.02 millions of revenue ton-miles per mile of road owned. This more intense use of rail infrastructure is especially challenging in communities that developed adjacent to or around rail lines, most built over a century ago on alignments appropriate to the times.

As a result, in many places throughout the country, the rail infrastructure that was once so critical to communities now presents problems as well as benefits. For example, the tracks that run down the middle of towns separate the communities on either side. Rail yards and tracks occupy valuable real estate. Trains parked in sidings may present attractive nuisances to children and vandals, and, in the case of tank cars containing hazardous materials, may present serious security or health risks. Grade crossings may present safety risks to the cars and pedestrians that must cross the tracks. These same crossings create inconveniences when long trains block crossings for extended periods of time and sound horns as they operate through crossings in neighborhoods. In some cases, trains operate over lines at speeds that are suited for the type of track but often present safety concerns to those in the surrounding community. In some cases, rail lines have become so congested that communities experience what they perceive as almost continuous train traffic. In short, rail lines, which once brought economic prosperity and social cohesion, are now sometimes viewed as factors that decline both.[3]

In an effort to satisfy all constituents, state and local governments are looking for ways to eliminate the problems created by the increased demand on the infrastructure while still maintaining the benefits the railroad provides. Many times, the solution is merely to relocate the track in question to an area that is better suited for it. For example, a recently completed relocation project in Greenwood, Mississippi eliminated twelve at-grade highway-rail crossings, which greatly improved safety for motorists and eliminated blocked crossings. With that success in mind, Mississippi is currently looking to relocate two main lines that run through the heart of the Central Business District in Tupelo. Combined, these two lines cross 26 highways in the city, and all but one are at-grade crossings. One of the options the State is considering is laterally relocating the lines outside of the business district. FRA would like commenters to discuss other potential projects that could benefit from the program implemented by this regulation.

In some situations, vertical relocation may be the best solution. For example, Nevada has undertaken the Reno Transportation Rail Access Project (ReTRAC), the purpose of which is to ''sink'' 33 feet below the ground in a trench the approximately 2.25 mile segment of main line track that runs through Reno. Both the Union Pacific Railroad Company (UP) and Amtrak operate over this line. The project will allow for the closing of 11 grade crossings and will generally improve both highway efficiency and safety as well as the safety and efficiency of the trains that operate through Reno. Many of these relocation projects, like the ReTRAC project, are expensive, and state and local governments lack the resources to undertake them.[4] When commenting on potential projects, FRA requests that commenters discuss the estimated costs of those projects.

In addition to relocation projects, many communities are eager to improve existing rail infrastructure in an effort to mitigate the perceived negative effects of rail traffic on safety in general, motor vehicle traffic flow, economic development, or the overall quality of life of the community. For example, in an effort to improve train speed and reduce the risk of derailments, rail lines that were built a century ago with sharp curves can be straightened. In addition, significant efficiencies can be gained and safety enhanced by, as examples, extending passing tracks and yard lead tracks, and adding track circuits and signal spacing changes.

II. SAFETEA–LU

On August 10, 2005, President George W. Bush signed SAFETEA–LU, (Pub. L. 109–59) into law. Section 9002 of SAFETEA–LU amended chapter 201 of Title 49 of the United States Code by adding a new § 20154, which establishes the basic elements of a funding program for capital grants for local rail line relocation and improvement projects.

[1] This measure is the aggregate length of roadway and excludes yard tracks and sidings, and does not reflect the fact that a mile of road may include two, three or more parallel tracks.

[2] A ton of any commodity transported one-mile.

[3] In some locations, passenger trains, both intercity and commuter, will continue to serve downtown locations. Passenger trains generally operate less often than freight trains, are shorter, and, therefore, do not create the extensive problems that freight trains do.

[4] The ReTRAC project is expected to cost in excess of $260,000,000.

Subsection (b) of the new § 20154 mandates that the Secretary issue ''temporary regulations'' to implement the capital grants program and then issue final regulations by October 1, 2006. This NPRM proposes a regulation intended to carry out that statutory mandate.

In order to be eligible for a grant for an improvement construction project, the project must mitigate the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, including noise mitigation, or economic development, or involve a lateral or vertical relocation of any portion of the rail line, presumably to reduce the number of grade crossings and/or serve to mitigate noise, visual issues, or other externality that negatively impacts a community. A more detailed explanation of the rule text is provided below in the Section-by-Section Analysis.

Congress authorized, but did not appropriate, $350 million per year for each fiscal year 2006 through 2009. At least half of the funds awarded under this program shall be provided as grant awards of not more than $20 million each. A State or other eligible entity will be required to pay at least 10 percent of the shared costs of the project, whether in the form of a contribution of real property or tangible personal property, contribution of employee services, or previous costs spent on the project before the application was filed. The state or FRA may also seek financial contributions from private entities benefiting from the rail line relocation or improvement project.

In SAFETEA–LU, Congress directed FRA to issue ''temporary regulations'' by April 1, 2006. Under the Administrative Procedure Act and Executive Orders governing rulemaking, FRA could comply with Congress's deadline only by issuing a direct final rule or an interim final rule by April 1, 2006. However, the FRA cannot use either a direct final rule or an interim final rule because the legal requirements for using those instruments cannot be satisfied. The case law is clear that a statutory deadline does not suffice to justify dispensing with notice and comment prior to issuing a rule on grounds that notice and comment are ''impracticable, unnecessary, or contrary to the public interest'' under Section 553(b)(B) of the Administrative Procedure Act. Because as of this date no funding has been appropriated for the program and no projects can be funded at this time, FRA believes the purposes of SAFETEA–LU can best be met by proceeding in lieu of an interim final rule with an NPRM, which satisfies the requirements of the Administrative Procedure Act and allows for greater public participation in the rulemaking process.

III. Section-by-Section Analysis

SAFETEA–LU contains very specific language regarding implementation of the rail line relocation and improvement program. In several sections, the language in this proposed regulation is reprinted directly from SAFETEA–LU. Given such an unambiguous statutory mandate, FRA has made only a few additions in this proposed regulation to include language that was not in the statute. For those sections, there is a further discussion of FRA's intent and a request for comments. This Section-by-Section Analysis does not discuss Congressional intent.

Section 262.1 Purpose

This section merely states that the purpose of this NPRM is to carry out the Congressional mandate in § 9002 of SAFETEA–LU by promulgating regulations which implement the grant financial assistance program for local rail relocation and improvement projects set forth in new § 20154 of Title 49 of the United States Code.

Section 262.3 Definitions

Act

When used in this Part, ''Act'' means SAFETEA–LU.

Administrator

This definition makes clear that when the term ''Administrator'' is used in this Part, it refers to the Administrator of the Federal Railroad Administration. It also provides that the Administrator may delegate authority under this rule to other Federal Railroad Administration officials.

Allowable costs

This definition makes clear that only costs classified as ''allowable'' will be reimbursable under a grant awarded under this Part. Specifically, construction costs are the only costs that are reimbursable.

Construction

This definition sets out the types of project costs that are contemplated as being reimbursable under this Part. Only these costs will be allowable under a grant from this program. This definition closely tracks 49 U.S.C. 20154(h)(1). Subsection 20154(h)(1)(F) gave the Secretary the authority to prescribe additional costs, other than those specifically listed in § 20154(h)(1), as allowable under this Part. As the authority to promulgate this rule has been delegated to FRA by the Secretary, subsection (6) makes clear that FRA has that authority to prescribe additional costs. In addition, subsection (6) also makes clear that architectural and engineering costs associated with the project as well as costs incurred in compliance with applicable environmental regulations are considered construction costs, and will be allowable. Because FRA has some discretion with regard to this definition, commenters are invited to suggest additional costs that might be allowable under the regulation.

FRA

This definition makes clear that when the term ''FRA'' is used in this Part, it refers to the Federal Railroad Administration.

Improvement

The program established by the Act is intended to provide funds for both rail line relocation and improvement projects. This definition makes clear the types of projects that fall under the category of ''improvements.'' FRA considers improvements to be projects such as those that repair defective aspects of a rail system's infrastructure, projects that enhance an existing system to provide for improved operations, or new construction projects that result in better operational efficiencies. Examples include track work that increases the class of track, signal system improvements, and lengthening existing sidings or building new sidings. FRA invites comments on the definition of ''improvement'' as well as the types of projects that should be considered. Commenters should keep in mind, however, that any project must achieve the goals set forth in § 262.7(a)(1).

Non-Federal Share

This definition indicates that Non-Federal share means the portion of the allowable cost of the local rail line relocation or improvement project that is being paid for through cash or in-kind contributions by a State or other non-Federal entity.

Private Entity

This definition makes clear what types of entities are contemplated under § 262.13. A private entity must be a nongovernmental entity, but can be a domestic or foreign entity and can be either for-profit or not-for-profit.

Project

This definition makes clear that the term ''project'' refers only to a local rail line relocation or improvement project

undertaken with funding from a grant from FRA under this Part.

Quality of Life

FRA is requesting comments on what factors should be considered when measuring ''quality of life.'' The Act requires only that the definition include first responders'' emergency response time, the environment, noise levels, and other factors as determined by FRA. Thus, Congress left FRA some discretion in determining what else should be considered under this definition. FRA believes ''quality of life'' should include factors associated with an individual's overall enjoyment of life or a community's ability both to function and to provide services to its residents at a reasonable level. Commenters are invited to discuss specific factors that can measure these somewhat amorphous concepts, as well as any other factors that may be appropriate.

Real Property

This definition makes clear that ''real property'' refers to land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Relocation

This definition states what relocation consists of and provides the distinction between the two types of rail line relocations. A lateral relocation occurs when a rail line is horizontally moved from one location to another, usually away from dense urban development, grade crossings, etc., in an effort to allow trains to operate more efficiently and the community surrounding the old line to function more effectively. The typical example is moving a rail line that runs through the middle of a town or city to a location outside of the town or city.

A vertical relocation occurs when a rail line remains in the same location, but the track is lifted above the ground, as with an overpass, or is sunk below ground level, as with a trench. Vertical relocations may be preferable when the community surrounding the rail line still needs the line (for example, when a busy passenger station is located on the line), but the line is causing problems because of its location at grade.

Secretary

This definition makes clear that ''Secretary'' refers to the Secretary of Transportation.

State

This definition is reprinted from SAFETEA–LU and can be found at 49 U.S.C. 20154(h)(3). It makes clear that, for the purposes of this Part except for § 262.17, any of the fifty States, political subdivisions of the States, and the District of Columbia is a ''State'' and eligible for funding from this program. The definition also makes clear, however, that for purposes of § 262.17 only, ''State'' does not include political subdivisions of States, but instead only the fifty States and the District of Columbia.

Tangible Personal Property

This definition indicates that ''tangible personal property'' refers to property that has physical substance and can be touched, but is not real property. Examples of tangible personal property include machinery, equipment and vehicles.

Section 262.5 Allocation Requirements

This section is reprinted directly from SAFETEA–LU and can be found at 49 U.S.C. 20154(d). It mandates that at least fifty percent of all grant funds awarded under this Part out of funds appropriated for a fiscal year be provided as grant awards of not more than $20,000,000 each. Designated, high-priority projects will be excluded from this allocation formula. The statute states that the $20,000,000 amount will be adjusted by the Secretary to reflect inflation for each fiscal year of the program beginning in FY 2007. Under the Secretary's delegation of rulemaking authority to FRA, however, FRA will make the annual inflationary adjustment. In making the adjustment for inflation, FRA will use guidance published by the Association of American Railroads (AAR). Specifically, FRA will use the materials and supplies component of the AAR Railroad Cost Indexes. FRA will make the adjustment each October based on the most recent edition of the Cost Indexes.

Section 262.7 Eligibility

This section is reprinted directly from SAFETEA–LU and can be found at 49 U.S.C. 20154(b). It sets out the eligibility criteria for projects and declares that any state (or political subdivision of a state) is eligible for a grant under this section for any construction project for the improvement of a route or structure of a rail line that either is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle, traffic flow, community quality of life, or economic development, or involves a lateral or vertical relocation of any portion of a rail line. Lateral relocation refers to horizontally moving the rail line to another location while vertical relocation refers to either lifting the rail line above the ground or sinking it below the ground. Subpart (b) of this section also makes clear that only costs associated with construction, as defined in this Part, will be allowable costs for purposes of this Part. Therefore, only construction costs will be eligible for reimbursement under a grant agreement administered under this Part.

Section 262.9 Criteria for Selection of Rail Lines

This section is reprinted almost entirely from SAFETEA–LU and, aside from subsection (f), can be found at 49 U.S.C. 20154. It sets out the criteria for FRA to use in determining which projects should be approved for grants under this Part. It mandates that the Secretary, through FRA, consider the following factors in deciding whether to award a grant to an eligible state (as defined in this Part):

- The capability of the state (as defined in this part) to fund the project without Federal grant funding;
- The requirement and limitation relating to allocation of grant funds provided in § 262.5 of this Part;
- Equitable treatment of the various regions of the United States;
- The effects of the rail line, relocated or improved as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce; and
- The effects of the rail line, relocated or improved as proposed, on the freight and rail passenger operations on the rail line.

In making the determination required by the first factor of the State's capability to fund the project without Federal grant funding, FRA will look at indicators such as the existence of authorized and funded State programs for railroad improvement projects, the State's use of available highway-rail grade crossing improvement funds provided through 23 U.S.C. 130, and other indicia of credit worthiness such as bond ratings. FRA welcomes comments on these indicators as well as proposals for additional information that may be relevant in determining the State's ability to fund the project without Federal grant funding.

With regard to the third factor—equitable treatment of the various regions of the United States—Congress did not indicate how the geographical boundaries of the regions should be determined. For purposes of this regulation, FRA is proposing to divide the country into the same regions that FRA's Office of Safety divides the country for enforcement purposes. FRA's regional boundaries take into account factors such as density of rail

lines, frequency of rail operations, and population centers. For example, FRA's Regions 1 and 2, which encompass all of Amtrak's Northeast Corridor, contain many large cities, and have extensive freight, commuter, and intercity passenger rail operations; cover much less territory that FRA's Region 8, which encompasses the Pacific Northwest, including States such as Montana, Wyoming, and Idaho that have smaller populations, little or no commuter or intercity passenger service, and less frequent freight rail operations. A map of FRA's Regions is included as Appendix A. FRA is soliciting comments on this proposed division of the country and welcomes suggestions for alternative methods.

Subsection (f) states that FRA will consider the level of commitment of non-Federal and/or private funds when determining whether to award a grant under this program. This requirement was not listed in § 20154(c) of SAFETEA–LU, but the statute did not mandate that FRA consider only the listed factors in determining whether to award a grant to an eligible state. The listed factors are fairly comprehensive, but FRA wants to retain the flexibility to consider other factors, as well, that may not be readily apparent. Therefore, FRA added a ''catch-all'' factor to the criteria. Subsection (f) allows FRA to also consider any other factors that the agency deems relevant to assessing the effectiveness and or efficiency of the grant application in achieving the goals of the national program and specifically mentions the level of financial commitment provided by non-Federal and/or private entities noted in § 20154(e)(4)(B). FRA welcomes comments on this addition and any other potential factors that the FRA may consider in determining whether to award a grant.

Section 262.11 Application Process

All grant applications submitted under this program must be submitted to FRA through the Internet at *http://www.grants.gov.* All Federal grant-making agencies are required to receive applications through this website. Potential applicants should note that the information below describes FRA's typical grant application requirements. However, the specific requirements for individual grants will be listed in the ''Instructions'' section for the particular grant for which FRA is accepting applications.

The application process for funds appropriated under § 20154 will differ depending on whether the grant is non-competitive or discretionary (competitive). Non-competitive applications—usually projects designated in the appropriations statute or in the Conference Report accompanying an annual appropriation as high-priority—generally must include the following: (1) A detailed project description; (2) Standard Forms (SF) 424 —Application; SF 424A or C—Budget Information; SF 424B or D—Assurances; Certifications and Assurances, i.e. debarment/suspension/ineligibility, Drug-free Work Place; Lobbying, Indirect Costs; SF 3881—Payment Information; SF 1194—Authorized Signatures; and (3) an Audit History. Potential applicants should keep in mind that these are the typical forms that FRA requests with non-competitive applicants. FRA may not require all of these for a particular application.

For a discretionary (competitive) grant, applicants will be provided with certain basic information covering deadlines and addresses for submitting statements of interest, the entities eligible for funding, an estimate of the amount of funding available and the expected number of awards, and the selection criteria for evaluating statements of interest. A major responsibility of FRA's technical staff will be development of a Source Selection Plan (SSP) to be used for evaluating applications. The SSP will be available to all applicants.

All applicants should keep in mind that no funding will be available for this program unless and until Congress appropriates funding for it. SAFETEA–LU authorized, but did not appropriate, $350 million per fiscal year for each fiscal year 2006 through 2009. As of the publication date of this Part, Congress has not appropriated any funds for fiscal year 2006 or 2007. If Congress appropriates non-competitive funds for a specific project under this Program, FRA will notify the potential recipient of the appropriation. If Congress approves funding for a discretionary grant or grants, FRA will publish a Notice of Funds Availability in the **Federal Register** and eligible applicants will be able to apply for a grant through *http://www.grants.gov.*

Subsection (b) of this section mandates that, when submitting an application, a state must submit a description of the anticipated public and private benefits associated with each proposed rail line relocation or improvement project. The determination of the benefits must be developed in consultation with the owner and user of the rail line being relocated and improved or other private entity involved in the project. Since one of the factors that FRA will consider in selecting projects is the level of commitment of non-Federal and/or private funds available for the project (see proposed section 262.9(f)), applications should also identify the financial contributions or commitments the state has secured from any private entities that are expected to benefit from the proposed project. The language for this subsection is based upon SAFETEA–LU requirements and can be found at 49 U.S.C. 20154(e)(4)(A) and (B).

Subsection (c) of this section allows for a potential applicant to request a meeting with the FRA Associate Administrator for Railroad Development or his designee to discuss a project the potential applicant is considering for financial assistance under this Part. Subsection (c) does not require that such a meeting occur, but it has been FRA's experience that pre-application meetings generally save the potential applicant both time and money, and, therefore, FRA strongly encourages potential applicants to schedule such a meeting.

Section 262.13 Matching Requirements

This section is reprinted entirely from SAFETEA–LU and can be found at 49 U.S.C. § 20154(e). It sets out the requirement that a State (as defined in this Part) or other non-Federal entity shall pay at least ten (10) percent of the shared costs of a project that is funded in part by a grant awarded under this Part. The ten percent may be in cash or in the form of the following in-kind contributions:

- Real property or tangible personal property, whether provided by the State (as defined by this Part) or a person for the State;
- The services of employees of the State or other non-Federal entity, calculated on the basis of costs incurred by the State or other non-Federal entity for the pay and benefits of the employees, but excluding overhead and general administrative costs;
- A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application, if and to the extent that the costs were incurred or in-kind contributions were made to comply with a provision of a statute required to be satisfied in order to carry out the project.

Finally, this section states that FRA will consider the feasibility of seeking financial contributions or commitments from private entities involved with the project in proportion to the anticipated

public and private benefits that accrue to such entities from the project. FRA invites comments and suggestions from commenters on how FRA can best accomplish this requirement. Since project sponsors are most directly involved and familiar with the details of the proposed projects and are required to submit a description of the anticipated public and private benefits associated with each rail line relocation or improvement project as a part of the application process, the requirement to seek financial contributions or commitments from private entities might best be accomplished by the project sponsors in assembling the overall financial package to complete the project. This could then be one of the factors to be evaluated by the FRA in deciding whether to proceed with a project or in selecting one project over another should there be more than one project competing for any available funding.

Section 262.15 Environmental Assessment

This section clearly states to all grantees that, in order for FRA to award funding for any project, the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA) and related laws, regulations and orders must be complied with. NEPA mandates that before any ''major'' Federal action can take place, the Federal entity performing the action must complete an appropriate environmental review. The use of Federal funds in a project triggers the NEPA process. Thus, because FRA will be providing Federal funds to grantees for local rail line relocation and improvement projects, a completed NEPA review will be required before the agency decides to approve any project. A State may be requested to provide environmental information and/or fund the NEPA review, either directly (if the entity administering the grant is a State agency with statewide jurisdiction) or through a third party contract. FRA's NEPA compliance will be governed by FRA's ''Procedures for Considering Environmental Impacts'' (65 FR 28545) and the NEPA regulations of the Council on Environmental Quality (40 CFR part 1500).

This section also notes several of the other environmental and historic preservation statutes that must be considered during the NEPA review. This is not, however, a comprehensive list of all environmental and historic preservation statutes and implementing regulations that must be considered, but instead merely illustrative of the issues that a State may be required to address in the environmental review.

Section 261.17 Combining Grant Awards

This section is reprinted entirely from SAFETEA–LU and can be found at 49 U.S.C. 20154(f). It allows for two or more States, but not political subdivisions of States, pursuant to an agreement entered into by the States, to combine any part of the amounts provided through grants for a project under this Part, provided the project will benefit each State and the agreement is not a violation of a law of any of the States. SAFETEA–LU specifically excludes political subdivisions of States from taking advantage of this section, but does not exclude the District of Columbia.

Section 261.19 Closeout Procedures

The ''grant closeout'' is the process by which the FRA and grantee perform final actions that document completion of work, administrative requirements, and financial requirements of the grant agreement. FRA, the grantee, and any other involved parties, such as an auditor, need to fulfill these requirements promptly in order to avoid unnecessary delays in grant closeout.

FRA will notify the grantee in writing 30 days before the end of the grant period regarding what final reports are due, the dates by which they must be received, and where they must be submitted. The grantee will be required to submit the reports within 90 days after the expiration or termination of the grant. Copies of any required forms and instructions for their completion will be included with the notification. The financial, performance, and other reports required as a condition of the grant will generally include the following:

- Final performance or progress report;
- Financial Status Report (SF–269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271);
- Final Request for Payment;
- Federally-Owned Property Report. A grantee must submit an inventory of all Federally-owned property (as opposed to property acquired with grant funds) for which it is accountable and request disposition instructions from FRA if the property is no longer needed.

Upon receipt of this information, FRA will determine whether any additional funds are due the grantee or whether the grantee needs to refund any funds. FRA will also determine final costs and, if necessary, make upward or downward adjustments to any allowable costs within 90 days after receipt of reports and make prompt payment to the grantee for any unreimbursed allowable costs. If the grantee has received more funds than the total allowable costs, the grantee must immediately refund to FRA any balance of unencumbered cash advanced that is not authorized to be retained for use on other grants.

FRA will notify the grantee in writing that the grant has been closed out. The grant agreement will in most cases be ready to be closed out before receipt of the single audit report that covers the period of the grant performance. Therefore, the grant will be closed administratively without formal audit. The grant may be reopened later to resolve subsequent audit findings.

The closeout of a grant does not affect FRA's right to disallow costs and recover funds on the basis of a later audit or other review and the grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

IV. Regulatory Impact

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FRA has determined preliminarily that this action represents a ''significant regulatory action'' within the meaning of DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Executive Order 12866. This determination is based on a finding that the rule may have an annual effect on the economy of $100 million or more because Congress has authorized the appropriation of $350,000,000 per year for fiscal years 2006 through 2009. However, no funds to implement the program were appropriated for fiscal year 2006 and no funds were requested in the Administration's Fiscal Year 2007 budget request. The NPRM was reviewed by the Office of Management and Budget under E.O. 12866.

This section summarizes the estimated economic impact of the proposed rule. As mandated by section 9002 of SAFETEA–LU, this rulemaking proposes establishment of the basic elements of a funding program for capital grants for local rail line relocation and improvement projects. This regulation would affect only those entities that voluntarily elected to apply for the capital grants under section 9002 and were selected to receive a grant under the program. It would not impose any direct involuntary un-reimbursed costs on non-participants. Prospective applicants will normally have available the information needed to prepare applications for funding so these costs would be minimal.

FRA has undertaken a preliminary evaluation of the economic impact of this proposed regulatory action. However, because the number, nature, and size of projects to be assisted would not be known until funds are appropriated and specific applications are received, this analysis is by necessity an estimate. Since the actual projects have yet to be identified, it is also not possible at this stage to ascertain the appropriate benefit/cost ratios. The only costs imposed on the participants (States and political subdivisions) are the costs associated with completing an application and providing the required minimum ten percent non-Federal funding match.

FRA has also concluded that the local rail line relocation and improvement projects capital grants program could generate both direct and indirect benefits, providing economic, safety and environmental benefits. Of the $350 million authorized to be appropriated annually, fifty percent of all grant funds awarded are reserved for projects of no more than $20 million each, adjusted for inflation. Lacking specifics about individual projects, it is difficult to estimate whether the benefits are anticipated to surpass the combined potential direct costs to the Federal Government (potentially $350 million annually) and to the entities that elect to participate in the program. The statutory criteria for evaluating applications do not require a cost/benefit analysis for each project but instead focus on the capability of the state to fund the project without Federal grant funding, the effects of the relocated or improved rail line on traffic, safety, quality of life, area commerce, and freight and passenger operations on the line. Because of the voluntary nature of participation in the program, this regulatory action is not anticipated to impose any non-reimbursed costs upon non-participants (relocation assistance is an eligible program cost which would mitigate impacts to non-participants). The FRA requests comments, information, and data from the public and potential users concerning the economic impact of implementing this rule and the local rail line relocation and improvement projects capital grants program.

This rule is not anticipated to adversely affect, in a material way, any sector of the economy. This rulemaking sets forth eligibility and selection criteria for project proposals in the local rail line relocation and improvement projects capital grants program, which will result in only minimal cost to program applicants. In addition, this proposed rule would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 601–612) requires a review of rules to assess their impact on small entities. FRA is not able to certify that this proposed rule would not have a significant impact on a substantial number of small entities and seeks comments from the public. For government entities, the definition of small entities is based on population served. As defined by the Small Business Administration (SBA), this term means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand. States are not included in the definition of small entity set forth in 5 U.S.C. 601, but political subdivisions of states may well fall into this category. Given FRA's lack of knowledge about specific projects, applicants or applications that might be filed if Congress appropriated funds for the program, it is not possible to determine the number of small government entities that may be involved in applications under the local rail line relocation and improvement projects capital grants program or the impacts to those entities from the program.

FRA has not conducted a regulatory flexibility assessment of this proposed rule's impact on small entities. FRA views it as unlikely that a small entity such as a local government would be disproportionately impacted by the proposed rule. The capital grants for rail line relocation program could certainly provide benefits to small entities, such as local governments (political subdivisions of a State). The funds being made available through this program could provide economic, safety, and environmental benefits. Moreover, participation in the local rail line relocation and improvement projects capital grants program is voluntary. The statute requires a State or other non-Federal entity to provide at least ten percent of the shared cost of a project funded under this program. To the extent a small entity was providing that non-Federal share, the impact would be calculated by the small entity in deciding whether to file the application under the program.

At the same time, small governmental entities, limited by Section 9002 to political subdivisions of a State, would likely benefit from the economic opportunities resulting from infrastructure improvements to existing rail lines that connect small governmental entities to the national railroad system. As discussed in greater detail in the background section of this NPRM, rail infrastructure that was once critical to many communities can now present problems as well as benefits. To the extent the program can be used by a local government to address an existing problem, it could provide a substantial benefit to the community. The cost to governmental entities of applying for the program would be minimal since applicants will normally have available most of the information needed to prepare applications for a grant under Section 9002.

Written public comments that will clarify the number of affected small entities and what the impacts will be for the affected small entities are requested. FRA especially encourages political subdivisions that may be considered to be small entities to participate in the comment process and submit written comments to the docket.

Small entities, other than political subdivisions of states, are not eligible to apply for relocation or improvement funds, though on a voluntary basis a non-governmental small entity could agree to supply the non-Federal match. The statute also requires the Secretary to consider the feasibility of seeking financial contributions or commitments from private entities involved with a project in proportion to the expected benefits that accrue to such private entities. Project beneficiaries could include small entities; however, without details about specific projects, it is not possible to realistically estimate whether impacts to non-governmental small entities in these circumstances is likely. FRA invites public comment on this component of the analysis, as well.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) addresses the collection of information by the Federal government from individuals, small businesses and State and local governments and seeks to minimize the burdens such information collection requirements might impose. A collection of information includes providing answers to identical questions posed to, or identical reporting or record-keeping requirements imposed on ten or more persons, other than agencies, instrumentalities, or employees of the United States. This Notice of Proposed Rulemaking contains information requirements that would apply to States or political subdivisions of States that file applications for Federal funding for local rail line relocation and improvement projects.

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section—49 CFR	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
262.11—Application Process	50 States	7 applications	580 hours	4,060	$0 (Cost incl. in RIA).
—Requests for Meeting with FRA	50 States	5 requests	30 minutes	3	$120.
—Meeting Discussions	50 States	5 meetings	2 hours	10	$700.
262.15—Environmental Assessment	50 States	7 documents	200 hours	1,400	$0 (Cost incl. in RIA).
262.19—Close-Out Procedures	50 States	7 document sets	6 hours	42	$1,680.
—Inspection of All Construction Report	50 States	7 reports	80 hours	560	$39,200.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for FRA to properly perform its functions, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collecting information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 21, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan at the following address: *robert.brogan@fra.dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA) and related directives (*see* FRA Policy Statement on Procedures for Considering Environmental Impacts, 64 FR 28545). FRA has concluded that the issuance of this NPRM, which establishes regulations governing the awarding of grants for local rail line relocation and improvement projects, does not have a potential impact on the environment and does not constitute a major Federal action requiring an environmental assessment or environmental impact statement. Because all projects undertaken with grants administered under this section will involve Federal funding, appropriate NEPA analyses, including studies of any potential environmental justice issues, will be necessary prior to the award of any grant.

E. Federalism Implications

FRA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 42355. This NPRM will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This NPRM will not have federalism implications that impose any direct compliance costs on State and local governments. There will be costs associated with the submission of applications, but they are discretionary and will only be incurred should a State or local government wish to apply for funding. Otherwise, this NPRM directs how Federal funds will go to the States, and thus, there are no federalism implications.

F. Unfunded Mandate Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector.

There are no ''regulatory actions'' contemplated within the meaning of the Unfunded Mandate Reform Act of 1995. Furthermore, this grant program is not an ''unfunded mandate,'' in that there will be no money until Congress specifically appropriates it. The only requirements in this NPRM for funding other than grant funds provided to State and local governments is the ten percent matching requirement, which may

include costs associated with NEPA compliance. That requirement, however, is specifically set forth in § 9002 of SAFETEA–LU and FRA need not assess its effect. This NPRM, therefore, will not result in the expenditure by State, local, or tribal governments, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' See 66 FR 28355 (May 22, 2001). Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a ''significant energy action'' within the meaning of the Executive Order.

H. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT's 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 published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

V. The Proposed Rule

For the reasons discussed in the preamble, the Federal Railroad Administration proposes to add part 262 to Title 49, Code of Federal Regulations, as follows:

PART 262—PROGRAM FOR CAPITAL GRANTS FOR RAIL LINE RELOCATION AND IMPROVEMENT PROJECTS

Table of Contents for Proposed Part 262

Sec.
262.1 Purpose.
262.3 Definitions.
262.5 Allocation requirements.
262.7 Eligibility.
262.9 Criteria for selection of rail lines.
262.11 Application process.
262.13 Matching requirements.
262.15 Environmental assessment.
262.17 Combining grant awards.
262.19 Close-out procedures.

Authority: 49 U.S.C. 20154 and 49 CFR 1.49.

§ 262.1 Purpose.

The purpose of this part is to carry out the statutory mandate set forth in § 9002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (Pub. L. 109–59) that the Secretary of Transportation promulgate regulations implementing new § 20154 of Title 49 of the United States Code, which establishes a capital grants program to provide financial assistance for local rail line relocation and improvement projects.

§ 262.3 Definitions.

Act means the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (Pub. L. 109–59).

Administrator means the Federal Railroad Administrator, or his or her delegate.

Allowable costs means those project costs for which Federal funding may be expended under this part. Only construction and construction-related costs will be allowable.

Construction means supervising, inspecting, demolition, actually building, and incurring all costs incidental to building a project described in § 262.9 of this part, including bond costs and other costs related to the issuance of bonds or other debt financing instruments and costs incurred by the Grantee in performing project related audits, and includes:

(1) Locating, surveying, and mapping;

(2) Track and related structure installation, restoration, and rehabilitation;

(3) Acquisition of rights-of-way;

(4) Relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(5) Elimination of obstacles and relocation of utilities; and

(6) Any other activities as defined by FRA, including architectural and engineering costs, and costs associated with compliance with the National Environmental Policy Act, National Historic Preservation Act, and related statutes, regulations, and orders.

FRA means the Federal Railroad Administration.

Improvement means repair or enhancement to existing rail infrastructure, or construction of new rail infrastructure, that results in improvements to the efficiency of the rail system and the safety of those affected by the system.

Non-Federal share means the portion of the allowable cost of the local rail line relocation or improvement project that is being paid for through cash or in-kind contributions by a state or other non-Federal entity.

Private Entity means any domestic or foreign nongovernmental for-profit or not-for-profit organization.

Project means the local rail line relocation or improvement for which a grant is requested under this section.

Quality of Life means the level of social, environmental and economic satisfaction and well being a community experiences, and includes factors such first responders' emergency response time, the environment, grade crossing safety, and noise levels.

Real Property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Relocation means moving a rail line vertically or laterally to a new location. Vertical relocation refers to raising above the current ground level or sinking below the current ground level a rail line. Lateral relocation refers to moving a rail line horizontally to a new location.

Secretary means the Secretary of Transportation.

State except as used in § 262.17, means any of the fifty United States, a political subdivision of a State, and the District of Columbia. In § 262.17, *State* means any of the fifty United States and the District of Columbia.

Tangible personal property means property, other than real property, that has a physical existence and an intrinsic value, including machinery, equipment and vehicles.

§ 262.5 Allocation requirements.

At least fifty percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each. Designated, high-priority projects will be excluded from this allocation formula. FRA will adjust the $20,000,000 amount to reflect real inflation for fiscal years beginning

after fiscal year 2006 based on the materials and supplies component from the all-inclusive index of the AAR Railroad Cost Indexes.

§ 262.7 Eligibility.

(a) A state is eligible for a grant from FRA under this section for any construction project for the improvement of the route or structure of a rail line that either:

(1) Is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development; or

(2) Involves a lateral or vertical relocation of any portion of the rail line.

(b) Only costs associated with construction will be considered allowable costs.

§ 262.9 Criteria for Selection of Rail Lines.

FRA will consider the following factors in determining whether to award a grant to an eligible State under this part:

(a) The capability of the State to fund the rail line relocation project without Federal grant funding;

(b) The requirement and limitation relating to allocation of grant funds provided in § 262.7;

(c) Equitable treatment of various regions of the United States;

(d) The effects of the rail line, relocated or improved as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce;

(e) The effects of the rail line, relocated as proposed, on the freight rail and passenger rail operations on the line;

(f) Any other factors FRA determines to be relevant to assessing the effectiveness and or efficiency of the grant application in achieving the goals of the national program, including the level of commitment of non-Federal and/or private funds to a project.

§ 262.11 Application process.

(a) All grant applications for opportunities funded under this section must be submitted to FRA through *www.grants.gov.* Opportunities to apply will be posted by FRA on *www.grants.gov* only after funds have been appropriated for Capital Grants for Rail Line Relocation Projects. The electronic posting will contain all of the information needed to apply for the grant, including required supporting documentation.

(b) In addition to the information required with an individual application, a State must submit a description of the anticipated public and private benefits associated with each rail line relocation or improvement project described in § 262.7(a)(1) and (2). The determination of such benefits shall be developed in consultation with the owner and user of the rail line being relocated or improved or other private entity involved in the project. The State should also identify any financial contributions or commitments it has secured from private entities that are expected to benefit from the proposed project.

(c) Potential applicants may request a meeting with the FRA Associate Administrator for Railroad Development or his designee to discuss the nature of the project being considered.

§ 262.13 Matching requirements.

(a) A State or other non-Federal entity shall pay at least ten percent of the construction costs of a project that is funded in part by the grant awarded under this section.

(b) The non-Federal share required by sub-part (a) of this section may be paid in cash or in-kind. In-kind contributions that are permitted to be counted under this section are as follows:

(1) A contribution of real property or tangible personal property (whether provided by the State or a person for the State) needed for the project;

(2) A contribution of the services of employees of the State or other non-Federal entity or allowable costs, calculated on the basis of costs incurred by the State or other non-Federal entity for the pay and benefits of the employees, but excluding overhead and general administrative costs;

(3) A payment of any allowable costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application; if and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.

(c) In determining whether to approve an application, FRA will consider the feasibility of seeking financial contributions or commitments from private entities involved with the project in proportion to the expected benefits determined under § 262.11(b) of this Part that accrue to such entities from the project.

§ 262.15 Environmental assessment.

The provision of grant funds by FRA under this Part is subject to a variety of environmental and historic preservation statutes and implementing regulations including, but not limited to, the National Environmental Policy Act (NEPA) (42 U.S.C. 4332 *et seq.*), Section 4(f) of the Department of Transportation Act (49 U.S.C. 303(c)), the National Historic Preservation Act (16 U.S.C. 470(f)), and the Endangered Species Act (16 U.S.C. 1531). Appropriate environmental and historic documentation must be completed and approved by the Administrator prior to a decision by FRA to approve a project for construction. FRA's ''Procedures for Considering Environmental Impacts'' (65 FR 28545 (May 26, 1999)) or any replacement environmental review procedures that FRA may later issue and the NEPA regulation of the Council on Environmental Quality (40 CFR Part 1500) will govern FRA's compliance with applicable environmental and historic preservation review requirements. Applicants will be expected to fund costs associated with FRA NEPA compliance. Those costs will be considered allowable costs should FRA and the state enter into a grant agreement.

§ 262.17 Combining grant awards.

Two or more States, but not political subdivisions of States, may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this section provided:

(a) The project will benefit each of the States entering into the agreement; and

(b) The agreement is not a violation of the law of any such State.

§ 262.19 Close-out procedures.

(a) Thirty days before the end of the grant period, FRA will notify the state that the period of performance for the grant is about to expire and that close-out procedures will be initiated.

(b) Within 90 days after the expiration or termination of the grant, the state must submit to FRA any or all of the following information, depending on the terms of the grant:

(1) Final performance or progress report;

(2) Financial Status Report (SF–269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271);

(3) Final Request for Payment (SF–270);

(4) Patent disclosure (if applicable);

(5) Federally-owned Property Report (if applicable)

(c) If the project is completed, within 90 days after the expiration or termination of the grant, the State shall complete a full inspection of all construction work completed under the grant and submit a report to FRA. If the project is not completed, the State shall

submit a report detailing why the project was not completed.

(d) FRA will review all closeout information submitted, and adjust payments as necessary. If FRA determines that the State is owed additional funds, FRA will promptly make payment to the State for any unreimbursed allowable costs. If the State has received more funds than the total allowable costs, the State must immediately refund to the FRA any balance of unencumbered cash advanced that is not authorized to be retained for use on other grants.

(e) FRA will notify the State in writing that the grant has been closed out.

Issued in Washington, DC, on December 19, 2006.

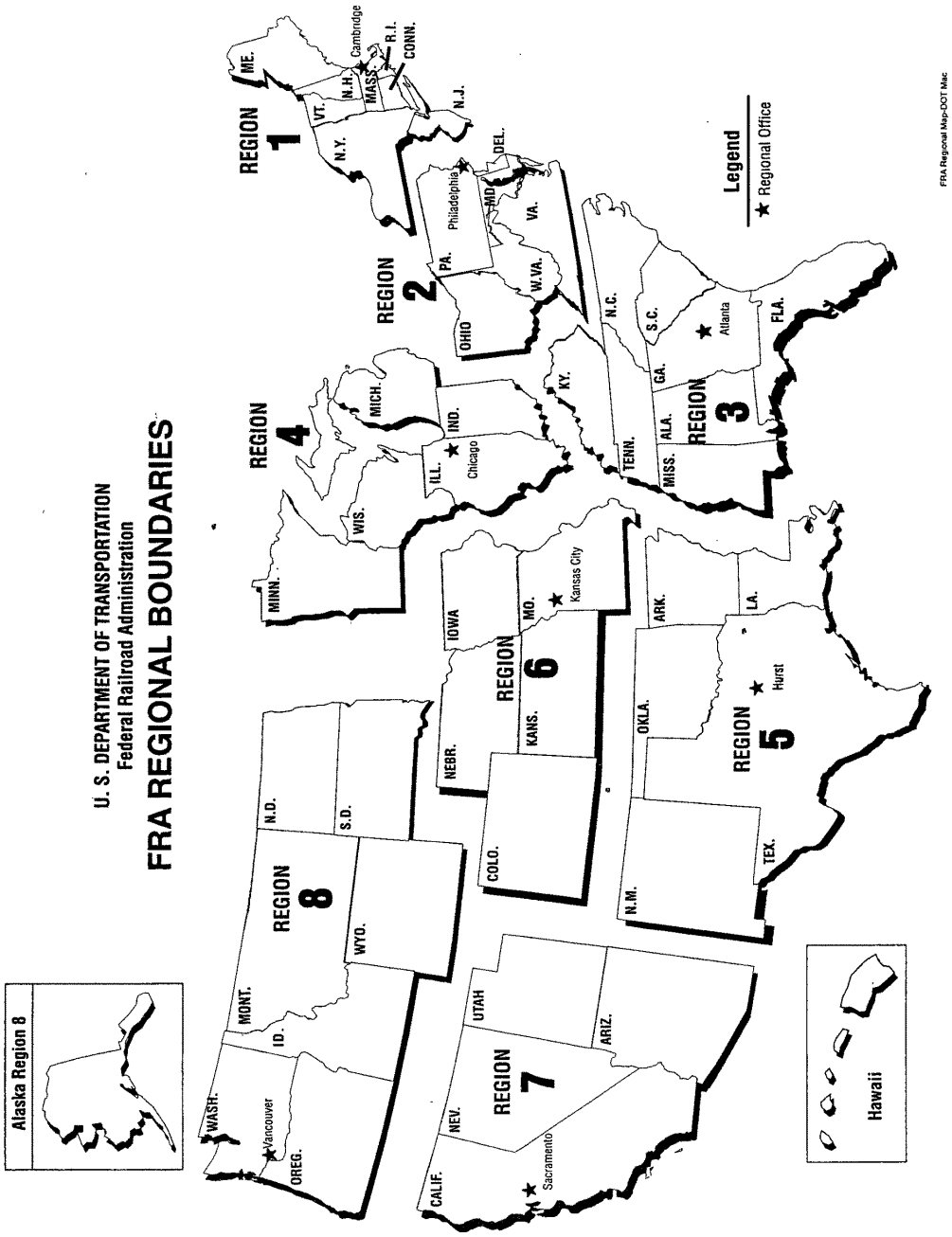
Joseph H. Boardman,

Federal Railroad Administrator.

BILLING CODE 4910–06–P

NOTE: THIS APPENDIX WILL NOT APPEAR IN THE CODE OF FEDERAL REGULATIONS

Appendix A to Part 262 -- FRA Regional Boundaries



[FR Doc. 07–45 Filed 1–16–07; 8:45 am]

BILLING CODE 4910–06–C

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA–2005–23082]

RIN 2132–AA90

Buy America Requirements; End Product Analysis and Waiver Procedures; Public Meeting and Extension of Comment Period

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice announcing public meeting and extension of comment period.

SUMMARY: The Federal Transit Administration (FTA) is holding a public meeting on the Buy America second notice of proposed rulemaking (SNPRM). The purpose of this meeting is to allow the public to ask questions regarding the notice published on November 30, 2006 (71 FR 69411). Furthermore, due to the complexity of the issues presented in the SNPRM, FTA is extending the comment period to February 28, 2007, which will allow affected parties time to carefully consider the changes made in the SNPRM and the information presented at the public meeting.

DATES: Comments should be submitted before February 28, 2007. Late-filed comments will be considered to the extent practicable.

Public Meeting Date: FTA will hold a public meeting on February 13th and 14th of 2007 from 9 a.m.–4:30 p.m. at the Department of Transportation (DOT) headquarters building (400 7th Street, SW., Washington, DC 20590, Room 2201). Anyone interested in attending the meeting should arrive at the southwest entrance of the DOT building to go through security screening. Please allow a minimum of 15 minutes to clear security. A summary of the meeting will be posted in the docket. FTA will not accept public comment during the public meeting. Instead, attendees must submit their comments to the docket in order to have their comments considered by FTA.

ADDRESSES: You may submit comments identified by the docket number [FTA–2005—23082] by any of the following methods:

1. *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
2. *Fax:* 202–493–2251.
3. *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–401, Washington, DC 20590–0001.
4. *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name (Federal Transit Administration and Docket number (FTA–2005—23082) for this Notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to *http://dms.dot.gov* including any personal information provided and will be available to Internet users. 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. Docket:* For access to the docket to read background documents and comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Attorney-Advisor, Office of the Chief Counsel, Federal Transit Administration, 400 Seventh Street SW., Room 9316, Washington, DC 20590, (202) 366–4011 or *Richard.Wong@dot.gov.*

SUPPLEMENTARY INFORMATION: On November 28, 2005, FTA published an NPRM in the **Federal Register** (70 FR 71246) discussing a number of proposals as mandated by SAFETEA–LU and to provide further clarification of existing FTA decisions on Buy America. Due to the complexity of many of the Buy America issues addressed in the NPRM and the divergence of opinion on important areas, FTA issued a final rule that addressed fewer issues than proposed in the NPRM. (71 FR 14112, March 21, 2006.) These more routine topics covered in the final rule included: (1) Administrative review; (2) A definition of ''negotiated procurement;'' (3) A definition of ''contractor;'' (4) Repeal of the general waiver for Chrysler vehicles; (5) Certification under negotiated procurements; (6) Pre-award and post-award review of rolling stock purchases; and (7) Miscellaneous corrections and clarifications to the Buy America regulations.

FTA issued a second notice of proposed rulemaking (SNPRM) on November 30, 2006, to address the remaining issues identified in the NPRM, but not covered in the final rule, including: (1) Justification for public interest waiver; (2) Microprocessor and post-award waivers; (3) Definition of ''final assembly;'' (4) The definition of ''end product,'' ''system end products,'' and a representative list of end products; and (5) Proposed changes to communication equipment and the list of rolling stock items in Part 661.

During the public meeting on February 13th and 14th at DOT headquarters, FTA staff will summarize its proposals in the SNPRM and staff will be available to answer questions regarding those proposals. This is an opportunity for affected parties to receive clarification regarding FTA's proposals. The public meeting is not, however, an opportunity to submit comments to FTA regarding the proposals contained in the SNPRM. Rather, interested parties should submit their comments to the docket for this rulemaking as described in the **ADDRESSES** section of this notice.

In addition, because of the complexity of the issues involved in the SNPRM, FTA is extending the comment period for the SNPRM until February 28, 2007. This additional time should be sufficient to allow those who attend the public meeting to submit comments to the docket for this rulemaking.

Issued this 10th day of January, 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–473 Filed 1–16–07; 8:45 am]

BILLING CODE 4910–57–P

Notices

Federal Register
Vol. 72, No. 10
Wednesday, January 17, 2007

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 10, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: 7 CFR 1942–G, Rural Business Enterprise Grants and Television Demonstration Grants.

OMB Control Number: 0570–0022.

Summary of Collection: Section 310B of the Consolidated Farm and Rural Development Act authorizes the Rural Business Enterprise Grants to facilitate the development of small and emerging private businesses, industry and related employment for improving the economy in rural communities. Television Demonstration Grants (TDG) is available to statewide, private nonprofit, public television systems to provide information on agriculture and other issues of importance to farmers and other rural residents. 7 CFR Part 1942, Subpart G, is a Rural Business-Cooperative Service (RBS) regulation which covers the administration of this program including eligibility requirements and evaluation criteria to make funding selection decisions.

Need and Use of the Information: RBS will use this information to determine (1) Eligibility; (2) the specific purposes for which grant funds will be utilized; (3) time frames or dates by which actions surrounding the use of funds will be accomplished; (4) who will be carrying out the purposes for which the grant is made; (5) project priority; (6) applicants experience in administering a rural economic development program; (7) employment improvement; and (8) mitigation of economic distress of a community through the creation or salvation of jobs or emergency situations. If the information were not collected, RBS would not be able to determine the eligibility of applicant(s) for the authorized purposes. Collecting this information infrequently would have an adverse effect on the Agency's ability to administer the grant program.

Description of Respondents: Business or other for profit; not-for-profit institutions.

Number of Respondents: 720.

Frequency of Responses: Record-keeping; Reporting: Monthly, on occasion, quarterly.

Total Burden Hours: 19,479.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–484 Filed 1–16–07; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), terminated the certification of a petition for trade adjustment assistance (TAA) on December 12, 2006, that was filed by a group of Florida avocado producers. Florida avocado producers are no longer eligible for TAA benefits in fiscal year 2007.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that U.S. producer prices for fresh Florida avocados were 39 percent higher than the base five-year average price. Therefore, producer prices were no longer a contributing factor for program eligibility—a requirement for TAA program eligibility and therefore insufficient grounds to re-certify this petition.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: January 5, 2007.

W. Kirk Miller,

Acting, Administrator Foreign Agricultural Service.

[FR Doc. 07–148 Filed 1–11–07; 4:17 pm]

BILLING CODE 3410–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

Extension of Call for Nominations for Appointment, Santa Rosa and San Jacinto Mountains National Monument Advisory Committee

AGENCIES: Bureau of Land Management, U.S. Department of the Interior; and Forest Service, U.S. Department of Agriculture.

ACTION: Notice of extension to the call for nominations for appointment or re-appointment of representatives and alternates for five positions on the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee.

SUMMARY: The Bureau of Land Management (BLM) and Forest Service announce an extension to the call for nominations for appointment or reappointment for the following five positions on the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee: representative and alternate for the City of Palm Springs; representative and alternate for a local developer or builder organization; representative and alternate for the City of La Quinta; representative and alternate for a local conservation organization; and representative and alternate for the California Department of Fish and Game or the California Department of Parks and Recreation.

DATES: Nomination applications must be submitted to the address listed below no later than 30 days after the date of publication of this notice in the **Federal Register**.

ADDRESSES: Santa Rosa and San Jacinto Mountains National Monument, c/o Bureau of Land Management, Palm Springs-South Coast Field Office, Attn: Monument Manager, Advisory Committee Nomination Application, P.O. Box 581260, North Palm Springs, California 92258–1260.

FOR FURTHER INFORMATION CONTACT: Jim Foote, Monument Manager, Santa Rosa and San Jacinto Mountains National Monument, telephone (760) 251–4800; facsimile message (760) 251–4899; e-mail *jfoote@ca.blm.gov*.

SUPPLEMENTARY INFORMATION: The BLM and Forest Service jointly published notice in the **Federal Register** on April 24, 2006 (71 FR 21039), calling for nominations for appointment or reappointment of representatives and alternates for the five positions listed above. The closing date for submission of nominations was identified as 90 days from the date of publication in the **Federal Register**. Information regarding qualifications, terms of appointment, and availability of nomination application packages was included in the notice.

Dated: November 2, 2006.

Gail Acheson,

Field Manager, Bureau of Land Management, Palm Springs-South Coast Field Office.

Dated: November 6, 2006.

Laurie Rosenthal,

District Ranger, USDA Forest Service, San Jacinto Ranger District, San Bernardino National Forest.

Dated: November 1, 2006.

Jim Foote,

Monument Manager, Santa Rosa and San Jacinto Mountains National Monument.

[FR Doc. 07–132 Filed 1–16–07; 8:45 am]

BILLING CODE 4310–40–P; 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include: ''Conservation Cover (Code 327)'', ''Contour Farming (Code 330)'', ''Contour Buffer Strips (Code 332)'', ''Critical Area Treatment (Code 342)'', ''Field Border (Code 386)'', ''Irrigation System, Tailwater Recovery (Code 447)'', ''Sinkhole and Sinkhole Area Treatment (Code 527)'', and ''Prescribed Grazing (Code 528).'' NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their respective electronic Field Office Technical Guides (eFOTG). These practices may be used in conservation systems that treat highly erodible land or on land determined to be a wetland.

DATES: Comments will be received for a 30-day period commencing with this date of publication. Final versions of these new or revised conservation practice standards will be adopted after the close of the 30-day period, after consideration of all comments.

ADDRESSES: Comments should be submitted by one of the following methods:

1. By replying directly to this Notice through the automatic comment feature of the **Federal Register**;

2. *In writing to:* National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890; or

3. *Electronically by e-mail to: daniel.meyer@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of these standards are attached to this Notice or can be downloaded or printed from the following Web site: *ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/federal-register/.* Single copies of these standards are also available from NRCS in Washington, DC. Submit individual inquiries in writing to Daniel Meyer, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890, or electronically to *daniel.meyer@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 30 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments and a final determination of changes will be made.

Signed in Washington, DC, on December 22, 2006.

Arlen L. Lancaster,

Chief.

[FR Doc. E7–469 Filed 1–16–07; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Guarantee Fee Rates for Guaranteed Loans for Fiscal Year 2007; Maximum Portion of Guarantee Authority Available for Fiscal Year 2007

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: As set forth in 7 CFR 4279.107(b) and 4280.126(c), Rural Development (the Agency) has the authority to charge an annual renewal fee for loans made under the Business and Industry (B&I) Guaranteed Loan Program and the Renewable Energy and Energy Efficiency Improvements (9006) Guaranteed Loan Program. Pursuant to that authority, the Agency is establishing the renewal fee rate at one-fourth of 1 percent for the B&I Guaranteed Loan Program and one-eighth of 1 percent for the 9006 Guaranteed Loan Program. These rates will apply to all loans obligated in fiscal year (FY) 2007 that are made under the cited programs. As established in 7 CFR 4279.107 and 4280.126, the amount of the fee on each guaranteed loan will be determined by multiplying the fee rate by the outstanding principal loan balance as of December 31, multiplied by the percent of guarantee.

As set forth in 7 CFR 4280.126(a), each fiscal year the Agency shall establish the initial guarantee fee rate for loans made under the 9006 Guaranteed Loan Program. Pursuant to that authority, the Agency is establishing the initial guarantee fee rate at 1 percent for loans made in FY 2007.

As set forth in 7 CFR 4279.107(a) and 4279.119(b)(4), each fiscal year the Agency shall establish a limit on the maximum portion of B&I guarantee authority available for that fiscal year that may be used to guarantee loans with a B&I guarantee fee of 1 percent or guaranteed loans with a guarantee percentage exceeding 80 percent.

Allowing the guarantee fee to be reduced to 1 percent or exceeding the 80 percent guarantee on certain B&I guaranteed loans that meet the conditions set forth in 7 CFR 4279.107 and 4279.119 will increase the Agency's ability to focus guarantee assistance on projects which the Agency has found particularly meritorious. For 1 percent fees, the borrower's business supports value-added agriculture and results in farmers benefiting financially, or such projects are high impact as defined in 7 CFR 4279.155(b)(5) and located in rural communities that remain persistently poor, which experience long-term population decline and job deterioration, are experiencing trauma as a result of natural disaster, or are experiencing fundamental structural changes in its economic base. For guaranteed loans exceeding 80 percent, such projects must be a high-priority project in accordance with 7 CFR 4279.155.

Not more than 12 percent of the Agency's quarterly apportioned B&I guarantee authority will be reserved for loan requests with a guarantee fee of 1 percent, and not more than 15 percent of the Agency's quarterly apportioned guarantee authority will be reserved for guaranteed loan requests with a guaranteed percentage exceeding 80 percent. Once the respective quarterly limits are reached, all additional loans for that quarter will be at the standard fee and guarantee limits in 7 CFR part 4279. As an exception to this paragraph and for the purposes of this notice, loans developed by the North American Development Bank (NADBank) Community Adjustment and Investment Program (CAIP) will not count against the 15 percent limit. Up to 50 percent of CAIP loans may have a guaranteed percentage exceeding 80 percent. The funding authority for CAIP loans is not derived carryover or recovered funding authority of the B&I Guaranteed Loan Program.

Written requests by the Rural Development State Office for approval of a guaranteed loan with a 1 percent guarantee fee or a guaranteed loan exceeding 80 percent must be forwarded to the National Office, Attn: Director, Business and Industry Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Office confirming approval or disapproval of the request.

EFFECTIVE DATE: January 17, 2007.

FOR FURTHER INFORMATION CONTACT: Fred Kieferle, USDA, Rural Development, Business Programs, Business and Industry Division, Stop 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224, telephone (202) 720–7818.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 as amended by Executive Order 13258.

Dated: January 5, 2007.

Jackie J. Gleason,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E7–504 Filed 1–16–07; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket No.: 061213333–6333–01]

Privacy Act of 1974: System of Records

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice; COMMERCE/CENSUS–10, ''American Community Survey.''

SUMMARY: The Department of Commerce (Commerce) publishes this notice to announce the effective date of a Privacy Act System of Records notice entitled COMMERCE/CENSUS–10, ''American Community Survey.''

DATES: The system of records becomes effective on January 17, 2007.

ADDRESSES: For a copy of the system of records please mail requests to Gerald W. Gates, Chief Privacy Officer, U.S. Census Bureau, Washington, DC 20233, 301–763–2515.

FOR FURTHER INFORMATION CONTACT: Gerald W. Gates, Chief Privacy Officer, U.S. Census Bureau, Washington, DC 20233, 301–763–2515.

SUPPLEMENTARY INFORMATION: On June 29, 2006, the Commerce Department published and requested comments on a proposed new Privacy Act System of Records notice entitled COMMERCE/CENSUS–10, ''American Community Survey.'' No comments were received in response to the request for comments. By this notice, the Department is adopting the proposed system as final without changes effective January 17, 2007.

Dated: January 10, 2007.

Brenda Dolan,

Department of Commerce Freedom of Information and Privacy Act Officer.

[FR Doc. E7–492 Filed 1–16–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–122–822)

Certain Corrosion–Resistant Carbon Steel Flat Products from Canada: Notice of Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: January 17, 2007.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Myrna Lobo, AD/CVD Operations, Office 6, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3782 or (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2006, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on Corrosion–Resistant Carbon Steel Flat Products from Canada. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 43441 (August 1, 2006). On August 30, 2006, Stelco Inc. (Stelco) timely requested that the Department conduct an administrative review of Stelco. On August 31, 2006, U.S. Steel (petitioner), timely requested that the Department conduct an administrative review of Dofasco Inc., Sorevco Inc., and Do Sol Galva., Partnership (hereinafter referred to as Dofasco), and Stelco. Shortly thereafter, the Department published a notice of the initiation of the antidumping duty administrative review of Corrosion–Resistant Carbon Steel Flat Products from Canada for the period August 1, 2005 through July 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006). On December 28, 2006, petitioner withdrew its request for this administrative review with respect to respondents Dofasco and Stelco; on January 3, 2006, Stelco withdrew its request for an administrative review. Dofasco did not request an administrative review for this period.

Rescission of Review

The Department's regulations at section 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Petitioner submitted its request for withdrawal for Dofasco and Stelco in a timely manner. In addition, although Stelco withdrew its request after the 90-day deadline, the Department finds it reasonable to extend the withdrawal deadline for Stelco because the Department has not yet devoted any significant time and resources to this review. Furthermore, we find that Stelco's withdrawal does not constitute an abuse of our procedures. Therefore, the Department is rescinding the administrative review of the antidumping duty order on Corrosion–Resistant Carbon Steel Flat Products from Canada for the period August 1, 2005 through July 31, 2006. The Department intends to issue assessment instructions to U.S. Customs and Border Protection 41 days after the date of publication of this rescission of administrative review. *See* section 356.8(a) of the Department's regulations.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 9, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–530 Filed 1–16–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–475–703)

Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy

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

EFFECTIVE DATE: January 17, 2007.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Italy, covering the period August 1, 2004, through July 31, 2005. The review covers one producer/exporter of the subject merchandise, Solvay Solexis, Inc. and Solvay Solexis S.p.A. (collectively, Solvay). Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the *Final Results of Review* section.

FOR FURTHER INFORMATION CONTACT: Salim Bhabhrawala, at (202) 482–1784; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2005, the Department published the notice of initiation of this antidumping duty administrative review, covering the period August 1, 2004, through July 31, 2005 (the period of review, or POR). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631.

On September 11, 2006, the Department published the preliminary results of its administrative review of the antidumping duty order on Granular PTFE Resin from Italy. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy*, 71 FR 53400 (*Preliminary Results*). We invited parties to comment on the *Preliminary Results*. On October 11, 2006, we received a case brief from Solvay. On October 17, 2006, we received a rebuttal brief from the petitioner.[1] Additionally, on September 15, 2006, the Department issued a section E supplemental questionnaire to Solvay. Solvay submitted its response to this questionnaire on October 6, 2006. On October 31, 2006, and November 6, 2006, the Department issued letters to all interested parties stating that it would accept comments and rebuttals, respectively, to remark upon issues strictly related to Solvay's October 6, 2006, response to the section E supplemental questionnaire. No parties submitted comments on Solvay's section E supplemental response.

Scope of the Review

The product covered by this order is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See Granular Polytetrafluoroethylene Resin From Italy; Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in

[1] The petitioner is E.I. DuPont de Nemours & Company (DuPont).

water and fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTSUS). We are providing this HTSUS number for convenience and Customs and Border Protection (CBP) purposes only. The written description of the scope remains dispositive.

Analysis of Comments Received

All issues addressed in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (*Decision Memorandum*) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated January 9, 2007, which is hereby adopted by this notice. Attached to this notice, as an appendix, is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this memorandum, which is on file in the Central Records Unit (CRU), Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at ia.ita.doc.gov\frn. The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we made the following adjustments to the calculation methodology in determining the final dumping margins in the proceeding:

• We revised Solvay's U.S. warehousing expenses. *See* Comment 2 of the *Decision Memorandum*.

• We used the section E data reported by Solvay to the Department on October 6, 2006.

These adjustments are discussed in the *Decision Memorandum* and in the *Memorandum to Julie Santoboni from Salim Bhabhrawala Re: 2004–2005 Administrative Review of the Antidumping Duty Order on Granular Polytetrafluoroethylene Resin from Italy Final Results Sales Calculation Memorandum - Solvay Solexis, Inc. and Solvay Solexis S.p.A. (Calculation Memorandum)*.

Final Results of Review

As a result of our review, we determine that the following weighted–average margin exists for the period of August 1, 2004, through July 31, 2005:

Exporter/Manufacturer	Weighted–Average Margin Percentage
Solvay Solexis, Inc.	39.13

Assessment Rates

The Department shall determine, and the CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer–specific assessment rate is above *de minimis* we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise. The Department intends to issue appropriate instructions to CBP 15 days after the publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)

of the Tariff Act of 1930, as amended (the Act): (1) for the exporter/manufacturer covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company–specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 46.46 percent, the ''All Others'' rate established in the less–than-fair–value investigation. *See Final Determination of Sales at Less Than Fair Value: Granular Polytetrafluoroethylene Resin From Italy*, 53 FR 26096 (July 11, 1988). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: January 9, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX

Comment 1: Calculation of Solvay's General and Administrative (G&A) Expense Ratio

Comment 2: Clerical Error Allegation

[FR Doc. E7–551 Filed 1–16–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–549–821

Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On September 11, 2006, the Department of Commerce published the preliminary results of the 2004/2005 administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made certain changes for the final results. The final weighted–average dumping margins for the respondents are listed below in the ''Final Results of the Review'' section of this notice.

EFFECTIVE DATE: January 17, 2007.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer at (202) 482–0410 or Richard Rimlinger at (202) 482–4477, 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 September 11, 2006, the Department of Commerce (the Department) published *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405 (September 11, 2006) (*Preliminary Results*) in the **Federal Register**. The period of review is January 26, 2004, through July 31, 2005.

We invited parties to comment on the *Preliminary Results*. On October 11, 2006, we received case briefs from the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation (collectively, the petitioners) and respondents CP Packaging Co., Ltd. (CP), King Pac Industrial Co., Ltd., Dpac Industrial Co., Ltd., Zippac Co., Ltd., and King Bag Co., Ltd. (collectively, King Pac), Sahachit Watana Plastic Ind. Co., Ltd. (Sahachit), and Universal Polybag Co., Ltd., Alpine Plastics, Inc., Advance Polybag Inc., and API Enterprises, Inc. (collectively, UPC/API). On October 19, 2006, the petitioners, CP, King Pac, and UPC/API filed rebuttal briefs. At the request of certain parties, we held a hearing on October 25, 2006.

We have conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of Order

The merchandise subject to this antidumping duty order is polyethylene retail carrier bags (PRCBs) which may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the *Harmonized Tariff Schedule of the United States* (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the January 9, 2007, Issues and Decision Memorandum for the Antidumping Duty Administrative Review of Polyethylene Retail Carrier Bags from Thailand for the period of review January 26, 2004, through July 31, 2005 (Decision Memorandum), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit, Room B–099 of the main Department building (CRU). In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since The Preliminary Results

With respect to CP, in the *Preliminary Results*, we used, as adverse facts available for CP's inland–freight expense incurred on its U.S. sales, the highest expense which CP reported. For these final results of review, we used a simple average of the three highest per–kilogram freight expenses reported by other respondents in this review.

With respect to UPC/API, in the *Preliminary Results*, we adjusted the market prices of UPC's direct purchases from unaffiliated suppliers by UPC's affiliates' selling, general, and administrative expenses and then compared the transfer price UPC paid to its affiliated suppliers to these adjusted market prices. For these final results of review, we compared the transfer price UPC paid to its affiliated suppliers to the unadjusted market price of UPC's direct purchases from unaffiliated suppliers. We then valued the inputs UPC received from its affiliated reseller at the higher of market price or transfer price. In doing this, we corrected a ministerial error we made in the *Preliminary Results* by ensuring that the total value of HDPE resin is included in the numerator to derive the cost–of-manufacturing (COM) adjustment factor.

Further, in the *Preliminary Results*, we added additional costs to COM in error when disallowing UPC/API's claimed shutdown adjustment. For these final results of review, although we have not changed our position regarding UPC/API's claimed shutdown adjustment, we corrected the error by not adding back additional shutdown cost fields to COM. See Comment 5 of the Decision Memorandum concerning allegations of other ministerial errors.

Cost of Production

Pursuant to sections 773(b)(1) and (b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the cost of production (COP), we did not disregard any below–cost sales of that product because we

determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the period of review were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' See sections 773(b)(1) and (b)(2)(C) of the Act. The sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below–cost sales occurring during the entire period of review. We compared the prices of below–cost sales to the weighted–average per–unit COP for the period of review to determine whether such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of the comparison–market sales were at prices less than the COP and, thus, the below–cost sales were made within an extended period of time in substantial quantities by the following respondents: CP, UPC/API, Thai Plastic Bags Industries Company Ltd. and APEC Film Ltd. (collectively, TPBG), Apple Film Co., Ltd. (Apple), and Naraipak Co., Ltd., and Narai Packaging (Thailand) Ltd. (collectively, Naraipak). In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales, if any, as the basis for determining normal value in accordance with section 773(b)(1) of the Act.

Final Results of the Review

As a result of our review, we determine that the following percentage weighted–average dumping margins exist on polyethylene retail carrier bags from Thailand for the period January 26, 2004, through July 31, 2005:

Company	Margin (percent)
UPC/API	11.75
TPBG	1.41
Apple	16.43
CP Packaging	6.10
King Pac	122.88
Naraipak	1.69
Sahachit	6.34

Assessment Rates

The Department will determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above de minimis, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment–Policy Notice*). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediary involved in the transaction. See *Assessment–Policy Notice* for a full discussion of this clarification.

a. Export Price

With respect to export–price sales, we divided the total dumping margins (calculated as the difference between normal value and the export price) for each exporter's importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per–unit dollar amount against each unit of merchandise on each of that importer's or customer's entries during the review period. See 19 CFR 351.212(b)(1).

b. Constructed Export Price

For constructed export–price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries during the review period. See 19 CFR 351.212(b)(1).

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, consistent with section 751(a)(1) of the Act: (1) the cash–deposit rates for the reviewed companies will be the rates shown above; (2) for previously investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original less–than-fair–value (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) the cash–deposit rate for all other manufacturers or exporters will continue to be 2.80 percent, the ''All Others'' rate from the amended final determination of the LTFV investigation published on July 15, 2004. See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Thailand*, 69 FR 42419 (July 15, 2004).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: January 9, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

Comments and Responses

1. CP - Direct–Material Costs
2. CP - Inland–Freight Expenses
3. UPC/API - Cost Issues

A. Quarterly Costs vs. Period Costs
B. Shutdown Costs
C. Major–Input Purchases
4. UPC/API - Contract Sales
5. UPC/API - Offsetting of Negative Margins
6. UPC/API - Ministerial Errors
7. King Pac - Adverse Facts Available
8. King Pac - Application of Provisional–Measures Cap
9. Sahachit - G&A Calculation

[FR Doc. E7–552 Filed 1–16–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Atlantic Sea Scallops Amendment 10 Data Collection

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 19, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Ryan Silva, 978–281–9326 or *Ryan.Silva@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) Northeast Region manages the Atlantic sea scallop (scallop) fishery of the Exclusive Economic Zone (EEZ) off the East Coast under the Atlantic Sea Scallop Fishery Management Plan (FMP). The regulations implementing the FMP are at 50 CFR part 648. This collection, Amendment 10, was merged with Framework Adjustments 14, 15, 16, 17 and 18 of the FMP.

Amendment 10 included new access area broken trip notification requirements and access area trip exchange procedures for limited access vessels participating in the Area Access Program.

Framework Adjustments 14 and 15 required occasional scallop vessels that participate in the Area Access Program to install a vessel monitoring system (VMS) unit.

Framework Adjustment 16 required the installation of VMS units on general category scallop vessels participating in the Area Access Program. These vessels are required to declare an access area trip prior to departure and to report daily catch information while on an access area trip.

Framework Adjustment 17 extended the VMS reporting requirements to include the general category vessels that possess or land more than 40 lbs. of scallop meats. The VMS is required to be fully automatic and operational at all times, unless exempted under the power-down exemption. These vessels are required to declare a trip prior to departure and to report daily catch information while on an access area trip.

Framework Adjustment 18 required vessels taking broken trip compensation trips to enter a unique trip identification code into their VMS units prior to departure.

II. Method of Collection

VMS transmissions, paper applications, telephone calls and/or E-mail are required from participants. Facsimile transmission of paper forms, mail, E-mail, and/or express mail are the methods of information submittal.

III. Data

OMB Number: 0648–0491.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 1,296.
Estimated Total Responses: 235,998.
Estimated Time Per Response: 2 minutes.
Estimated Total Hours: 7,837.
Estimated Total Annual Cost to Public: $1,242,440.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 11, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–488 Filed 1–16–07; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Senior Corps Project Progress Report (PPR)—reference OMB Control Number 3045–0033, with an expiration date of August 31, 2007. In conjunction with the PPR renewal, the Corporation proposes to make several modifications:

- Streamline the ''Data Demographic'' section of the collection instrument to reduce frequency and eliminate redundancy; and
- Modify the PPR datasheet frequency schedule from biennial to annual.

Copies of the information collection requests can be obtained by contacting

the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by March 19, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods: (1) By mail sent to: Corporation for National and Community Service, Senior Corps; Attention Ms. Angela Roberts, Associate Director, Room 9401; 1201 New York Avenue, NW., Washington, DC 20525. (2) By hand delivery or by courier to the Corporation's mailroom on the 8th Floor at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. (3) By fax to: (202) 606–3475, Attention Ms. Angela Roberts, Associate Director. (4) Electronically through the Corporation's e-mail address system: *aroberts@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Angela Roberts, (202) 606–6822 or by e-mail at *aroberts@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are expected 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 submissions of responses).

Background

The Progress Report (PPR) was designed to assure that grantees of the Senior Corps' programs (RSVP, Foster Grandparent and Senior Companion Programs) address and fulfill legislated program purposes; meet agency program management and grant requirements; track and measure progress to benefit the local project and its contributions to senior volunteers and the community; and to report progress toward work plan objectives agreed upon in the granting of the award.

Current Action

• The Corporation seeks to renew and revise the current OMB approved Progress Report. When revised, the Progress Report will: (a) Eliminate all quarterly submissions of the PPR; (b) change the submission frequency of narrative and work plan sections to 100 percent semi-annual and; (c) change the submission frequency of the data demographics section from semi-annual to annual. The revised PPR will be used in the same manner as the existing PPR to report progress toward accomplishing work plan goals and objectives, reporting volunteer and service outputs; reporting actual outcomes related to self-nominated performance measures meeting challenges encountered, describing significant activities, and requesting technical assistance.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Senior Corps Project Progress Report.

OMB Number: 3045–0033.

Agency Number: CNCS Form 1020.

Affected Public: Sponsors of Senior Corps grants.

Total Respondents: 1,350.

Frequency: Work plans and narratives: semi-annual. *Data demographics:* annual.

Average Time per Response: 8 hours.

Estimated Total Burden Hours: 10,800 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $2,000.

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: January 9, 2007.

Tess Scannell,

Director, National Senior Service Corps.

[FR Doc. E7–483 Filed 1–16–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Task Force on the Future of Military Health Care; Meeting

AGENCY: DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, announcement is made of the following meeting:

Name of Committee: DoD Task Force on the Future of Military Health Care, a Subcommittee of the Defense Health Board.

Dates: January 16, 2007.

Times: 12:30 p.m.–4 p.m.

Location: Salon F, Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia.

Agenda: The purpose of the meeting is to obtain, review, and evaluate information related to the Future of Military Health Care Task Force's congressionally-directed task to examine matters relating to the future of military health care. In addition to discussing internal administrative issues, the Task Force members will receive briefings on topics related to the delivery of military health care. Due to scheduling conflicts among Task Force members, an agreed upon meeting date and time to achieve a membership quorum could not be obtained within the required 15 day **Federal Register** notice period.

FOR FURTHER INFORMATION CONTACT: Colonel Christine Bader, Executive Secretary, Defense Health Board, Skyline One, 5205 Leesburg Pike, Suite 810, Falls Church, VA 22041, (703) 681–3279, ext. 116. *http://www.ha.osd.mil/dhb.*

SUPPLEMENTARY INFORMATION: The session on January 16, 2007 will be open to the public in accordance with Section 552b(b) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., appendix 1, subsection 10(d). Open sessions of the meeting will be limited by space accommodations. Any interested person may attend, appear before or file statements with the Board at the time and in the manner permitted by the Board.

Dated: January 9, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–130 Filed 1–16–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel will form consensus advice for the final report on the findings and recommendations of the Middle East Subcommittee to the CNO. The meeting

will consist of discussions of potential future operating environments and force posture implications.

DATES: The meeting will be held on February 2, 2007, from 10 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Center for Naval Analysis Corporation Boardroom at 4825 Mark Center Drive, Alexandria, VA 22311–1846.

FOR FURTHER INFORMATION CONTACT: CDR David Di Tallo, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703–681–4908.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: January 9, 2007.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Office.

[FR Doc. E7–500 Filed 1–16–07; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 8269–7]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a petition for review filed by the American Foundry Society in the United States Court of Appeals for the District of Columbia Circuit: *American Foundry Society* v. *EPA*, No. 04–1191 (D.C. Cir.). On June 18, 2004, Petitioner filed a petition for review challenging the EPA's final rule entitled ''National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries'' published at 69 FR 21,906 (April 22, 2004). Under the terms of the proposed settlement agreement, EPA would sign a notice proposing revisions to the rule that were the same in substance as set forth in the attachment to the settlement agreement.

DATES: Written comments on the proposed settlement agreement must be received by February 16, 2007.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–GC–2007–0009, online at *www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Diane McConkey, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5588; fax number (202) 564–5603; e-mail address: *mcconkey.diane@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

Petitioners raised issues concerning the final rule entitled ''National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries'' published at 69 FR 21,906 (April 22, 2004) (''the Rule'').

The proposed settlement agreement provides that no later than 30 days after it became final, EPA would sign a notice proposing revisions to the Rule that were the same in substance as set forth in Attachment A to the settlement agreement. The proposed revisions would add an alternative compliance option for cupolas at existing foundries and would include a number of small changes and clarifications. The Parties would file a joint stipulation of dismissal of case number 04–1191 if EPA promulgated final revisions that were materially the same as the proposed revisions.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How Can I Get A Copy of the Settlement Agreement?

Direct your comments to the official public docket for this action under Docket ID No. EPA–HQ–OGC–2007–0009 which contains a copy of the settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov.* 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. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov.* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public

docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: January 9, 2007.

Richard B. Ossias,

Associate General Counsel.

[FR Doc. E7–516 Filed 1–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8269–9]

Science Advisory Board Staff Office; EPA Clean Air Scientific Advisory Committee (CASAC); Notification of Public Advisory Committee Meeting of the CASAC Lead Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee (CASAC) Lead Review Panel (CASAC Panel) to conduct a peer review of the Draft Review of the National Ambient Air Quality Standards for Lead: Policy Assessment of Scientific and Technical Information (1st Draft Lead Staff Paper, December 2006) and a related draft technical support document, Lead Human Exposure and Health Risk Assessments and Ecological Risk Assessment for Selected Areas: Pilot Phase, Draft Technical Report (Draft Lead Exposure and Risk Assessments, December 2006).

DATES: The meeting will be held from 8:30 a.m. (Eastern Standard Time) on Tuesday, February 6, 2007, through 3 p.m. (Eastern Standard Time) on Wednesday, February 7, 2007.

Location: The meeting will take place at the Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC 27703, phone: 919–941–6200.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to submit a written or brief oral statement (five minutes or less) or wants further information concerning this meeting must contact Mr. Fred Butterfield, Designated Federal Officer (DFO). Mr. Butterfield may be contacted at the EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail: 202–343–9994; fax: 202–233–0643; or e-mail at: *butterfield.fred@epa.gov*. General information concerning the CASAC or the EPA SAB can be found on the EPA Web site at *http://www.epa.gov/sab*. Information concerning EPA technical contacts appears below in this **Federal Register** notice.

SUPPLEMENTARY INFORMATION:

Background: The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. The CASAC provides advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and NAAQS under sections 108 and 109 of the Act. The CASAC is chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC Lead Review Panel consists of the seven CASAC members supplemented by subject-matter-experts. The CASAC Lead Review Panel provides advice and recommendations to EPA concerning lead in ambient air. The Panel complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the national ambient air quality standards (NAAQS) for the six ''criteria'' air pollutants, including Lead. On September 30, 2006, EPA's National Center for Environmental Assessment National, Research Triangle Park (NCEA–RTP), within the Agency's Office of Research and Development (ORD), made available a document, Air Quality Criteria for Lead (EPA/600/R–05/144aC–bC). This final Lead air quality criteria document (AQCD) represented a revision to the previous EPA document, Air Quality Criteria for Lead, EPA–600/8–83/028aF–dF (published in June 1986) and an associated supplement (EPA–600/8–89/049F) published in 1990. The CASAC's most-recent letter to the Administrator concerning the draft Lead AQCD (EPA–CASAC–06–010, dated September 6, 2006) is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/casac-06–010.pdf*. Detailed summary information on the Final AQCD for Lead is contained in a previous EPA **Federal Register** notice (71 FR 57508, September 29, 2006).

In December 2006, EPA's Office of Air Quality Planning and Standards (OAQPS), within the Office of Air and Radiation (OAR), released the 1st Draft Lead Staff Paper and the Draft Lead Exposure and Risk Assessments document as part of its review of the Lead NAAQS. The purpose of the 1st Draft Lead Staff Paper is to evaluate the policy implications of the key scientific

and technical information contained in the Agency's Final AQCD for Lead and to identify critical elements that EPA staff believes should be considered in its review of the Lead NAAQS. The Lead Staff Paper is intended to ''bridge the gap'' between the scientific review contained in the Lead AQCD and the public health and welfare policy judgments required of the EPA Administrator in reviewing the Lead NAAQS. The Draft Lead Exposure and Risk Assessments technical support document describes the methodology and presents the results of the pilot phase human exposure and health risk assessments and ecological risk assessments for a number of case studies.

Technical Contacts: Any questions concerning the Agency's 1st Draft Lead Staff Paper should be directed to Dr. Deirdre Murphy, OAQPS, at phone: 919–541–0729, or e-mail: murphy.deirdre@epa.gov. Any questions about the human exposure and health risk analyses in the Draft Lead Exposure and Risk Assessments technical support document can be directed to Dr. Zachary Pekar, OAQPS, at phone: 919–541–3704, or e-mail: *pekar.zachary@epa.gov*; while questions about the environmental assessment can be directed to Ms. Ginger Tennant, OAQPS, at phone: 919–541–4072, or e-mail: *tennant.ginger@epa.gov*.

Availability of Meeting Materials: The 1st Draft Lead Staff Paper and the Draft Lead Exposure and Risk Assessments technical support document can be accessed via the Agency's Technology Transfer Network (TTN) Web site at URL *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_index.html*, in the ''Documents from Current Review'' section under ''Staff Papers'' and ''Technical Documents,'' respectively. In addition, a copy of the draft agenda and other materials for this CASAC meeting will be posted on the SAB Web site at *http://www.epa.gov/sab/panels/casacorpanel.html* prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the CASAC Lead Review Panel to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Mr. Butterfield, DFO, in writing (preferably via e-mail), by January 30, 2007, at the contact information noted above, to be placed on the list of public speakers for this meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by Thursday, February 1, 2007, so that the information may be made available to the CASAC Panel for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Butterfield at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 9, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–517 Filed 1–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8269–5]

Science Advisory Board Staff Office; EPA Clean Air Scientific Advisory Committee (CASAC); Notification of Public Advisory Committee Meeting and Consultation on EPA's Technical Assessment in Support of the Draft Lead Renovation, Repair and Painting (LRRP) Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee (CASAC) Panel (CASAC Panel) to conduct a consultation on EPA's *Draft Assessment to Support the Lead Renovation, Repair, and Painting (LRRP) Rule* (1st Draft LRRP Assessment, January 2007).

DATES: The meeting will be held on Monday, February 5, 2007 from 9 a.m. to 4 a.m. (Eastern Time).

ADDRESSES: The meeting will take place at the Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC, 27703, phone: 919–941–6200.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to submit a written or brief oral statement (five minutes or less) or wants further information concerning this meeting must contact Mr. Fred Butterfield, Designated Federal Officer (DFO). Mr. Butterfield may be contacted at the EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail: 202–343–9994; fax: 202–233–0643; or e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/sab*. Information concerning EPA technical contacts appears below in this **Federal Register** notice.

SUPPLEMENTARY INFORMATION:

Background

The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. The CASAC is chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC Panel consists of the seven CASAC members supplemented by subject-matter-experts. The CASAC Panel provides advice and recommendations to EPA concerning lead in ambient air. The Panel complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

EPA has proposed new requirements to reduce exposure to lead hazards created by renovation, repair, and painting activities that disturb lead-based paint. The **Federal Register** notice for the LRRP proposed rule is available at: *http://edocket.access.gpo.gov/2006/06-71.htm*. This action supports the attainment of the Federal government's goal of eliminating childhood lead poisoning by 2010. The proposed rule 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. In support of this rule-making activity, EPA's Office of Pollution Prevention and Toxics (OPPT), within the Agency's Office of Prevention, Pesticides and Toxic Substances (OPPTS), has requested that the CASAC conduct a consultation and a subsequent peer review on the Draft LRRP Assessment, and has made available for public review and comment a draft document, *Draft Assessment to Support the Lead*

Renovation, Repair, and Painting Rule. This 1st Draft LRRP Assessment consists of three parts: A draft *Assessment Plan,* a draft *Hazard Assessment*; and a draft *Exposure Assessment for Lead Dust Generated During Renovation, Repair, and Painting in Residences and Child-Occupied Facilities*. In addition, the CASAC Panel will subsequently be asked to conduct a peer review of the 2nd Draft LRRP Assessment. For the purposes of this consultation, the CASAC will be augmented with members of the CASAC Panel and Science Advisory Board (SAB) Committee, who have expertise in indoor air exposure assessment. Biosketches of these experts and the members of the CASAC Panel are available on the SAB Web site at *http://www.epa.gov/sab*.

Technical Contacts

Any questions concerning the Agency's 1st Draft LRRP Assessment should be directed to Ms. Cathy Fehrenbacher, OPPT, at phone: 202–564–8551, or e-mail: *fehrenbacher.cathy@epa.gov*; or to Dr. Jennifer Seed, OPPT, at phone: 202–564–7634, or e-mail: *seed.jennifer@epa.gov*.

Availability of Meeting Materials

The 1st Draft LRRP Assessment can be accessed via EPA's Lead Web site at *http://www.epa.gov/lead/pubs/casac.htm*. In addition, a copy of the draft agenda and other materials for this CASAC meeting will be posted on the SAB Web Site at *http://www.epa.gov/sab/panels/casacorpanel.html* prior to the meeting.

Procedures for Providing Public Input

Interested members of the public may submit relevant written or oral information for the CASAC Panel to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Mr. Butterfield, DFO, in writing (preferably via e-mail), by January 29, 2007, at the contact information noted above, to be placed on the list of public speakers for this meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by Thursday, February 1, 2007, so that the information may be made available to the CASAC Panel for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Accessibility

For information on access or services for individuals with disabilities, please contact Mr. Butterfield at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 9, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–523 Filed 1–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8269–8]

Science Advisory Board Staff Office; Notification of a Meeting of the Science Advisory Board; Integrated Nitrogen Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public face-to-face meeting of the Integrated Nitrogen Committee to develop a work plan for its evaluative study on the need for integrated research and control management strategies.

DATES: The meeting dates are Tuesday, January 30, 2007, from 9 a.m. to 6 p.m. through Wednesday, January 31, 2007 from 9 a.m. to 1 p.m. (eastern standard time).

ADDRESSES: The meeting will be held at the U. S. EPA Science Advisory Board Staff Office Conference Room, Third Floor, 1025 F Street NW., Suite 3700, Washington DC, 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information about this meeting may contact Ms. Kathleen White, Designated Federal Officer (DFO), by mail at EPA SAB Staff Office (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 343–9878; by fax at (202) 233–0643; or by e-mail at *white.kathleen@epa.gov*. The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC, 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background

All biologically active, photochemically reactive, and radiatively active nitrogen compounds in the atmosphere, hydrosphere, and biosphere are collectively referred to as reactive nitrogen. Over the past few decades, human activities leading to the production of reactive nitrogen exceed that of natural terrestrial ecosystem production at the global scale. Reactive nitrogen has both benefited (e.g., increased food production) and impacted health and welfare of people (e.g., respiratory effects) and ecosystems (e.g., biodiversity loss). Scientific information suggests that reactive nitrogen is accumulating in the environment, and that nitrogen cycling through biogeochemical pathways has a variety of consequences. Environmental research suggests that the management of reactive nitrogen should be viewed from a systems perspective and integrated across environmental media. As examples, urban air pollution from reactive nitrogen may contribute to water pollution; and extensive nitrogen loads in river basins may impact downstream coastal zones. Accordingly, linkages between reactive nitrogen induced environmental and human health effects need to be understood in order to optimize reactive nitrogen research and risk management strategies.

The EPA Science Advisory Board (SAB) was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA policies and regulations. Understanding EPA's various programs for reactive nitrogen is key to developing scientific and technical recommendations regarding the development of an integrated research and management strategies for reactive nitrogen. The SAB has formed the Integrated Nitrogen Research committee to develop information regarding EPA's nitrogen research and risk management programs. The information will provide the basis for an SAB report that will provide advice and recommendations regarding how the Agency may better integrate reactive nitrogen research and risk management strategies across environmental media and programs. Background information on the formation of this expert committee can

be found in a **Federal Register** Notice published March 14, 2005 (70 FR 12476–12477). The purpose of this meeting is for the Committee to: Initiate discussion about the scientific issues underlying the environmental problems due to reactive nitrogen in the environment; learn more about Agency nitrogen research and control strategies; and to plan its future work.

Availbility of Meeting Materials

A roster of committee members, their biographical sketches, the meeting agenda, and any other materials in support of this meeting will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of this meeting.

Procedures for Providing Public Input

Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than one hour for all speakers. Interested parties should contact Ms. White, DFO, at the contact information provided above, by January 23, 2007, to be placed on the public speaker list for the January 30–31, 2007 meeting.

Written Statements: Written statements should be received in the SAB Staff Office by January 23, 2007, so that the information may be made available to the SAB for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature at the mailing address provided above, and one electronic copy via e-mail to *white.kathleen@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Meeting Accommodations

For information on access or services for individuals with disabilities, please contact Ms. Kathleen White at (202) 343–9878, or via e-mail at *white.kathleen@epa.gov*. To request accommodation of a disability, please contact Ms. White, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 9, 2007.

Anthony F. Maciorowski,

Deputy Director EPA Science Advisory Board Staff Office.

[FR Doc. E7–524 Filed 1–16–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–1002; FRL–8110–6]

Antimycin A Risk Assessments; Notice of Availability, and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments, and related documents for the pesticide antimycin A, and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for antimycin A through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before March 19, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–1002, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–1002. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 Federal 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 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. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Lance Wormell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 603-0523; fax number: (703) 308-7070; e-mail address:*wormell.lance@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through 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 document 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 or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for antimycin A and soliciting public comment on risk management ideas or proposals. Antimycin A is a restricted use pesticide derived as a fermentation product from Streptomyces mold. The chemical is primarily used to renovate recreational fish populations and to remove scaled fish from catfish fingerling and food-fish production ponds. Over the past decade antimycin has been used successfully to restore Federally-listed, threatened or endangered fish to their native habitats. EPA developed the risk assessments and risk characterization for antimycin A through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for antimycin A. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as environmental fate data or residue (i.e., the amount of antimycin A in treated fish) data, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for antimycin A. In particular, EPA seeks public input on potential strategies to prevent human exposure and to reduce the uncertainties regarding the chemical's environmental fate and ecological effects. EPA is working with the technical registrant and other Federal agencies to develop a rigorous use (standard operating procedures) manual for both fish restoration and catfish uses. The manual would be part of the labeling required by the RED and would require users to follow the procedures specified therein. The manual is intended to ensure the responsible use of antimycin A in targeted treatment areas and minimize mortality to non-target species. It is EPA's expectation that proper use through a detailed manual and revised product label will virtually eliminate recreational (e.g., swimming) exposure, drinking water exposure, and exposure from consuming treated fish. The manual will also ensure minimal exposure to workers. In addition, efforts to develop an analytical detection method and identify potential routes of degradation are currently underway by the U. S. Geological Survey, EPA's Office of Research and Development, and EPA's Office of Pesticide Programs' Biologic and Economic Assessment Division laboratories. In targeting these uncertainties, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to antimycin A, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For antimycin A, a modified, 4-Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its limited use and small number of users. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may

lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for antimycin A. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 3, 2007.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–411 Filed 1–16–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0955; FRL–8104–7]

Rodenticides; Proposed Risk Mitigation Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed risk mitigation decision for nine rodenticides, the economic impact assessment for the proposed risk mitigation decision, the revised comparative ecological risk assessment, updated human health and ecological incident reports, and other related documents, and opens a 60–day public comment period on the proposed risk mitigation decision. The nine rodenticides covered by this risk mitigation decision are brodifacoum, bromadiolone, difethialone, chlorophacinone, diphacinone, warfarin, zinc phosphide, bromethalin, and cholecalciferol. As part of the proposed risk mitigation decision, EPA anticipates classifying all products containing the active ingredients brodifacoum, bromadiolone, and difethialone as restricted use products. EPA also anticipates requiring that all products available for sale to consumers be sold only in refillable tamper-resistant bait stations. Furthermore, EPA is proposing certain additional restrictions and labeling improvements to mitigate the risks associated with these nine rodenticides.

DATES: Comments must be received on or before March 19, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0955, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0955. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 Federal 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 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. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Kelly Sherman, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-8401; fax number: (703) 308-8005; e-mail address: *sherman.kelly@epa.gov* or Laura Parsons, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5776; fax number: (703) 308-8005; e-mail address: *parsons.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members

of the public interested in the sale, distribution, or use of pesticides. Since others also may 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through 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 document 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 or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is making available the proposed risk mitigation decision document and related supporting documents for the following nine rodenticides: brodifacoum, bromadiolone, difethialone, chlorophacinone, diphacinone, warfarin, zinc phosphide, bromethalin, and cholecalciferol.

Based on an evaluation of the ecological risks associated with the use of these nine rodenticides, and consideration of the public health and other important benefits of the use of rodenticides, EPA anticipates classifying all products containing the active ingredients brodifacoum, bromadiolone, and difethialone as restricted use products. To decrease the incidence of childrens' exposure to rodenticide products used in homes, EPA also anticipates requiring that all products available for sale to consumers and labeled for indoor residential use be sold only in refillable tamper-resistant bait stations. Furthermore, EPA is proposing certain additional restrictions and labeling improvements to mitigate the risks associated with these nine rodenticides.

The proposed decision document, including the Agency's supporting rationale for the proposed decision, can be found in docket identification number EPA–HQ–OPP–2006–0955 at *http://www.regulations.gov*. Older documents and previous public comments can be found in docket ID number EPA–HQ–OPP–2004–0033 or docket EPA–HQ–OPP–2002–0049 at *http://www.regulations.gov*.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's proposed decision for rodenticides. Comments should be limited to issues raised by the proposed decision and associated documents.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for rodenticides. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. After consideration of the comments, the Agency will publish its final mitigation decision for these nine rodenticides.

B. What is the Agency's Authority for Taking this Action?

EPA is reevaluating the use of these nine rodenticides pursuant to section 4 of FIFRA. The Agency's authority for implementing the risk mitigation measures identified in the proposed risk management decision would derive from various sections of FIFRA, including, but not limited to, sections 3, 4 and 6.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 8, 2007.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–351 Filed 1–16–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0349; FRL–8105–7]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 264–EUP–140 from Bayer CropScience LP (BCS) requesting an experimental use permit (EUP) for the *Bacillus thuringiensis* Cry1Ab protein and the genetic material necessary for its production in Events T303–3 and T304–40 cotton plants. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before February 16, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0349, by one of the following methods:

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

Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0349. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 Federal 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 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. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Sharlene R. Matten, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0514; e-mail address: *matten.sharlene@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 interested in agricultural biotechnology or may be required to conduct testing of pesticidal substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through 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 document 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 or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

BCS has requested an extension of EUP 264–EUP–140 granted by EPA on February 7, 2006 (71 FR 41020, July 19, 2006) (FRL–8060–6). This EUP will expire January 31, 2007. BCS is proposing to test 84 acres of the plant-incorporated protectant *Bacillus thuringiensis* Cry1Ab protein (a total of 0.91g to 7.31g or 0.002 to 0.016 pounds of Cry1Ab protein) and the genetic material necessary for its production in Events T303–3 and T304–40 cotton plants in an experimental program of 285 total acres from February 1, 2007 to January 31, 2008. The Cry1Ab protein is effective in controlling lepidopteran larvae such as bollworm (*Helicoverpa zea*) and tobacco budworm (*Heliothis virescens*) larvae, which are common pests of cotton. In total, the proposed program will be carried out in Arizona, California, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The planned experimental program includes the following: Insect efficacy trials, agronomic performance evaluation, breeding, herbicide efficacy evaluations, and dissemination studies, as well as the production of sample material for regulatory feeding and analytical studies. In addition to these experimental plans, seed may be produced for future plantings of experimental field trials.

III. What Action is the Agency Taking?

Following the review of the BCS application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The specific legal authority for EPA to take this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 4, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–550 Filed 1–16–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8270–1;Docket ID No. ORD–2005–0001]

Draft of Part 1 of the 2007 Release of the Causal Analysis/Diagnosis Decision Information System (CADDIS)

AGENCY: Environmental Protection Agency.

ACTION: Notice of External Review Draft for Public Review and Comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 30-day public review and comment period for the external review draft of Part 1 of the 2007 release of the EPA Web site titled, ''Causal Analysis/Diagnosis Decision Information System (CADDIS).'' The CADDIS Web site was developed and prepared by EPA's National Center for Environmental Assessment (NCEA) in the Office of Research and Development (ORD). NCEA will consider public comments received in accordance with this notice when revising the CADDIS Web site. Review of Part 2 of CADDIS 2007 will be announced in the Spring of 2007.

EPA is releasing the draft CADDIS 2007 Web site solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. The draft CADDIS 2007 Web site has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 30-day public comment period begins January 17, 2007, and ends February 16, 2007. Technical comments should be in writing and must be submitted electronically or postmarked by February 16, 2007.

ADDRESSES: The draft CADDIS 2007 Web site can be accessed via the Internet at *http://caddis.tetratech-ffx.com.* Enter the username ''public'' and the password ''public.'' Additional instructions for submitting comments are provided at the top of the home page of the CADDIS Web site. Comments may be submitted electronically to the EPA's e-docket, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the section of this notice entitled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.* For technical information, contact Vic Serveiss, NCEA, via phone 202–564–3251, facsimile: 202–564–2018, or e-mail: *serveiss.victor@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

Over a thousand water bodies in the United States are listed by states as biologically impaired. For many of these sites, the cause of impairment is reported as ''unknown.'' To formulate appropriate management actions for impaired water bodies, it is important to identify the causes of biological impairment (*e.g.*, excess fine sediments, nutrients, or toxic substances). Effective causal analyses call for knowledge of the mechanisms, symptoms, and stressor-response relationships for various stressors, as well as the ability to use that knowledge to draw appropriate, defensible conclusions. To aid in these causal analyses, NCEA developed CADDIS. CADDIS is a Web-based decision support system that will help regional, state, and tribal scientists find, access, organize, and share information useful for causal evaluations of impairment in aquatic systems. It is based on EPA's Stressor Identification process, which is an EPA-recommended method for identifying causes of impairments in aquatic environments. EPA released the first version of CADDIS earlier in 2006, after addressing comments from the public and independently selected peer reviewers. Current features of CADDIS include a step-by-step guide to conducting causal analysis, downloadable worksheets and examples, a library of conceptual models, and links to useful information sources. Additional information is being added to the CADDIS Web site in preparation for release of a major revision in September 2007. The review announced here is the first of two sets of modules added to the CADDIS Web site. Specifically, comment is invited on information on six candidate causes: metals, sediments, nutrients, dissolved oxygen, thermal alteration, and ionic strength. Since its release, CADDIS has become a valuable resource for EPA, state, tribal, and local risk assessors. CADDIS 2007 will add more capabilities to this already important diagnostic tool.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2005–0001 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov*
- *Fax:* 202–566–1753
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2005–0001. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system,

which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: January 11, 2007.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E7–518 Filed 1–16–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

January 8, 2007.

SUMMARY: The Federal Communications Commission (Commission) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington DC, 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0168.

OMB Approval Date: 9/28/2006.

Expiration Date: 9/30/2009.

Title: Reports of Proposed Changes in Depreciation Rates—Section 43.43.

Form No.: N/A.

Estimated Annual Burden: 10 responses; 60,000 total annual burden hours.

Needs and Uses: Section 43.43 of the Commission's Rules requires certain carriers to file specified information before making any change in the depreciation rates applicable to their operating plants.

OMB Control No.: 3060–0233.

OMB Approval Date: 11/30/2006.

Expiration Date: 11/30/2009.

Title: Part 36—Separations.

Form No.: N/A.

Estimated Annual Burden: 5,788 responses; 58,418 total annual burden hours.

Needs and Uses: In order to determine which carriers are entitled to universal service support, all (both non-rural and rural) incumbent local exchange carriers (LECs) must provide the National Exchange Carrier Association (NECA) with the loop cost and loop count data required by section 36.611 for each of its study areas and, if applicable, for each wire center. Local telecommunications carriers who want to participate in the federal universal service support program must make certain informational showings to demonstrate eligibility.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–346 Filed 1–16–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 10, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 19, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Children's Television Requests for Preemption Flexibility.

Form Number: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 15.

Estimated Time per Response: 10 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 150 hours.

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On September 26, 2006, the Commission adopted a Second Order on Reconsideration and Second Report and Order in MM Docket 00–167, FCC 06–143, In the Matter of Children's Television Obligations of Digital Television Broadcasters. The Second Order addressed several matters relating to the obligation of television licensees to provide educational programming for children and the obligation of television licensees and cable operators to protect children from excessive and inappropriate commercial messages. Among other things, the Second Order adopts a children's programming preemption policy. This policy requires all networks requesting preemption flexibility to file a request with the Media Bureau by August 1 of each year. The request identifies the number of preemptions the network expects, when the program will be rescheduled, whether the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change. Preemption flexibility requests are not mandatory filings. They are requests that may be filed by networks seeking preemption flexibility.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–419 Filed 1–16–07; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting: Wednesday, January 17, 2007

Date: January 10, 2007.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, January 17, 2007, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC. The Meeting will focus on presentations by senior agency officials regarding implementations of the agency's strategic plan and a comprehensive review of FCC policies and procedures.

Presentations will be made in four panels:

Panel One will feature the Managing Director and the Chief of the Consumer & Governmental Affairs Bureau.

Panel Two will feature the Chiefs of the Enforcement Bureau and Public Safety and Homeland Security Bureau.

Panel Three will feature the Chiefs of the Wireless Telecommunications Bureau, Office of Engineering and Technology, and the International Bureau.

Panel Four will feature the Chiefs of the Media Bureau, and Wireline Competition Bureau.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's Audio/Video Events web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 07–163 Filed 1–12–07; 11:49 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing an Open Meeting of the Board of Directors

TIME AND DATE: The meeting of the Board of Directors is scheduled to begin at 10 a.m. on Thursday, January 18, 2007.

PLACE: Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

STATUS: The meeting will be open to the public.

MATTER TO BE CONSIDERED:

Appointment of Federal Home Loan Bank Directors.

CONTACT PERSON FOR MORE INFORMATION: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov.*

Dated: January 12, 2007.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

[FR Doc. 07–188 Filed 1–12–07; 3 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 07–01]

APM Terminals North America, Inc v. Port Authority of New York and New Jersey; Notice of Filing of Complaint and Assignment

January 9, 2007.

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by APM Terminals North America, Inc. (''APMT''). Complainant asserts that it is a marine terminal operator engaged in the business of furnishing marine terminal services to ocean common carriers at facilities throughout the United States, including the Port Elizabeth Terminal in Elizabeth, New Jersey. Complainant alleges that Respondent Port Authority of New York and New Jersey (''PANYNJ'') is a marine terminal operator that owns marine terminal facilities in the New York and New Jersey area, including the Port Elizabeth Terminal in Elizabeth, New Jersey. Complainant alleges that on January 6, 2000, Complainant entered into FMC Agreement No. 201106 with Respondent, pursuant to which Complainant leased certain land and facilities at the Elizabeth-Port Authority Marine Terminal. (The Agreement became effective under the Shipping Act on August 2, 2002). The Agreement covered both ''Initial Premises'' and an additional 84 acres referred to as ''Added Premises'' which Complainant claims were to be delivered to Complainant between January 6, 2000 and December 31, 2003. Complainant alleges that despite numerous requests to Respondent, the Added Premises were not delivered until December 25, 2005. In addition, Complainant alleges that Respondent allowed these premises to be used by Maher Terminals to the detriment of Complainant. Complainant alleges that the failure to adhere to the Agreement's terms by failing to turn over the Added Premises had an adverse effect on their business, and this failure constitutes violations of the following Sections of the Shipping Act of 1984 (''The Act''): Section 10(a)(3) (46 U.S.C. 41102(b)(2) for failure to operate in accordance with the terms of the Agreement; Section 10(d)(1) (46 U.S.C. 41102(c)) for unjust, unreasonable, and unlawful practices; Sections 10(d)(3) and 10(b)(4) (46 U.S.C. 41106(3) and 41104(10)) for unreasonable refusal to deal or negotiate; and Section 10(d)(4) (46 U.S.C. 41106(2)) for the imposition of undue or unreasonable prejudice or disadvantage. Complainant prays the Commission to: (a) Order PANYNJ to

desist from the aforementioned alleged violations of the Act; (b) order PANYNJ to pay reparations for any violations of the Act plus interest, costs, attorney's fees, and any other damages to be determined; (c) command PANYNJ to comply with all applicable provisions of the Agreement; and (d) any other relief as the Commission determines to be proper, fair, and just.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by January 8, 2008, and the final decision of the Commission shall be issued by May 7, 2008.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–496 Filed 1–16–07; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public.

DATES: The meeting will be held on February 5, 2007, from 9 a.m. to 5 p.m., and on February 6, 2007, from 9 a.m. to 12 p.m.

ADDRESSES: Department of Health and Human Services; Hubert H. Humphrey Building, Room 800; 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Emma English, Program Analyst, National Vaccine Program Office, Department of Health and Human Services, Room 443–H Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; (202) 690–5566, *nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Assistant Secretary for Health, as the Director of the National Vaccine Program, on matters related to the program's responsibilities.

Topics to be discussed at the meeting include the 2006–2007 influenza season, Departmental vaccine priorities, adolescent and adult immunization, immunization registry systems, and the Pandemic and All-Hazards Preparedness Act. Subcommittee meetings will be held on the morning of February 6, 2007. A tentative agenda is currently available on the NVAC Web site: *http://www.hhs.gov/nvpo/nvac.*

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the Humphrey Building. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to NVAC members should submit materials to the Executive Secretary, NVAC, through the contact person listed above prior to close of business January 31, 2007. Pre-registration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should e-mail *nvpo@hhs.gov* or call 202–690–5566.

Dated: January 11, 2007.

Bruce Gellin,

Director, National Vaccine Program Office.

[FR Doc. E7–553 Filed 1–16–07; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Childhood Agricultural Safety and Health Research, Request for Applications (RFA) OH–07–002

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting of the aforementioned Special Emphasis Panel.

Time and Date: 8 a.m.–5 p.m., February 6, 2007 (Closed).

Place: Residence Inn Marriott, 1456 Duke Street, Alexandria, Virginia 22314.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of research grant applications in response to RFA OH–07–002, ''Childhood Agricultural Safety and Health Research.''

Contact Person for More Information: Steve Olenchock, Scientific Review Administrator, National Institute for Occupational Safety and Health, 1095 Willowdale Road, Morgantown, WV 26506, telephone (304) 285–6271.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–506 Filed 1–16–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Uniform Project Description (UPD) Program Narrative for Discretionary Grant Application Form

OMB No. 0970–0139.

Description: The Administration for Children and Families (ACF) has more

than 40 discretionary grant programs. The proposed information collection form would be a uniform discretionary application form eligible for use by grant applications to submit project information in response to ACF program announcements. ACF would use this information, along with other OMB-approved information collections, to evaluate and rank applicants and protect the integrity of the grantee selection process. All ACF discretionary grant programs would be eligible but not required to use this application form. The application consists of general information and instructions; the Standard Form 424 series that requests basic information, budget information, budget information and assurances; the Project Description requesting the applicant to describe how these objectives will be achieved; along with assurances and certifications. Guidance for the content of information requested in the Project Description is found in OMB Circulars A–102 and A–110.

Respondents: Applicants for ACF Discretionary Grant Programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
UPD	11,960	1	40	478,400

Estimated Total Annual Burden Hours: 478,400.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 11, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–127 Filed 1–16–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0514]

Draft Guidance for Industry: Minimally Manipulated, Unrelated, Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution in Patients with Hematological Malignancies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Minimally Manipulated, Unrelated, Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution in Patients with Hematological Malignancies'' dated December 2006. The draft guidance document provides recommendations that would allow the manufacturer, generally a cord blood bank, to apply for licensure of minimally manipulated, unrelated, allogeneic placental/umbilical cord blood, for specified indications. The document also contains information about the manufacture of minimally manipulated, unrelated, allogeneic placental/umbilical cord blood and how to comply with applicable regulatory requirements.

DATES: Submit written or electronic comments on the draft guidance by April 17, 2007 to ensure their adequate consideration in preparation of the final guidance. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Kathleen E. Swisher, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Minimally Manipulated, Unrelated, Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution in Patients with Hematological Malignancies'' dated December 2006. The draft guidance document provides recommendations that would allow the manufacturer, generally a cord blood bank, to apply for licensure of minimally manipulated, unrelated, allogeneic placental/umbilical cord blood, for specified indications. The

guidance document provides recommendations for the submission of a biologics license application for placental/umbilical cord blood products that are: (1) Manipulated minimally; (2) used for hematopoietic reconstitution in patients with hematological malignancies; and (3) used in recipients unrelated to the donor. The document also contains information about the manufacture of minimally manipulated, unrelated, allogeneic placental/umbilical cord blood and how to comply with applicable regulatory requirements. For the manufacture of peripheral blood or cord hematopoietic stem/progenitor cells other than those described, the manufacturer may need to submit an investigational new drug application or other premarketing application for that product.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information 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 21 CFR part 201 have been approved under OMB Control No. 0910–0572; 21 CFR part 211 have been approved under OMB Control No. 0910–0139; 21 CFR part 600 have been approved under OMB Control No. 0910–0308; 21 CFR parts 601, 610, and FDA Form 356(h) have been approved under OMB Control No. 0910–0338; 21 CFR part 1271 have been approved under OMB Control Nos. 0910–0559, 0910–0469, and 0910–0543; and FDA Form 3500A has been approved under OMB Control No. 0910–0291.

III. Comments

The draft guidance 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 the draft guidance. 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 the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 10, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–549 Filed 1–16–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–02]

Notice of Submission of Proposed Information Collection to OMB; Multifamily Housing Service Coordinator Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Housing project owners/managers apply for grants under the Housing Service Coordinator Program. The requested information will assist HUD in evaluating grant applicants and to determine how well grant funds meet stated program goals and how well the public was served.

DATES: *Comments Due Date:* February 16, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0447) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Multifamily Housing Service Coordinator Program.

OMB Approval Number: 2502–0447.

Form Numbers: SF–424, SF–424–Supp, SF–LLL, HUD–2880, HUD–2993, HUD–2994–A, HUD–96010, HUD–92456, HUD–50080–SCMF–HUD–91186, SF–269–A, and HUD–91186–A.

Description of the Need for the Information and Its Proposed Use: Housing project owners/manages apply for grants under the Housing Service Coordinator Program. The requested information will assist HUD in evaluating grant applicants and to determine how well grant funds meet stated program goals and how well the public was served.

Frequency of Submission: Quarterly, Semi-annually, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	3,200	5.37		2.489		42,848

Total Estimated Burden Hours: 42,848

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 9, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–471 Filed 1–16–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–03]

Notice of Submission of Proposed Information Collection to OMB; Owner of Record and Re-Sale Data To Preclude Predatory Lending Practices (Property Flipping) on FHA Insured Mortgages

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

For all loans for purchase money mortgages, lenders must obtain and submit to HUD documentation that the seller is the owner of record and that the transaction does not involve any sale or assignment of the sales contract. For properties resold with one year of acquisition by the seller (with limited exceptions), or if the sale price exceeds HUD's threshold for an area, additional appraisal requirements may apply. HUD uses the information to ensure that purchasers are not victims of predatory sales or lending practices.

DATES: *Comments Due Date:* February 16, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0547) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Owner of Record and Re-sale Data to Preclude Predatory Lending Practices (Property Flipping) on FHA Insured Mortgages.

OMB Approval Number: 2502–0547.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: For all loans for purchase money mortgages, lenders must obtain and submit to HUD documentation that the seller is the owner of record and that the transaction does not involve any sale or assignment of the sales contract. For properties resold with one year of acquisition by the seller (with limited exceptions), or if the sale price exceeds HUD's threshold for an area, additional appraisal requirements may apply. HUD uses the information to ensure that purchasers are not victims of predatory sales or lending practices.

Frequency Of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	12,000	42.83		0.036		19,000

Total Estimated Burden Hours: 19,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 9, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–472 Filed 1–16–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5030–FA–15]

Announcement of Funding Awards; Fair Housing Initiatives Program—Fiscal Year 2006

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Super Notice of Funding Availability (SuperNOFA) for the Fair Housing Initiatives Program (FHIP) for Fiscal Year (FY) 2006. This announcement contains the names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Director, FHIP Support Division, Office of Programs, Room 5230, 451 Seventh Street, SW., Washington, DC 20410–2000, telephone number (202) 708–2215 (this is not a toll-free number). A telecommunications device (TTY) for hearing and speech impaired persons is available at (800) 927–9275 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (the Fair Housing Act) charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616, established FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR Part 125.

The Department announced under separate solicitations in the **Federal Register** on January 20, 2006 (71 FR 3382–3404) and March 8, 2006 (71 FR 11712–11717 and 11784–11799), the availability of approximately $18,100,000 out of a FY 2006 appropriation of $20,000,000 and any potential recapture, to be utilized for FHIP projects and activities with approximately $1,900,000 designated for continuation of contracts with activities for the fifth option year under the Accessibility First Project, formerly the Project for Training and Technical Assistance Guidance (PATTG) and other contracts. However, Pub. L. 109–148 mandated a 1 percent rescission and, accordingly, $200,000.00 was charged against the initial appropriation resulting in a reduced appropriation of $19,800,000. Subsequently, the amount available for contracts was reduced to $1,700,000.00, and any potential recapture.

Additionally, on June 14, 2006 (71 FR 34385), the Department extended the application submission date for applicants submitting proposals from areas affected by the President's Emergency Declaration for the State of Maine, the Commonwealth of Massachusetts, and the State of New Hampshire. Funding availability follows for discretionary grants: the Private Enforcement Initiative (PEI/ $13,900,000) and the Education and Outreach Initiative (EOI) ($4,200,000).

The Catalog of Federal Domestic Assistance Number for currently funded Initiatives under the Fair Housing Initiatives Program is 14.408.

This notice announces the award of $18,100,000 to 102 organizations that submitted applications under the FY2006 funding round or received continuation funding under the PEI Performance-Based Funding Component. The Department reviewed, evaluated and scored the applications received based on the criteria in the FY2006 SuperNOFA. As a result, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

Dated: December 20, 2006.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

APPENDIX A.—FAIR HOUSING INITIATIVES PROGRAM AWARDS FY2006

Applicant name	Contact person	Region	Award amount ($)
Education and Outreach Initiative/General Component			
City of Newton, 1000 Commonwealth Avenue, Newton Centre, MA 02459	Patricia Guditz, ph. 617–796–1156, fx. 617–796–1157.	1	$98,044.00
Rhode Island Housing and Mortgage Finance Corp., 44 Washington Street, Providence, RI 02903.	Jo-Ann Ryan, ph. 401–457–1258, fx. 401–457–1137.	1	100,000.00
Champlain Valley Office of Economic Opportunity, P.O. Box 163, Burlington, VT 05402.	Robert Meehan, ph. 802–651–0551, fx. 802–651–4179.	1	100,000.00
New Jersey Citizen Action, 400 Main Street, Hackensack, NJ 07601	Phyllis Salowe-Kaye, ph. 201–488–2804, fx. 201–488–1253.	2	100,000.00
Neighborhood Economic Development Advocacy Project, Inc., 73 Spring Street, Suite 506, New York, NY 10012.	Sarah Ludwig, ph. 212–680–5100, fx. 212–680–5104.	2	100,000.00
St. Martin Center, Inc., 1701 Parade Street, Erie, PA 16503	David Pesch, ph.814–452–6113, fx.814–452–9483.	3	99,863.00
Delaware Community Reinvestment Action Council, Inc., 601 N. Church Street, Wilmington, DE 19801.	Rashmi Rangan, ph. 302–654–5024, fx. 302–654–5046.	3	50,000.00
Office of Human Affairs, 2410 Wickham Avenue, Newport News, VA	Wendell Shelton, ph.757–247–0379, fx. 757–247–6527.	3	60,415.00
American Environmental Justice Project, 16 West 25th Street, Baltimore, MD 21218.	Joe Cox, ph. 410–735–3373, fx. 410–735–3383.	3	99,716.00
American Institute for Social Justice, 739 8th Street, SE, Washington, DC 20003.	Valerie Coffin, ph. 410–735–3373, fx. 410–735–3383.	3	99,080.00

APPENDIX A.—FAIR HOUSING INITIATIVES PROGRAM AWARDS FY2006—Continued

Applicant name	Contact person	Region	Award amount ($)
Fair Housing Agency of Alabama, 475 Azalea Road #124, Mobile, AL 36609.	Enrique Larrion, ph. 251–660–7733, fx. 251–660–7734.	4	99,905.00
Greenville County Human Relations Commission, 301 University Ridge, Suite 1600, Greenville, SC 29601.	Sharon Smathers, ph. 864–467–7095, fx. 864–467–5965.	4	99,992.00
JC Visions and Associates, Inc., P.O. Box 1972, Hinesville, GA 31310	Dana Ingram, ph. 912–877–4243, fx. 912–877–4274.	4	94,950.00
Legal Services of North Florida, Inc., 2119 Delta Boulevard, Tallahassee, FL 32302.	John Fenno, ph. 850–385–9007, fx. 850–250–6540.	4	100,000.00
Housing Education and Economic Development, 3405 Medgar Evers Boulevard, Jackson, MS 39206.	Charles Harris, ph. 601–981–1960, fx. 601–981–0258.	4	96,000.00
Minneapolis Urban League, 2100 Plymouth Avenue North, Minneapolis, MN 55411.	Shawne Monahan ph. 612–302–3103 fx. 612–521–1444.	5	99,937.00
Community Action Agency, 1214 Greenwood Avenue, Jackson, MI 49203	Katherine Martin, ph.517–784–4800, fx. 517–784–6785.	5	100,000.00
Prairie State Legal Services, Inc., 975 North Main Street, Rockford, IL 61103.	David Wolowitz, ph. 630–690–2130, fx. 630–690–2279.	5	100,000.00
Crawford Sebastian, Community Development Council, Inc., 4831 Amour Street, Fort Smith, AR 72956.	Weldon Ramey, ph. 479–784–9829, fx. 479–784–9029.	6	34,088.00
Consumer Credit Counseling Service of Greater Dallas, Inc., 8737 King George Drive, Dallas, TX 75235.	Bettye Banks, ph. 214–540–6860, fx. 214–540–6678.	6	99,973.00
New Mexico ACORN Fair Housing, 411 Bellemah NW, Albuquerque, NM 87102.	Mathew Henderson, ph. 505–242–7411, fx. 410–735–3383.	6	99,724.00
Kansas Legal Services, 712 Kansas Avenue, Suite 200, Topeka, KS 66603.	Theresa Shively, ph. 785–233–2068, fx. 785–354–8311.	7	99,926.00
Urban League of Metropolitan St. Louis, 3701 Grandel Square, St. Louis, MO 63108.	Brenda Wrench, ph. 314–615–3650, fx. 314–531–7462.	7	100,000.00
High Plains Community Development Corp, Inc., 130 East 2nd Street, Chadron, NE 69337.	Marguerite Vey-Miller, ph. 308–432–4346, fx. 309–432–4655.	7	97,277.00
Colorado Coalition for the Homeless, 2111 Champs Street, Denver, CO 80205.	John Parvensky, ph. 303–293–2217	8	100,000.00
Ogden City Corporation, 2549 Washington Boulevard, #120, Ogden, UT 84401.	Karen Thurber, ph. 801–629–8943, fx. 801–629–8996.	8	77,310.00
By-Design Financial Solutions, 5628 East Slauson Avenue, Los Angeles, CA 90040.	Martha Lucey, ph.559–455–5525, fx. 559–455–1405.	9	62,993.00
Greater Napa Fair Housing Center, 601 Cabot Way Napa, CA 94559	Stephen Cogswell, ph. 707–224–9720, fx. 707–224–1566.	9	99,990.00
Idaho Legal Aid Services, Inc., 310 North 5th Street, Boise, ID 83702	James Cook, ph. 208–345–0106, fx. 208–345–2561.	10	80,961.00
Kitsap County Consolidated Housing Authority, 9307 Bayshore Drive NW, Silverdale, WA 98383.	Deborah Howard, ph. 360–535–6151.	10	100,000.00
Legal Aid Services of Oregon, 921 SW Washington Street, Suite 570, Portland, OR 97205.	Thomas Matsuda, ph. 503–471–1159, fx. 503–417–0147.	10	100,000.00
Education and Outreach Initiative/Disability Component			
Three Rivers Center for Independent Living, Inc., 900 Rebecca Avenue, Wilkinsburg, PA 15221.	Rick McWilliams, ph. 412–371–7700, fx. 412–371–9430.	3	$51,489.00
Legal Aid Society of Palm Beach County, Inc., 423 Fern Street, Suite 200, W. Palm Beach, FL 33401.	Robert Bertisch, ph. 561–655–8944, fx. 561–655–5269.	4	100,000.00
University of Southern Mississippi, 118 College Drive, #5157, Hattiesburg, MS 39406.	Constance Wyldmon, ph.601–266–4119.	4	100,000.00
Mainstreaming Consultants, dba Program for Accessibility, 5801 Executive Center Drive, Suite 101, Charlotte, NC 28212.	Julia Sain, ph.704–537–0550, fx. 704–537–0507.	4	88,022.00
Coalition on Homelessness and Housing in Ohio, 175 S Third Street, Suite 250, Columbus, OH 43215.	Spencer Wells, ph. 614–260–1984, fx. 614–260–1060.	5	100,000.00
Disability Rights Wisconsin, 16 North Carroll Street, Suite 400, Madison, WI 53703.	Joan Karan, ph. 608–267–0214, fx. 608–267–0368.	5	100,000.00
Housing Research & Advocacy Center, 3631 Perkin Avenue, Cleveland, OH 44114.	Jeffrey Dillman, ph. 216–361–9240, fx. 216–361–1290.	5	100,000.00
Advocacy Center, 1010 Common Street, Suite 2600, New Orleans, LA 70112.	Lois Simpson, ph. 504–522–2337, fx. 504–522–5507.	6	100,000.00
City of Billings, 510 North Broadway, 4th Floor, Billings, MT 59103	Brenda Beckett, ph. 406–657–8286, fx. 406–657–8327.	8	99,987.00
Aids Legal Referral Panel, San Francisco Bay Area, 1663 Mission Street, Suite 500, San Francisco, CA 94103.	Bill Hirsh, ph. 415–701–1200, fx. 415–701–1400.	9	60,502.00
Education and Outreach Initiative/Subprime Lending Component			
Community Impact Legal Services, 1003 East Lincoln Highway, Coatesville, PA 19320.	Carolyn Johnson, ph. 610–380–7111, fx. 610–380–9030.	3	$50,000.00

APPENDIX A.—FAIR HOUSING INITIATIVES PROGRAM AWARDS FY2006—Continued

Applicant name	Contact person	Region	Award amount ($)
Housing Counseling Services, Inc., 2410 17th Street, NW, Suite 100, Washington, DC 20009.	Marian Siegel, ph. 202–667–7006, fx. 202–667–1939.	3	50,000.00
Phoenix Housing and Counseling Non-Profit, Inc., 1640 Porter Street, Detroit, MI 48216.	Marguerite Evans, ph. 313–964–4207, fx. 313–964–3861.	5	50,000.00
ACORN Associates, Inc., 411 Bellemah NW, Albuquerque, NM 87102	Camella Phillips, ph.718–246–7900, fx.410–735–3383.	6	49,997.00
Legal Aid Foundation of Los Angeles, 1102 Crenshaw Boulevard, Los Angeles, CA 90019.	Mary Ann Heimann, ph. 323–801–7945, fx. 323–801–7945.	9	50,000.00
Education and Outreach Initiative/Hurricane Katrina Component			
ACORN Community Land Association Of Louisiana, 1024 Elysian Fields Avenue New Orleans, LA 70117.	Jeff Kalson, ph. 504–943–0044, fx. 504–943–3842.	6	100,000.00
Texas Workforce Commission, 101 East 15th Street, Austin, TX 78778	DeDe Webb, ph. 512–936–6049	6	100,000.00
Private Enforcement Initiative/General Component			
Housing Discrimination Project, Inc., 57 Suffolk Street, Holyoke, MA 01040.	Jamie Williamson, ph. 413–539–9796.	1	275,000.00
Fair Housing Counsel of Northern New Jersey, 131 Main Street, Suite 140, Hackensack, NJ 07601.	Lee Porter, ph. 201–489–3552, fx. 201–489–8472.	2	275,000.00
Legal Assistance of Western New York, Inc., 17 West Main Street, Suite 400, Rochester, NY 14614.	Louis Priesto, ph. 585–325–2520, fx. 585–325–2559.	2	221,800.00
Fair Housing Partnership of Greater Pittsburg, Inc., 2840 Liberty Avenue, Suite 205, Pittsburgh, PA 15222.	Peter Harvey, ph. 412–391–2535, fx. 412–391–2647.	3	275,000.00
Fair Housing Center of the Gulf Coast of Mississippi, 15105 Lemoyne Boulevard, Suite 1–7, Biloxi, MS 39532.	Toshja Brown, ph. 228–396–4008, fx. 228–396–4857.	4	126,634.66
Housing Opportunities Project for Excellence, Inc., 18441 NW 2nd Avenue, Suite 218, Miami, FL 33169.	Keenya Robertson, ph. 305–651–4673.	4	275,000.00
Mississippi Center for Legal Services, Inc., 111 East Front Street, Hattiesburg, MS 39401.	Sam Buchanan, ph. 601–545–2950, fx. 601–545–2935.	4	275,000.00
Mobile Fair Housing Center, Inc., P. O. Box 161202, Mobile, AL 36616	Teresa Bettis, ph. 251–479–1532, fx. 251–479–1488.	4	274,971.00
Access Living of Metropolitan Chicago, 614 West Roosevelt Road, Chicago, IL 60607.	Daisy Feidt, ph. 312–253–7000, fx. 312–253–7001.	5	275,000.00
Fair Housing Center of Southeastern Michigan, P. O. Box 7825, Ann Arbor, MI 48107.	Pamela Kisch, ph. 734–994–3426 ...	5	125,500.00
Fair Housing Resource Center, Inc., 54 South State Street, Suite 303, Painesville, OH 44077.	Patricia Kidd, ph. 440–392–0147, fx. 440–392–0148.	5	275,000.00
Housing Advocates, Inc., 3214 Prospect Avenue, East, Cleveland, OH 44115.	Edward Kramer, ph. 216–431–7400, fx. 216–431–6149.	5	272,035.45
Housing Opportunities Made Equal Of Greater Cincinnati, Inc., 2400 Reading Road, Suite 404, Cincinnati, OH 45202.	Elizabeth Brown, ph. 513–721–4663, fx. 513–721–1642.	5	271,870.22
Interfaith Housing Center of the Northern Suburbs, 620 Lincoln Avenue, Winneka, IL 60093.	Gail Schechter, ph. 847–501–5760, fx. 847–501–5722.	5	274,248.00
Legal Services of Eastern Michigan, 436 South Saginaw Street, Flint, MI 48502.	Teresa Trantham, ph. 810–234–2621, fx.810–234–9039.	5	204,826.00
Austin Tenants Council, Inc., 1619 E. Cesar Chavez Street, Austin, TX 78702.	Katherine Stark, ph. 512–474–7007, fx. 512–474–7007.	6	274,773.00
Greater Houston Fair Housing Center, Inc., 1900 Kane, Room 111, P. O. Box 292, Houston, TX 77001.	Daniel Bustamante, ph. 713–641–3247.	6	274,000.00
Greater New Orleans Fair Housing Action Center, 228 St. Charles Avenue, Suite 1035, New Orleans, LA 70130.	James Perry, ph. 877–445–2100	6	275,000.00
Metropolitan Fair Housing Council of Greater Oklahoma City, 1500 NE 4th Street, Suite 204, Oklahoma City, OK 73117.	George Wesley, ph.405–232–3247, fx. 405–232–5119.	6	274,766.00
San Antonio Fair Housing Council, Inc., 4203 Woodcock Drive, Suite 218, San Antonio, TX 78228.	Sandra Tamez, ph. 210–733–3247, fx. 210–733–6670.	6	269,049.00
Fair Housing of the Dakotas, 533 Airport Road, Suite C, Bismarck, ND 58504.	Amy Schauer-Nelson, ph. 701–221–2530, fx. 701–221–9597.	8	214,769.00
Fair Housing Council of Central California, 560 East Shields Avenue, Suite 103, Fresno, CA 93704.	Marilyn Borelli, ph. 559–244–2950, fx. 559–244–2956.	9	275,000.00
Fair Housing of Marin, 615 B Street, San Rafael, CA 94901	Nancy Kenyon, ph. 415–457–5025, fx. 415–457–6382.	9	275,000.00
Inland Mediation Board, 60 East 9th Street, Upland, CA 91786	Lynne Anderson, ph. 909–984–2254, fx. 909–984–0274.	9	275,000.00
Legal Aid Society of Hawaii, 924 Bethal Street, Honolulu, HI 96813	Nalani Fujimori, ph. 808–536–4302	9	275,000.00
Orange County Fair Housing Council, Inc., 201 South Broadway, Santa Ana, CA 92701.	David Levy, ph. 714–569–0823	9	157,500.00
Sentinel Fair Housing, 510 Sixteenth Street, Suite 560, Oakland, CA 94612.	Katura Rutan, ph. 510–836–2687, fx. 510–836–0461.	9	274,962.00

APPENDIX A.—FAIR HOUSING INITIATIVES PROGRAM AWARDS FY2006—Continued

Applicant name	Contact person	Region	Award amount ($)
Fair Housing Council of Oregon, 1020 SW Taylor Street, #700, Portland, OR 97205.	Pegge McGuire, ph. 503–223–3542, fx. 503–223–3396.	10	268,819.00
Northwest Fair Housing Alliance, 35 W. Main, Suite 200, Spokane, WA 99201.	Marley Eichstaedt, ph. 509–325–2665, fx. 509–325–2716.	10	275,000.00
Private Enforcement Initiative/Performance Based Component FY2005 Continuation			
Fair Housing Center of Greater Boston, 59 Temple Place, Suite 1105, Boston, MA 02111.	David Harris, ph. 617–399–0492, fx. 617–399–0492.	1	274,166.67
Fair Housing Council of Montgomery County, 105 East Glenside Avenue, Glenside, PA 19038.	Elizabeth Albert, ph. 215–576–7711, fx. 215–576–1509.	3	270,000.00
Fair Housing Council of Suburban Philadelphia, Inc., 225 South Chester Street, Suite 1, Swarthmore, PA 19081.	James Berry, ph. 610–604–4411, fx. 610–604–4424.	3	275,000.00
Fair Housing Continuum, Inc., 840 N Cocoa Boulevard, Suite F, Cocoa, FL 32922.	David Baade, ph. 321–633–4451, fx. 321–633–5198.	4	275,000.00
Jacksonville Area Legal Aid, Inc., 126 West Adam Street, Jacksonville, FL 32202.	Michael Figgins, ph. 904–356–8371, fx. 904–356–8780.	4	274,972.67
Lexington Fair Housing Council, 205 East Reynolds Road, Suite E, Lexington, KY 40517.	Author Crosby, ph. 859–971–8067, fx. 859–971–1652.	4	205,258.00
West Tennessee Legal Services, Inc., 210 West Main Street, Jackson, TN 38302.	Carol Gish, ph. 731–426–1309	4	275,000.00
HOPE Fair Housing Center, 2100 Manchester Road, #1070 B, Wheaton, IL 60187.	Bernard Kleina, ph. 630–690–6500, fx. 630–690–6586.	5	274,702.33
Metropolitan Milwaukee Fair Housing Council, 600 East Mason Street, Suite 200, Milwaukee, WI 53202.	William Tisdale, ph. 414–278–1240, fx. 414–278–8033.	5	274,996.00
South Suburban Housing Center, 18220 Harwood Avenue, Suite 1, Homewood, IL 60430.	John Petruszak, ph. 708–957–4674, fx. 708–957–4761.	5	262,500.00
Family Housing Advisory Services, Inc., 2410 Lake Street, Suite 200, Omaha, NE 68111.	Teresa Hunter, ph. 402–934–6657, fx. 402–934–7928.	7	275,000.00
Silver State Fair Housing Council, 855 E. Fourth Street, Suite E, Reno, NV 89512.	Katherine Copeland, ph. 775–324–0990, fx. 775–324–7507.	9	203,629.00
Fair Housing Center of South Puget Sound, 1517 South Fawcett, Suite 250, Tacoma, WA 98402.	Lauren Walker, ph. 253–274–9523, fx. 253–274–8220.	10	275,000.00
Private Enforcement Initiative/Performance Based Component FY2006			
Fair Housing Council of New York, Inc., 327 W. Fayette Street, Suite 408, Syracuse, NY 13202.	Merrilee Witherell, ph. 315–471–0420, fx. 315–471–0549.	2	211,346.00
Long Island Housing Services, Inc., 3900 Veterans Memorial Highway, Bohemia, NY 11761.	Michelle Santantonio, ph. 531–467–5111, fx. 531–467–5131.	2	270,417.00
South Brooklyn Legal Services, Inc., 105 Court Street, Brooklyn, NY 11201.	Josh Zinner, ph. 718–237–5567, fx. 718–855–0733.	2	183,333.00
Central Alabama Fair Housing Center, 1817 West Second Street, Montgomery, AL 36106.	Faith Cooper, ph. 334–263–4663, fx. 334–263–4664.	4	274,000.00
Fair Housing Center of Northern Alabama, 1728 3rd Avenue North 400C, Birmingham, AL 35203.	Lila Hackett, ph. 205–324–0111	4	275,000.00
Chicago Lawyers Committee for Civil Rights Under Law, 100 North LaSalle Street, Suite 600, Chicago, IL 60602.	Gaylene Henry, ph. 312–630–9744, fx. 312–630–1127.	5	274,994.00
Fair Housing Opportunities, Inc. dba, Fair Housing Center, 432 North Superior, Toledo, OH 43604.	Michael Marsh ph. 419–243–6163, fx. 419–243–6163.	5	275,000.00
John Marshall Law School, 315 South Plymouth Court, Chicago, IL 60604	Michael Seng, ph. 312–987–2397, fx. 312–427–9438.	5	274,958.00
Bay Area Legal Aid, 405 4th Street, 9th Floor, Oakland, CA 94612	Jaclyn Pinero, ph. 510–250–5229	9	275,000.00
California Rural Legal Assistance, Inc., 631 Howard Street, Suite 300, San Francisco, CA 94105.	Ilene Jacobs, ph. 530–742–7235, fx. 530–742–0854.	9	275,000.00
Project Sentinel, Inc., 430 Sherman Avenue, Suite 308, Palo Alto, CA 94306.	Ann Marquart, ph. 650–321–6291, fx. 650–321–4173.	9	270,000.00
Southwest Fair Housing Council, 2030 Broadway Boulevard, Suite 101, Tucson, AZ 85719.	Richard Rhey, ph. 520–798–1568, fx. 520–620–6796.	9	270,144.00

[FR Doc. E7–556 Filed 1–16–07; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–27]

Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll-free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single-family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 29th review period, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(es) of the mortgagee from originating FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are (1) Those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the Government Accountability Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Homeownership centers
Assurity Financial Services LLC.	6025 S. Quebec St. Ste 220, Englewood, CO 80111	Denver, CO	12/1/2006	Denver.
Colonial Savings FA	1500 N Norwood Dr., Hurst, TX 76054	Fort Worth, TX	12/1/2006	Denver.
Colonial Savings FA	9880 Westpoint Dr., 500 Bldg VI, Indianapolis, IN 46256.	Indianapolis, IN	12/1/2006	Atlanta.
New York Mortgage Co. LLC.	1 Research CT., Ste 160, Rockville, MD 20850	Dallas, TX	12/1/2006	Denver.
Southern Crescent Mtg. Inv. Corp..	145 W Lanier Avenue, Fayetteville, GA 30214	Atlanta, GA	12/1/2006	Atlanta.

Dated: January 5, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E7–582 Filed 1–16–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4743–N–09]

Notice of Planned Closing of Nashville, TN Post-of-Duty Station

AGENCY: Office of the Inspector General, HUD.

ACTION: Notice of planned closing of the Nashville, Tennessee post-of-duty station.

SUMMARY: This notice advises the public that HUD's Office of the Inspector General (HUD/OIG) plans to close its Nashville, Tennessee post-of-duty station, and also provides a cost-benefit analysis of the impact of this closure.

FOR FURTHER INFORMATION CONTACT: Bryan Saddler, Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–4500, (202) 708–1613. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at (800) 877–8339 (Federal Information Relay Services). (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: The Nashville, Tennessee post-of-duty station was opened in 2003 to address fraud statewide. In 2006, one of the two agents assigned to Nashville resigned and another was transferred to Texas. Additionally, HUD/OIG plans to add investigative staff to its existing post-of-duty station in Knoxville. HUD/OIG has determined that greater efficiency and cost-savings can be achieved by now consolidating staff and resources in the Knoxville office.

Section 7(p) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(p)) provides that a plan for field reorganization, which may involve the closing of any field or regional office, of the Department of Housing and Urban Development may not take effect until 90 days after a cost-benefit analysis of the effect of the plan on the office in question is published in the **Federal Register**. The required cost-benefit analysis should include: (1) An estimate of cost savings anticipated; (2) an estimate of the additional cost which will result from the reorganization; (3) a discussion of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services.

Legislative history pertaining to section 7(p) indicates that not all reorganizations are subject to the requirements of section 7(p). Congress stated that ''[t]his amendment is not intended to [apply] to or restrict the internal operations or organization of the Department (such as the establishment of new or combination of existing organization units within a field office, the duty stationing of employees in various locations to provide on-site service, or the establishment or closing, based on workload, of small, informal offices such as valuation stations).'' (See House Conference Report No. 95–1792, October 14, 1978 at 58.) Through this notice, HUD/OIG advises the public of the closing of the Nashville, Tennessee duty station and provides the cost-benefit analysis of the impact of the closure.

Impact of the Closure of the Nashville, Tennessee, Post-of-Duty Station: HUD/OIG considered the costs and benefits of closing the Nashville, Tennessee post-of-duty station, and is publishing its cost-benefit analysis with this notice. In summary, HUD/OIG has determined that the closure will result in a cost savings, and, as a result of the size and limited function of the office, will cause no appreciable impact on the provision of authorized investigative services/activities in the area.

A. *Cost Savings:* The Nashville, Tennessee post-of-duty station currently costs approximately $31,764.38 per annum for space rental. Additional associated overhead expenses (*e.g.*, telephone service) are incurred to operate the post-of-duty station. Thus, closing the office will result in annual savings of at least $32,000.

B. *Additional Costs:* Since the Nashville, Tennessee post-of-duty is currently not staffed, there are no offsetting costs associated with the closure.

C. *Impact on Local Economy:* No appreciable impact on the local economy is anticipated. The post-of-duty station is located in a desirable office park, and it is anticipated that the space can easily be re-leased to other tenants.

D. *Effect on Availability, Accessibility and Quality of Services Provided to Recipients of Those Services:* The availability, accessibility and quality of services provided to complainants will not be adversely impacted. Special agents assigned to other HUD/OIG offices—chiefly Atlanta, and soon Knoxville—can cost-effectively address fraud allegations in Tennessee generally and Nashville specifically.

For the reasons stated in this notice, HUD/OIG intends to proceed to close its Nashville, Tennessee post-of-duty station at the expiration of the 90-day period from the date of publication of this notice.

Dated: January 10, 2007.

Kenneth M. Donohue, Sr.,

Inspector General.

[FR Doc. E7–578 Filed 1–16–07; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION BOARD MEETING

Sunshine Act Meetings

TIME AND DATE: January 22, 2007, 9:15 a.m.–12:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open session.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the May 22, 2006, Meeting of the Board of Directors.
- President's Report.
- Program Update.
- Operations Update.
- External Affairs.
- Congressional Affairs.
- Board site visit to IAF grantees.

PORTIONS TO BE OPEN TO THE PUBLIC:

- All.

PORTIONS TO BE CLOSED TO THE PUBLIC:

- None.

CONTACT PERSON FOR MORE INFORMATION:

- Jennifer R. Hodges, General Counsel—(703) 306–4320.

Dated: January 9, 2007.

Jennifer R. Hodges,

General Counsel.

[FR Doc. 07–189 Filed 1–12–07; 3 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Class III Gaming Amendment taking effect.

SUMMARY: Notice is given that the Amendment to the Tribal-State gaming compact between the State of California and the Quechan Tribe of the Fort Yuma Indian Reservation is considered approved and is in effect.

DATES: *Effective Date:* January 17, 2007.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

The compact allows for up to 1,100 gaming devices, adds provisions addressing problem gambling, off reservation traffic impacts and workplace occupational health and safety standards. Finally, the term of the compact is until December 31, 2025. The Amendment, also, authorizes annual payments to the State for geographical exclusivity. The Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Amendment to the Tribal-State Compact between the State of California and the Quechan Tribe of The Fort Yuma Indian Reservation is now in effect.

Dated: January 4, 2007.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E7–514 Filed 1–16–07; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–1110–PI]

Notice of Seasonal Closure of Public Lands to Motorized Vehicle Use

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of seasonal closure of certain public lands located in Sublette County, Wyoming to all types of motor vehicle use and/or human presence.

SUMMARY: Pursuant to 43 Code of Federal Regulations subpart 8364, the Bureau of Land Management (BLM) may issue an order to close the use of BLM administered lands to the public to protect those lands and resources. The Pinedale Resource Management Plan (RMP) Record of Decision (ROD), December 12, 1988, states that big game winter ranges, and elk feedgrounds may be closed to minimize stress to wintering animals. The Pinedale Anticline Project (PAPA) ROD (2000) identifies areas that may be subject to seasonal closures as conditions warrant.

After consulting with the Wyoming Game and Fish Department, the BLM Pinedale Field Manager has implemented a seasonal closure on certain BLM-administered lands and travel ways including existing roads and two-track trails, to all types of motorized vehicle travel (*e.g.*, snowmobiles, all-terrain vehicles, any vehicle including trucks, sport utility vehicles and cars, motorcycles etc.). Winter ranges, as identified in the Pinedale RMP, and as described below in the **SUPPLEMENTARY INFORMATION** section, will be closed to all unauthorized motorized travel from November 15 through April 30 each winter. Use of winter range areas by non-motorized means is still allowed. Feedground areas will be closed November 15 through April 30 each winter, to all motorized vehicles and human presence. The Mesa winter range will remain open to motorized travel on existing roads from November 15 through January 14 each winter, but roads will be closed to unauthorized motorized travel January 15 through April 30 each winter. After April 30 each year, motorized vehicle use will be limited to existing roads and two-track trails.

The winter range seasonal closures affect public lands located within the Deer Hills, Oil Field, Mesa, Bench Corral, and Miller Mountain winter ranges. Elk feedground closures affect public lands around the Franz, Finnegan, Scab Creek, Fall Creek, and North Piney feedgrounds. This action is necessary for the protection of crucial winter range habitat for elk, moose, antelope, and mule deer. Except for travel on highways or county roads, motorized vehicle travel within these areas will be allowed only by written authorization from the Pinedale Field Manager. Personnel of the BLM, Wyoming Game and Fish Department, U.S. Department of Agriculture-APHIS & Forest Service, U.S. Fish & Wildlife Service, and law enforcement personnel are exempt from this closure when performing official duties. Operators of existing oil and gas facilities may perform routine maintenance, or operation and drilling as approved by the BLM, and livestock operators may perform permitted activities.

SUPPLEMENTARY INFORMATION: The BLM Pinedale Field Office is responsible for management of crucial winter range habitat located on public lands within Sublette County. These crucial winter range habitat areas and the management thereof are addressed in the Pinedale RMP ROD, which was signed December 12, 1988 and Pinedale Anticline Project Area (PAPA) ROD signed on July 27, 2000. The RMP identifies areas of crucial winter range and states that seasonal closures for motorized vehicles may be used to protect big game winter range. Closures will vary depending on conditions and will be implemented in coordination with the Wyoming Game and Fish Department (Pinedale RMP, pages 33, 35, and 37). Road closures from the PAPA ROD identify current and future use of roads in the winter and outlines allowable access (Pages 12 and 19). Reasons for the closure include the effects of persistent drought and/or severe winter conditions which threaten the health of these wintering wildlife species. Low forage production associated with persistent drought conditions causes animals to go into winter in poor condition. Losses of wintering habitat from development activity can reduce the area available to the wintering animals. These impacts to wintering wildlife are compounded by significant human activity, such as day and night wildlife observation, still and video photography, snowmobiling, and antler gathering. Because of the increased stress the presence of motorized vehicles inflicts on wintering big game during difficult winter periods, the number of animals that will die and the rate of aborting or reabsorption of fetuses on the winter range can increase. This decreases production of young during the following summer. Therefore, closing crucial winter ranges and feedgrounds to motorized vehicles and human presence (feedgrounds) reduces impacts to wintering big game.

By this order, the following BLM-administered lands are included in this notice of closures:

- The Oil Field winter range complex located approximately 10 miles west of Big Piney containing approximately 116,981 acres.
- The Deer Hills winter range complex located approximately 10 miles west of Big Piney containing approximately 23,552 acres.
- The Mesa winter range complex located approximately 3 miles south of Pinedale containing approximately 83,101 acres.
- The Bench Corral winter range complex and elk winter feedground (T31–32N, R112W) located approximately 18 miles southwest of Pinedale containing approximately 42,230 acres.
- Miller Mountain winter range located approximately 5 miles south and west of LaBarge containing approximately 118,543 acres.

- The Franz elk winter feedground (T36N, R112W) containing 680 acres.
- The Finnegan elk winter feedground (T30N, R114W) containing approximately 1920 acres.
- The Fall Creek elk winter feedground (T33N, R108W) containing approximately 160 acres.
- The Scab Creek elk winter feedground (T33N, R106–107W) containing approximately 2,240 acres.
- The North Piney elk winter feedground (T31N, R114W) containing approximately 1,080 acres.
- The Black Butte elk winter feedground (T36–37N, R114W) containing approximately 320 acres.

Signs will be posted at key locations that provide access into the closure areas. Additional information will be available at the Pinedale Field Office, 432 East Mill Street, Pinedale, Wyoming 82941.

Authority for closure orders is provided in regulation 43 CFR, subparts 8341.2 and 8364.1. Violations of this closure are punishable by a fine not to exceed $1000, and/or imprisonment not to exceed 12 months.

Dates: Every calendar year before the following dates, a press release will be published in the local newspaper as to the areas that will be closed for that year. The seasonal closure for big game winter ranges will be effective from November 15 through April 30 each winter, to all unauthorized motorized vehicle use. The Mesa winter range will remain open to motorized travel on existing roads from November 15 through January 14 each winter, but roads will be closed to unauthorized motorized travel January 15 through April 30 each winter. Elk feedground areas will be closed November 15 through April 30 each winter, to all unauthorized motorized vehicles and human presence. Use of winter range areas by non-motorized means is still allowed. After April 30 each year, motorized vehicle use will be limited to existing roads and two-track trails.

FOR FURTHER INFORMATION CONTACT: Pauline Schuette, Wildlife Biologist or Martin Hudson, Outdoor Recreation Planner, Bureau of Land Management, 432 East Mill Street, Pinedale, Wyoming 82941, or contact by telephone at 307–367–5300.

Dated: October 3, 2006.

Dennis R. Stenger,

Field Manager.

[FR Doc. E7–508 Filed 1–16–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180]

Call for Nominations for the Bureau of Land Management's Central California Resources Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations.

SUMMARY: The Bureau of Land Management is soliciting nominations from the public to fill a vacated position on the Central California Resources Advisory Council and serve the remainder of a three-year term that expires in September, 2007. Council members provide advice and recommendations to the BLM on the management of public lands in Central California.

ADDRESSES: Nominations should be sent to the Field Manager, Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630.

FOR FURTHER INFORMATION CONTACT: Field Manager William S. Haigh or Public Affairs Officer David Christy, both at Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630, (916) 985–4474.

SUPPLEMENTARY INFORMATION: The Central California Resources Advisory Council (RAC) is composed of twelve individuals who represent different interests and advise BLM officials on policies and programs concerning the management of public lands under the jurisdiction of the Folsom, Bishop, Hollister, and Bakersfield Field Offices. The Council meets in formal sessions two to four times a year at various locations. Council members serve without compensation except for reimbursement of travel expenditures incurred in the performance of their duties. Members serve three-year terms and may be renominated for reappointment for an additional three-year term.

The vacancy on the Central California RAC is in Category Three, which includes state, county and local elected officials; employees of a state agency responsible for natural resource management; representatives of Indian tribes within or adjacent to the Central California area; academicians employed by a natural resources management or natural sciences organization; or members of the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the region in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, and experience and their knowledge of the geographical resource decision making. The following must accompany nominations received in this call for nominations:

Letters of reference from represented interests or organizations;

A completed background information nomination form;

Any other information that speaks to the nominee's qualifications.

Nominations will be accepted for a 45-day period beginning the date this notice is published.

Dated: October 15, 2006.

William S. Haigh,

Field Office Manager, Folsom Field Officer.

[FR Doc. 07–129 Filed 1–16–07; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–06–0777–30]

Call for Nominations for Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council Call for Nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for two vacant positions on the Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC). The first vacant position is Category Two representing National/Regional Environmental interests. The second vacant position is Category One representing Federal Grazing interests. The RAC provides advice and recommendations to BLM on land use planning and management of the public land within northeastern Nevada. Public nominations will be considered for 45 days after the publication date of this notice.

DATES: All nominations should be received by the BLM Elko Field Office by 45 days from the publication date of this notice.

ADDRESSES: Simultaneous with this notice, BLM Elko Field Office will issue a press release providing additional information for submitting nominations. Nominations should be sent to Helen Hankins, BLM Elko Field Office, 3900 East Idaho Street, Elko, NV 89801; (775) 753–0200.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Officer, Elko

Field Office, 3900 E. Idaho Street, Elko, NV 89801. *Telephone:* (775) 753–0386. *E-mail: mbrown@nv.blm.gov*

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The vacant positions for the Northeastern Great Basin RAC are Category Two representing National/Regional Environmental interests and Category One representing Federal Grazing interests.

Individuals may nominate themselves or others. Nominees must be residents of Nevada. Nominees will be evaluated based on their education, training, experience, and their knowledge of northeastern Nevada. Nominees should have demonstrated a commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Dated: September 20, 2006.

Helen M. Hankins,

Field Manager.

[FR Doc. E7–509 Filed 1–16–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV912–07–1990–PO–241A–006F]

Sierra Front-Northwestern Great Basin Resource Advisory Council; Notice of a Change in Meeting Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a change in a previously announced meeting time for the Sierra Front-Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), a meeting of the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front-Northwestern Great Basin Resource Advisory Council (RAC), Nevada, has been rescheduled as indicated below.

Date & Time: The RAC meeting previously announced in the **Federal Register** for Wednesday–Thursday, February 7–8, 2007, at the BLM-Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada, has been postponed to Wednesday-Thursday, April 4–5, 2007. The location of the meeting and the agenda topics will not change and remains open to the public. A general public comment period, where the public may submit oral or written comments to the RAC, will be held at 4 p.m. on April 4, 2007.

The final RAC agenda, with any additions/corrections to agenda topics, the starting and ending times of meetings, and details of any planned field trips, will be determined/posted at least two weeks before the meeting on the BLM-Nevada State Office Web site at *http://www.nv.blm.gov/rac;* hard copies of the agendas can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or those who wish a hard copy of the agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107, no later than two weeks before each two-day meeting.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone: (775) 885–6107. E-mail: *mstruble@nv.blm.gov.*

Dated: January 10, 2007.

Don Hicks,

Field Office Manager, BLM-Carson City Field Office.

[FR Doc. E7–493 Filed 1–16–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–FQ; AA–17989, AA–65551]

Public Land Order No. 7674; Partial Revocation of Executive Order No. 3406 and Executive Order Dated January 4, 1901; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two Executive Orders insofar as they affect approximately 1,725.81 acres of National Forest System lands withdrawn for lighthouse purposes within Alaska. The lands are no longer needed for the purpose for which they were withdrawn.

EFFECTIVE DATE: January 17, 2007.

FOR FURTHER INFORMATION CONTACT: Terrie D. Evarts, Bureau of Land Management, Alaska State Office, 222 W. Seventh Avenue, #13, Anchorage, Alaska 99513–7599, 907–271–5630.

SUPPLEMENTARY INFORMATION: The lands withdrawn for Cape Decision, Point Retreat, and Five Finger lighthouses were conveyed out of Federal ownership pursuant to Public Law 105–383 (112 Stat. 3411). This revocation is for record-clearing purposes only.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Executive Order No. 3406 and Executive Order dated January 4, 1901, which withdrew National Forest System lands from surface entry and mining and reserved them for use by the United States Coast Guard for lighthouse purposes, are hereby revoked insofar as they affect the following described lands:

Copper River Meridian

(Cape Decision Executive Order No. 3406),
U. S. Survey No. 1609, located within Tps. 67 and 68 S., R. 73 E.,
(Point Retreat Executive Order dated January 4, 1901),
U. S. Survey No. 1597, located within T. 40 S., Rs. 63 and 64 E.,
(Five Finger Executive Order dated January 4, 1901),
Island located within T. 53 S., R. 74 E., sec. 15, S½.,
The areas aggregate approximately 1,725.81 acres.

Dated: December 14, 2006.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

[FR Doc. E7–522 Filed 1–16–07; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–920–1430–PM]

Notice of Final Supplementary Rules for Visitor Use and Permits at Meadowood Special Recreation Management Area—Bureau of Land Management, Eastern States, Springfield, VA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Final Supplementary Rules.

SUMMARY: In accordance with the Meadowood Integrated Activity Plan, the Bureau of Land Management, Eastern States Office (BLM–ES) implements these final supplementary rules which include certain rules of conduct and other limitations on public lands administered by BLM–ES. These final supplementary rules implement the management decisions made in the Meadowood Farm Proposed Management Program Analysis/ Environmental Assessment and the Meadowood Integrated Activity Plan for the Meadowood Special Recreation Management Area. These final supplementary rules will protect natural resources and provide for the safety of visitors and property on public lands located within the boundaries of the Meadowood Special Recreation Management Area (MSRMA) in Fairfax County, Virginia.

DATES: These final supplementary rules are effective February 16, 2007.

ADDRESSES: You may send inquiries or suggestions to Director, Eastern States Office, Bureau of Land Management, 7450 Boston Boulevard, Springfield, VA 22153.

FOR FURTHER INFORMATION CONTACT: Jeff McCusker, Outdoor Recreation Planner at 703–339–3463. Individuals who use a telecommunications device for the deaf may contact Mr. McCusker through the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On Thursday, July 28, 2005, BLM published a Notice of Proposed Supplementary Rules for the Meadowood Special Recreation Management Area (MSRMA), Fairfax County, VA (70 FR 43707). The BLM received no comments on the document during the 30-day comment period. The BLM is now finalizing these supplementary rules for the MSRMA. When these supplementary rules become effective, the MSRMA will be fully open for the uses and purposes identified the Meadowood Farm Proposed Management Program Analysis/Environmental Assessment (PA/EA) and the Meadowood Integrated Activity Management Plan for the Meadowood SRMA including the following stipulations. These final supplementary rules also rescind the temporary closure of these lands that was published in the **Federal Register** on October 22, 2001 (66 FR 53431).

II. Final Rule

The BLM is implementing these final supplementary rules to finalize the management decisions made in the Meadowood Farm Management PA/EA and the Meadowood Integrated Activity Management Plan for the Meadowood SRMA. The BLM developed these plans through a series of public meetings, a 30-day comment period, and an appeal and protest period.

III. Procedural Matters

E.O. 12866 Regulatory Planning and Review: Clarity of the Regulations. These final supplementary rules are not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866. These final supplementary rules do not constitute a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. They will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state local, or Tribal governments or communities. The final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients, or raise novel legal or policy issues. These final supplementary rules merely impose rules of conduct and impose other limitations on certain recreational activities on certain lands to protect natural resources and human health and safety.

Regulatory Flexibility Act. Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These final supplementary rules do not have an effect on business entities of any size. They merely impose reasonable restrictions on certain recreational activities on specific public lands to protect natural resources and the environment, and human health and safety. Therefore, BLM has determined under the RFA that these final supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA). These final supplementary rules are not a ''major rule'' as defined at 5 U.S.C. 804(2) because they will not have an annual effect on the economy greater than $100 million, nor will they result in major cost or price increases for consumers, industries, government agencies, or regions. They do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2) because they will not result in an annual effect on the economy of $100 million or more, in an increase in costs or prices, or insignificant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets. These final supplementary rules merely impose reasonable restrictions on certain recreational activities on specific public lands to protect natural resources and the environment, and human health and safety.

Unfunded Mandates Reform Act. These final supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or on the private sector of more than $100 million per year; nor do these final supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. They merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2U.S.C. 1531 *et seq.*).

Executive Order 12630, Government Action and interference with Constitutionally Protected Pro. In accordance with Executive Order 12360, BLM has found that these final supplementary rules do not have significant takings implications. These final supplementary rules will merely impose reasonable restrictions on certain recreational activities on specific

public lands to protect natural resources and the environment, and human health and safety. No takings of personal or real property will occur because of this final rule.

Executive Order 13132, Federalism. In accordance with Executive Order 13162, BLM finds that the final supplementary rules do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The rules do not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not preempt state law.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. In accordance with Executive Order 13175, BLM finds that these final rules will not result in significant changes to BLM policy and that Tribal Governments will not be unduly affected by these final supplementary rules. This rulemaking has no bearing on lands for which title is held in fee status by Indian tribes and U.S. Government-owned lands under the Bureau of Indian Affairs.

Executive Order 12988, Civil Justice Reform. In accordance with Executive Order 12988 the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act. BLM has determined this rulemaking does not contain any new information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act. BLM prepared an Environmental Assessment (EA), ''The Meadowood Farm Proposed Program Analysis/ Environmental Assessment'' and determined that these final supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required. The BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the Administrative Record at the Bureau of Land Management, Eastern States Office, 7450 Boston Blvd. Springfield, VA 22153.

Executive Order 13211 Effects on the Nation's Energy Supply (Executive Order 13211). These final supplementary rules are a purely administrative regulatory action and have no implications under Executive Order 13211.

Clarity of the Final Supplementary Rules. Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the final supplementary rules clearly stated?
2. Do the final supplementary rules contain technical language or jargon that interferes with clarity?
3. Does the format of the final supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
4. Would the final supplementary rule be easier to understand if it was divided into more (but shorter) sections?
5. Is the description of the final supplementary rules in ''Supplementary Information'' section of this preamble helpful in making the final rules easier to understand?

Please send any comments you have on the clarity of the regulations to the Bureau of Land Management, Eastern States Office, 7450 Boston Blvd. Springfield, VA 22153.

Author: The principle author of these final supplementary rules is Jeff McCusker, Outdoor Recreation Planner, Bureau of Land Management, Eastern States Office, assisted by Cynthia Ellis, Office of Regulatory Affairs, Washington, DC.

These final supplementary rules implement the management decisions made in the Meadowood Farm Proposed Management Program Analysis/ Environmental Assessment and the Meadowood Integrated Activity Plan for the Meadowood Special Recreation Management Area. These final supplementary rules will protect natural resources and provide for the safety of visitors and property on public lands located within the boundaries of the Meadowood Special Recreation Management Area (MSRMA) in Fairfax County, Virginia. Accordingly, for the reasons stated above and under the authorities for supplementary rules found in 43 CFR 8341.2, 8364.1, and 8365.1–6, and 43 U.S.C. 1740, the State Director, Bureau of Land Management, Eastern States Office, issues these final supplementary rules for public lands managed by the BLM in the Lower Potomac Field Stations to read as follows:

Final Supplementary Rules for Certain Public Lands Managed by the Lower Potomac Field Station Office, Bureau of Land Management

Unless otherwise authorized by the Field Station Manager, the following acts are prohibited within the Meadowood Special Recreation Management Area (MSRMA) boundary:

1. You must not hunt unless you are participating in a managed hunt following Commonwealth of Virginia hunting regulations, and planned by the Bureau of Land Management (BLM).
2. You must not use fireworks or explosive devices.
3. You must not enter the MSRMA between sunset and sunrise.
4. You must not swim or bathe in the ponds or streams.
5. You must not operate motorized vehicles or devices in the MSRMA except on the following established roads:
   a. From Old Colchester Road to the control line flying circles in the west parcel.
   b. From Belmont Boulevard to the visitor parking area.
   c. From Gunston Road to the parking areas at the horse barn and the BLM compound.
6. You must not enter the fenced pastures at 10406 Gunston Road unless you have a contract or other written permission from the BLM to board or maintain horses at the property.
7. You must not enter into any area posted as closed to entry or use.
8. You must not camp.
9. You must not use a bicycle on the property, except on the roads listed above in rule 5 unless it is on a designated bicycle trail.
10. You must not store fuel or accelerants.
11. You must not use control line model airplanes outside of designated times and places.
12. You must not use model rockets or explosive devices.
13. You must not use or possess weapons, other than for permitted hunts planned by the BLM.

Exception for Official Use of Site. Federal, state, and local law enforcement officers, government employees, and BLM volunteers are exempt from these supplementary rules in the course of their official duties. Limitations on the use of motorized vehicles do not apply to emergency vehicles, fire suppression and rescue vehicles, law enforcement vehicles, and other vehicles performing official duties, or as approved by an authorized officer of the BLM.

Penalties

1. Violations of these supplementary rules are punishable as follows: By a sentence of incarceration not more than one year, and a fine as provided by law under 43 U.S.C. 1733(a); 43 CFR 8360.0–7. Such violation may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

2. You may also be subject to civil action for unauthorized use of the public lands or related waters and their resources, for violations of permit terms, conditions, or stipulations, or for uses beyond those allowed by the permit.

Sue E. Richardson,

Acting State Director, Eastern States Office.

[FR Doc. E7–515 Filed 1–16–07; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–931–07, 1430–ET, AZA 33648]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application requesting the Secretary of the Interior to withdraw 387.50 acres of National Forest System land from mining for protection and conservation of the Arizona Hedgehog Cactus (Echinocereus triglochidiatus var. arizonicus) located in the Tonto National Forest, Arizona. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may by law be authorized on National Forest System lands.

DATES: Comments must be received no later than April 17, 2007.

ADDRESSES: Comments and meeting requests should be sent to both the Arizona Lands Program Lead, Division of Resources, Bureau of Land Management, One N. Central Avenue, Suite 800, Phoenix, Arizona 85004, and the Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona 85006.

FOR FURTHER INFORMATION CONTACT: Karen Harbour, Tonto National Forest, at the above address or at 602–225–5200.

SUPPLEMENTARY INFORMATION: The Forest Service has filed an application with the Bureau of Land Management, pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, to withdraw the following-described National Forest System land within the Tonto National Forest for a period of 20 years from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

T. 1 S., R. 13 E.
Sec. 12, S½NE¼NE¼SE¼NE¼, SE¼NE¼SE½NE¼, E½SE¼SE¼NE¼, E½E½NE¼SE¼, and NE¼NE¼SE¼SE¼;
Sec. 13, S½N½NE¼NE¼, S½NE¼NE¼, N½SE¼NE¼, N½S½SE¼NE¼, S½SE¼SE¼NE¼, and SE¼SW¼SE¼NE¼.
T. 1 S., R. 14 E.
Sec. 7, S½N½N½ of Lot 2, S½N½ of Lot 2, S½ of Lot 2, Lot 3, Lots 7–10, inclusive, SW¼SE¼NW¼, S½NW¼SE¼NW¼, W½E½SW¼, S½N½NW¼SE¼NW¼, SE¼SW¼SW¼, and E½SW¼SW¼SW¼;
Sec. 18, Lots 1 and 2, and E½NW¼, excepting a portion of Mineral Survey No. 2337.

The area described contains 387.50 acres, more or less, in Gila and Pinal Counties.

The purpose of the proposed withdrawal would be to protect and conserve an ecologically viable population of Arizona Hedgehog Cactus to compensate for occupied habitat that will be lost as a result of open-pit mine and processing facilities located within the Tonto National Forest. The cactus is listed as a Federal Endangered Species and is also on the Forest Service Sensitive Species list.

The use of a right-of-way, an interagency agreement, or a cooperative agreement would not adequately constrain nondiscretionary uses which could irrevocably damage the plants and their habitat.

There are no suitable alternative sites that can be considered because the above-described land was identified as the best choice for mitigation by a committee of botanists familiar with the species.

No water rights are needed to fulfill the purpose of the requested withdrawal.

Records relating to the application may be examined by interested parties at the address of the Bureau of Land Management office stated above.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to both the Arizona Lands Program Lead, Division of Resources, Bureau of Land Management, and the Forest Supervisor, Tonto National Forest at the addresses stated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request, by the date specified above, to both the Arizona Lands Program Lead, Bureau of Land Management, and the Forest Supervisor, Tonto National Forest at the addresses stated above. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Comments, including names and street addresses of respondents, will be available for public review at the Tonto National Forest at the above address during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored 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, will be made available for public inspection in their entirety.

On January 17, 2007 the above-described land will be segregated from location and entry under the United States mining laws. The segregative effect of the application shall terminate upon denial or cancellation of the application; approval of the application; or January 19, 2009, whichever occurs first.

Authority: 43 CFR 2310.3–1.

Dated: November 28, 2006.

Michael A. Taylor,

Deputy State Director, Resources Division.

[FR Doc. E7–510 Filed 1–16–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of the National Park Service Subsistence Resource Commission Meetings Within the Alaska Region

AGENCY: National Park Service, Interior.

ACTION: Announcement of the National Park Service Subsistence Resource Commission meetings within the Alaska Region.

SUMMARY: The National Park Service (NPS) announces the Subsistence Resource Commission (SRC) meeting schedule for the following areas: Aniakchak National Monument, Lake Clark National Park and Wrangell-St. Elias National Park. The purpose of each meeting is to develop and continue work on subsistence hunting program recommendations and other related subsistence management issues. Each meeting is open to the public and will have time allocated for public testimony. The public is welcomed to present written or oral comments to the SRC.

The NPS SRC program is authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. Draft meeting minutes will be available upon request from each Superintendent for public inspection approximately six weeks after each meeting.

DATES: The Aniakchak National Monument SRC meeting will be held from 9 a.m. to 5 p.m., Tuesday, February 13, 2007.

LOCATION: The meeting will be held at the COMSERFAC conference room in the FAA housing facility in King Salmon, Alaska.

DATES: The Lake Clark National Park SRC meeting will be held from 1 p.m. to 5 p.m., Friday, February 16, 2006.

LOCATION: The meeting will be held at the NPS Port Alsworth Visitor Center in Port Alsworth, Alaska.

FOR FURTHER INFORMATION CONTACT: Mary McBurney, Subsistence Program Manager, 2181 Kachemak Drive, Homer, Alaska. *Telephone:* (907) 271–3751. *Fax:* (907) 271–3707. *E-mail: Mary_McBurney @nps.gov*.

DATES: The Wrangell-St. Elias National Park SRC meeting will be held from 9 a.m. to 5 p.m. on Wednesday, February 21 and Thursday, February 22, 2006.

LOCATION: The meeting will be held at the Gulkana Village Hall in Gulkana, Alaska.

FOR FURTHER INFORMATION CONTACT: Barbara Cellarius, Subsistence Manager/ Cultural Anthropologist, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, AK 99573. *Telephone:* (907) 822–7236. *Fax:* (907) 822–7259. *E-mail: Barbara_Cellarius@nps.gov*.

SUPPLEMENTARY INFORMATION: SRC meeting locations and dates may need to be changed based on weather or local circumstances. If meeting dates and locations are changed notice of each meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates.

The agendas for each meeting include the following:

1. Call to order (SRC Chair).
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review and Approve Agenda.
5. Review and adopt minutes from last meeting.
6. Status of SRC Membership—If Needed, Election of Chair and Vice Chair.
7. Commission Member Reports.
8. Superintendent and NPS Staff Reports.
9. Federal Subsistence Board Update.
   a. Wildlife Proposals.
   b. Fisheries Proposals.
10. Board of Game and Board of Fisheries Update.
11. New Business.
12. Agency and Public Comments.
13. SRC Work Session. Prepare correspondence and hunting program recommendations.
14. Set time and place of next SRC meeting.

Adjournment.

Marcia Blaszak,

Director, Alaska Region.

[FR Doc. E7–486 Filed 1–16–07; 8:45 am]

BILLING CODE 4310–EF–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of public meeting.

SUMMARY: This notice announces two public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act, as amended (5 U.S.C. App.2).

DATES: Saturday, March 10, 2007, 7 p.m.

ADDRESSES: New Jersey District Office, Walpack, NJ 07881.

The agenda will include reports from Citizen Advisory Commission members including committees such as Recruitment, Natural Resources, Inter-Governmental, Cultural Resources, By-Laws, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures.

The agenda is set up to invite the public to bring issues of interest before the Commission.

FOR FURTHER INFORMATION CONTACT: Superintendent John J. Donahue, 570–426–2418.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission are established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

Dated: December 19, 2006.

John J. Donahue,

Superintendent, Delaware Water Gap National Recreation Area.

[FR Doc. 07–126 Filed 1–16–07; 8:45 am]

BILLING CODE 4312–JG–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States.

ACTION: Notice of cancellation of open hearing.

SUMMARY: The public hearing on proposed amendments to the Federal Rules of Criminal Procedure, scheduled for February 2, in San Francisco, California, has been canceled. [Original notice of hearing appeared in the **Federal Register** of October 2, 2006].

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: January 9, 2007.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 07–125 Filed 1–16–07; 8:45 am]

BILLING CODE 2210–55–M

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors and Four of the Board's Committees

TIMES AND DATES: The Legal Services Corporation Board of Directors and four of its Committees will meet on January 19–20, 2007 in the order set forth in the following schedule, with each meeting commencing shortly after adjournment of the immediately preceding meeting.

MEETING SCHEDULE

	Time
Friday, January 19, 2007	
1. Annual Performance Reviews Committee (Performance Reviews Committee)	10:30 a.m.
2. Provision for the Delivery of Legal Services Committee (Provisions Committee)	1 p.m.
3. Operations & Regulations Committee.	
Saturday, January 20, 2007	
4. Finance Committee	9 a.m.
5. Board of Directors.	

LOCATION: The Legal Services Corporation, 3333 K Street, NW.—3rd Floor Conference Center, Washington, DC.

STATUS OF MEETINGS: Open, except as noted below.

• *Status:* January 19, 2007 Performance Reviews Committee Meeting—Closed. The meeting of the Performance Reviews Committee may be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to meet in executive session to consider and act on the performance evaluation of the LSC President for calendar year 2006. In addition, the Committee may consider and act on whether and how to undertake an annual performance evaluation of the LSC Inspector General for calendar year 2006. The closing will be authorized by the relevant provision(s) of the Government in the Sunshine Act [5 U.S.C. 552b(c)(6)] and the Legal Services Corporation's corresponding regulation, 45 CFR 1622.5(e). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

• *Status:* January 20, 2007 Board of Directors Meeting—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Board may consider and may act on the report of the Annual Performance Reviews Committee on its plans for conducting the performance review of the LSC President and Inspector General, will consider and may act on the General Counsel's report on litigation to which the Corporation is or may become a party, and will receive a briefing from the Inspector General (IG).[1] A verbatim written transcript of the session will be made. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(6) and (10)] and LSC's implementing regulation 45 CFR 1622.5(e) and (h) will not be available for public inspection. The transcript of any portions not falling within either of these provisions will be available for public inspection.

MATTERS TO BE CONSIDERED: Friday, January 19, 2007.

Annual Performance Reviews Committee

Agenda

Closed Session

1. Approval of agenda.

2. Approval of minutes of the Committee's meeting of October 28, 2006.

3. Consider and act on whether and how to undertake an annual performance evaluation of the LSC Inspector General for calendar year 2006.

4. Consider and act on the Performance Evaluation of the President for calendar year 2006.

5. Consider and act on other business.

6. Consider and act on adjournment of meeting.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

Provision for the Delivery of Legal Services Committee

Agenda

1. Approval of agenda.

2. Approval of the Committee's meeting minutes of October 27, 2006.

3. Presentation on Private Attorney Involvement:

• Staff report on the LSC strategic work plan on private attorney involvement based on the 2006 work of the Provisions Committee.

4. Presentation on LSC Leadership Mentoring Pilot Project—a cornerstone of the LSC quality initiative:

• This presentation will be done in three parts: The African-American Project Directors Association (AAPDA) will make a presentation to the Committee; LSC staff will present an overview of the Leadership Mentoring Pilot Project; and protégé and mentor participants will share highlights of their experiences in the Pilot Project.

AAPDA Presenter: Lillian Johnson.

Staff Presenters: Evora Thomas, Althea Hayward.

Protégé/Mentor Presenters: Claudia Johnson/Don Isaacs, Peggy Lee/Guy Lescault, Tanya Douglas/Allison Thompson.

5. Public comment.

6. Consider and act on other business.

7. Consider and act on adjournment of meeting.

Operations & Regulations Committee

Agenda

1. Approval of agenda.

1. Approval of the minutes of the Committee's October 27, 2006 meeting.

3. Consider and act on Draft Final Rule revising 45 CFR Part 1621, Client Grievance Procedure:

a. Staff report.
b. Public comment.
4. Staff report on history and implementation of LSC restrictions:
a. Staff report.
b. Public comment.
5. Consider and act on adoption of a regulatory agenda for Operations & Regulations Committee for 2007:
a. OIG report.
b. Staff report.
c. Public comment.
6. Consider and act on adoption of Personnel Manual:
a. Staff report.
b. Public comment.
7. Consider and act on response to OIG Fiscal Practices Report recommendation regarding locality pay for LSC President:
a. Staff report.
b. Public comment.
8. Public comment.
9. Consider and act on other business.
10. Consider and act on adjournment of meeting.

Saturday, January 20, 2007

Finance Committee

Agenda

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of October 28, 2006.
3. Presentation of the Fiscal Year 2006 Annual Financial Audit:
• Kirt West, Inspector General.
• Nancy Davis, M.D. Oppenheim.
4. Presentation on LSC's Financial Reports for the first two months of FY 2007:
• Presentation by David Richardson, Treasurer/Comptroller.
• Comments by Charles Jeffress, Chief Administrative Officer.
5. Consider and act on adoption of Revised Temporary Operating Budget for FY 2007:
• David Richardson.
6. Staff report on revisions to LSC travel regulations:
• Charles Jeffress.
7. Staff report on progress of comparison of other federal spending practices (in addition to travel) to LSC spending practices:
• Charles Jeffress.
8. Consider and act on adoption of budget guidelines:
• Victor M. Fortuno, General Counsel.
• Laurie Tarantowicz, OIG.
9. Public comment.
10. Consider and act on other business.
11. Consider and act on adjournment of meeting.

Board of Directors

Agenda

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of October 28, 2006.
3. Approval of minutes of the Executive Session of the Board's meeting of October 28, 2006.
4. Approval of minutes of the Board's Open Session Telephonic meeting of November 27, 2006.
5. Approval of minutes of the Board's Open Session Telephonic meeting of December 18, 2006.
6. Consider and act on nominations for the Chairman of the Board of Directors.
7. Consider and act on nominations for the Vice Chairman of the Board of Directors.
8. Consider and act on delegation to Chairman of authority to make Committee assignments.
9. Chairman's Report.
10. Members' Reports.
11. President's Report.
12. Inspector General's Report.
13. Consider and act on the report of the Provision for the Delivery of Legal Services Committee.
14. Consider and act on the report of the Finance Committee.
15. Consider and act on the report of the Operations & Regulations Committee.
16. Staff presentation on LSC's Technology Initiative Grants.
17. Staff presentation on LSC's Competitive Grants Process.
18. Status Report on Performance Measures for Strategic Directions.
19. Consider and act on the selection of locations for LSC Board meetings in calendar year 2008.
20. Consider and act on Director Fuentes' suggestion that Board meet more frequently.
21. Public comment.
22. Consider and act on other business.
23. Consider and act on whether to authorize an executive session of the Board to address items listed below under Closed Session.

Closed Session

24. Consider and act on the report of the Performance Reviews Committee.
25. Consider and act on General Counsel's report on potential and pending litigation involving LSC.
26. IG briefing of the Board.
27. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

January 11, 2007.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 07–146 Filed 1–11–07; 4:26 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 07–002]

No FEAR Act Notice

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice to NASA employees, former NASA employees, and applicants for NASA employment regarding rights and protections available under Federal antidiscrimination and whistleblower protection laws.

SUMMARY: This notice fulfills NASA's ''No FEAR Act Notice'' **Federal Register** publication obligations, as required by the Act and by the Office of Personnel Management implementing regulations at 5 CFR 724.202.

DATES: This notice is effective the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brenda R. Manuel, Assistant Administrator for Diversity and Equal Opportunity, National Aeronautics and Space Administration, Suite 4W39, 300 E Street, SW., Washington, DC 20546. *Telephone:* (202) 358–2167.

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires Federal agencies, including the National Aeronautics and Space Administration (NASA), to provide this notice to

Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

The National Aeronautics and Space Administration cannot discriminate against an employee or applicant for Federal employment with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16. If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g., 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor, as noted above, or give notice of intent to sue to the U.S. Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through NASA's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A NASA employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs. Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

NASA cannot retaliate against an employee or applicant for employment because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, NASA retains the right, where appropriate, to discipline an employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, NASA is required under 5 U.S.C. 1214(f), to obtain approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits NASA to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724. You may also contact NASA's Office of Diversity and Equal Opportunity at (202) 358–2167, or access NASA's Office of the Inspector General Web site at *http://www.hq.nasa.gov/office/oig/hq/.* Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Brenda R. Manuel,

Assistant Administrator for Diversity and Equal Opportunity.

[FR Doc. E7–541 Filed 1–16–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–001)]

Notice of Intent to Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to grant exclusive license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in U.S. Patent Nos. 6,164,060 B1 entitled Combustion Chamber/Nozzle Assembly and Fabrication Process Therefrom, 6,308,408 B1 entitled Combustion Chamber/Nozzle Assembly and Fabrication Process Therefrom, 6,195,984 B1 entitled Rocket Engine Thrust Chamber Assembly, 6,330,792 B1 entitled Method of Making a Rocket Engine Thrust Chamber Assembly, 6,116,020 B1 entitled Injector for Liquid Fueled Rocket Engine, 6,189,315 B1 entitled Low-Cost Gas Generator and Ignitor, 6,497,091 B1 entitled Hypergolic Ignitor Assembly, 6,845,605 B1 entitled Hypergolic Ignitor and 6,860,099 B1 entitled Liquid Propellant Tracing Impingement Injector to Spacelines, LLC, having its principal place of business in Rocklin, California. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within

fifteen (15) days from the date of this published notice, NASA receives written objections including 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. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–0013.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Program Office/ED03, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226. Information about other NASA inventions available for licensing can be found online at *http://www.nasasolutions.com/.*

Dated: January 9, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–477 Filed 1–16–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of two currently approved information collections. The first information collection is used to advise requesters of (1) The correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law, and (2) the information to be provided so that records may be identified. The second information collection is used when veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before March 19, 2007 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Court Order Requirements.

OMB number: 3095–0038.

Agency form number: NA Form 13027.

Type of review: Regular.

Affected public: Veterans and Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 5,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,250 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel. The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

2. *Title:* Authorization for Release of Military Medical Patient Records, Request for Information Needed to Locate Medical Records, Request for Information Needed to Reconstruct Medical Data, and Questionnaire about Military Service.

OMB number: 3095–0039.

Agency form number: NA Forms 13036, 13042, 13055, and 13075.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 79,800.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).

Estimated total annual burden hours: 6,650 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.164. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When

veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record.

Dated: January 10, 2007.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E7–495 Filed 1–16–07; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting; Agenda

TIME AND DATE: 9:30 a.m., Tuesday, January 23, 2007.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED:

7713A *Aircraft Accident Report*—Crash During Approach to Landing, Circuit City Stores, Inc., Cessna Citation 560, N500AT, Pueblo, Colorado, February 16, 2005 (DCA05MA037)

NEWS MEDIA CONTACT: Lauren Peduzzi, Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, January 19, 2007.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: January 12, 2007.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 07–185 Filed 1–12–07; 2:04 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–425]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Unit 2; Exemption

1.0 Background

The Southern Nuclear Operating Company, Inc. (SNC/licensee), is the holder of Facility Operating License Nos. NPF–68 and NPF–81, which authorize operation of the Vogtle Electric Generating Plant, Units 1 and 2 (VEGP Unit 1 and VEGP Unit 2), respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors (PWRs) supplied by Westinghouse Electric Corporation, each rated at 3565 megawatts (thermal). The facility is located in Burke County, Georgia. This exemption addresses VEGP Unit 2.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Part 54.17(c) stipulates that an application for a renewed license may not be submitted to the Commission earlier than 20 years before the expiration of the operating license currently in effect.

By letter dated May 22, 2006, the licensee requested a schedular exemption from the 20-year restriction specified in 10 CFR 54.17(c) for VEGP Unit 2 so that the license renewal application (LRA) for both Vogtle Electric Generating Plant units can be prepared and submitted concurrently, with the goal of attaining efficiencies for preparation and review of the application. The current operating license for VEGP Unit 1 expires on January 16, 2027, whereas the current operating license for VEGP Unit 2 expires on February 9, 2029. At the time the exemption request was filed, VEGP Unit 1 had over 19 years of operating experience and VEGP Unit 2 had over 17 years of operating experience.

This exemption is required in order to allow an application for renewal of the VEGP Unit 2 license to be prepared and submitted concurrently with the LRA for VEGP Unit 1. Based on an anticipated submittal of a renewal application on June 28, 2007, VEGP Unit 1 will meet the requirements of 10 CFR 54.17(c) and the license renewal request for VEGP Unit 2 would occur approximately 2 years earlier than the earliest date allowed by 10 CFR 54.17(c).

3.0 Discussion

Pursuant to 10 CFR 54.15, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 54, in accordance with the provisions of 10 CFR 50.12, (1) when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Authorized by Law

The Commission's basis for establishing the 20-year limit contained in Section 54.17(c) is discussed in the 1991 Statements of Consideration for Part 54 of 10 CFR (56 FR 64963). The limit was established to ensure that substantial operating experience was accumulated by a licensee before a renewal application is submitted such that any plant-specific concerns regarding aging would be disclosed. In amending the rule in 1995, the Commission sought public comment on whether the 20-year limit should be reduced. The Commission determined that sufficient basis did not exist to generically reduce the 20-year limit. However, the Commission did indicate in the Statements of Consideration for the amended rule (60 FR 22488), that it was willing to consider plant-specific exemption requests by applicants who believe that sufficient information is available to justify applying for license renewal prior to 20 years from expiration of the current license. SNC's exemption request is consistent with the Commission's intent to consider plant-specific requests and is permitted by 10 CFR 54.15. Therefore, the exemption is authorized by law.

The current operating licenses for VEGP Unit 1 and Unit 2, were issued in accordance with the Atomic Energy Act of 1954, as amended (AEA), and 10 CFR 50.51, which limit the duration of an operating license to a maximum of 40 years. In accordance with 10 CFR 54.31, the renewed license will be of the same class as the operating license currently in effect and cannot exceed a term of 40 years. Therefore, the terms of the renewal licenses for VEGP Unit 1 and Unit 2, are limited both by law and the Commission's regulations to 40 years. Additionally, 10 CFR 54.31(b) states that ''A renewed license will be issued for a fixed period of time, which is the sum of the additional amount of time beyond the expiration of the operating license (not to exceed 20 years) that is requested in a renewal application plus the remaining number of years on the operating license currently in effect. The term of any renewed license may not exceed 40 years.''

The potential exists that, because SNC's decision to apply early for license renewal for VEGP Unit 2, SNC may not obtain the maximum 20-year extended operation permitted by 10 CFR 54.31(b). Any actual reduction will depend on the date the renewed licenses are issued. If a reduction in the 20-year extension is required, and SNC desires further extension of VEGP Units 2's operating licenses in the future, an additional renewal application can be submitted in accordance with 10 CFR Part 54.

Therefore, should the Commission determine to renew the VEGP Unit 2 operating license, the term of the license will not exceed 40 years, and granting of VEGP Unit 2's exemption request will not result in violation of the AEA or the Commission's regulations.

No Undue Risk to Public Health and Safety

This exemption will not result in changes to the operation of the plant. SNC's exemption request seeks only schedular relief regarding the date of submittal, and not substantive relief from the requirements of Parts 51 or Part 54. SNC must still conduct all environmental reviews required by Part 51 and all safety reviews and evaluations required by Part 54 when preparing the applications for VEGP Units 1 and 2. The NRC staff's review will verify that all applicable Commission regulations have been met before issuing the renewed licenses. Therefore, the NRC staff finds that granting this schedular exemption will not represent an undue risk to public health and safety.

Consistent With the Common Defense and Security

As discussed previously, the exemption requested is only a schedular exemption. The NRC staff will review the LRA SNC submits pursuant to the requested exemption, to assure all applicable requirements are fully met. This change has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

An exemption will not be granted unless special circumstances are present as defined in 10 CFR 50.12(a)(2). Specifically, Section 50.12(a)(2)(ii) states that a special circumstance exists when ''application of the regulation in the particular circumstances * * * is not necessary to achieve the underlying purpose of the rule.'' In initially promulgating Section 54.17(c) in 1991, the Commission stated that the purpose of the time limit was ''to ensure that substantial operating experience is accumulated by a licensee before it submits a renewal application'' (56 FR 64963). At that time, the Commission found that 20 years of operating experience provided a sufficient basis for renewal applications. However, in issuing the amended Part 54 in 1995, the Commission indicated it would consider an exemption to this requirement if sufficient information was available on a plant-specific basis to justify submission of an application to renew a license before completion of 20 years of operation (60 FR 22488). The 20-year limit was imposed by the Commission to ensure that sufficient operating experience was accumulated to identify any plant-specific aging concerns. As set forth below, VEGP Unit 1 is sufficiently similar to Unit 2, such that the operating experience for VEGP Unit 1 is applicable to VEGP Unit 2. In addition, VEGP Unit 2 has accumulated significant operating experience. Accordingly, under the requested exemption, sufficient operating experience will have been accumulated to identify any plant-specific aging concerns for both units.

SNC stated that special effort was made during construction of VEGP to keep the designs of the two units the same. Both units are PWRs supplied by Westinghouse Electric Corporation with a design net core output of 3565 megawatts (thermal). The containment for each of the VEGP units is a steel-lined, prestressed, post-tensioned concrete cylinder with a hemispherical dome. SNC states that the two units have similar materials of construction of the systems, structures, and components and are typically identical.

These statements are supported by a review of the VEGP Updated Final Safety Analysis Report (UFSAR for Units 1 and 2). In particular, Section 1.3 of the UFSAR describes the similarities in design between VEGP Unit 1, VEGP Unit 2, and similar licensed reactor facilities. Table 1–3–1 of the UFSAR lists significant similarities between systems, structures and components installed at VEGP, including elements of the reactor system, the reactor coolant system, the engineered safety features, and auxiliary systems.

SNC also states that the Operating Experience Program ensures that operating experience originating from all sources is appropriately utilized at VEGP. Specifically, any operating experience originating with VEGP Unit 1 is systematically applied to Unit 2. Moreover, SNC states that since the two VEGP units are essentially the same in design, operation, maintenance, materials and environments, there will be little difference in the aging management analyses for the two units.

Based on the above discussion, the NRC staff concludes that, with respect to VEGP Unit 1 and VEGP Unit 2 containment design, structural configuration, and management of structural-related aging effects, the applicant has provided adequate justifications for the NRC consideration of granting the VEGP Unit 2 request for exemption from the requirements of 10 CFR 54.17(c).

Therefore, sufficient combined operating experience from VEGP Unit 1 and industry exists to satisfy the intent of 10 CFR 54.17(c), and the application of the regulation in this case is not necessary to achieve the underlying purpose of the rule. The NRC staff concludes that SNC's request meets the requirement, in Section 50.12(a)(2) of 10 CFR, that special circumstances exist to grant the exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SNC an exemption from the requirements of 10 CFR 54.17(c). Specifically, this schedular exemption allows SNC to apply for a renewed license for VEGP Unit 2 earlier than 20 years before the expiration of the license currently in effect.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (71 FR 58014).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of January 2007.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–501 Filed 1–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–07517]

Issuance of Environmental Assessment and Finding of No Significant Impact for Amendment to Byproduct Materials License 53–00017–23 for the University of Hawaii in Honolulu, HI

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: D. Blair Spitzberg, PhD., Chief, Fuel Cycle and Decommissioning Branch, Division of Nuclear Materials Safety, Region IV, U.S. Nuclear Regulatory Commission, Arlington, Texas 76011. Telephone: (817) 860–8191; fax number: (817) 860–8188; or by e-mail: *dbs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to Material License No. 53–00017–23. This license is held by the University of Hawaii (the Licensee), School of Medicine, located at Queen's Medical Center, University Towers in Honolulu, Hawaii (the Facility). Issuance of the amendment would authorize release of the Facility's 7th floor for unrestricted use. The Licensee requested this action in a letter dated January 19, 2006. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment (EA)

Identification of Proposed Action: The proposed action is to approve the Licensee's January 19, 2006, license amendment request, resulting in release of the Facility's 7th floor, for unrestricted use. License No. 53–00017–23 was issued on July 29, 1991, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorized the Licensee to use byproduct material for purposes of research and development, calibration of instruments, instructional purposes, and for use in portable gauges.

The Facility is situated in three laboratory rooms (717, 720, and 722) of the University Towers. The Facility is located in a commercial area of Honolulu. Within the Facility, use of licensed material was confined to these three rooms.

During December 2002, the Licensee ceased licensed activities. The Licensee initiated a survey of the Facility during June-July 2004. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

The Need for the Proposed Action: The Licensee has ceased conducting licensed activities at this Facility and seeks its unrestricted use.

Environmental Impacts of the Proposed Action: The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted a final status survey during June-July 2004. This survey covered Rooms 717, 720, and 722 in the University Towers. The final status survey report was attached to the Licensee's amendment request dated January 19, 2006. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Although the Licensee will continue to perform licensed activities at other locations specified in the license, the Licensee must ensure that the Facility does not become recontaminated. Before the license can be terminated, the Licensee will be required to show that all areas in which licensed activities took place, including previously-released areas, comply with the radiological criteria in 10 CFR 20.1402. Based on its review, the staff

considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action: Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion: The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Contacted: NRC provided a draft of this EA to the State of Hawaii for review on October 23, 2006. On November 6, 2006, the State of Hawaii responded by letter. The State had no additional comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NRC, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' NUREG–1496, July 1997 (ML042310492, ML042320379, and ML042330385).
2. NRC, ''Consolidated NMSS Decommissioning Guidance,'' NUREG–1757, Volume 1, Revision 1, September 2003 (ML053260027).
3. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination.''
4. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''
5. Miyake, Nancy, University of Hawaii, Queen's Tower Decommissioning Report, January 19, 2006 (ML0604106581).
6. Whitten, Jack E., Acknowledgment of Receipt of Final Status Survey, June 21, 2006 (ML061740111).
7. Whitten, Jack E., Request for Comments on Draft Environmental Assessment for Decommissioning of the University of Hawaii, School of Medicine, Queen's Medical Center, University Towers, October 23, 2006 (ML0629803480).
8. Takata, Russell S., Concerning the Request for Comments on Draft Environmental Assessment, November 6, 2006 (ML063340094).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Arlington, Texas, this 8th day of January, 2007.

For the Nuclear Regulatory Commission.

D. Blair Spitzberg,

Chief, Fuel Cycle & Decommissioning Branch, Division of Nuclear Materials Safety, Region IV.

[FR Doc. E7–507 Filed 1–16–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Technical Specification Improvement To Modify Requirements Regarding Control Room Envelope Habitability Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared and is making available a model safety evaluation (SE) and a model no-significant-hazards-consideration (NSHC) determination relating to the modification of technical specification (TS) requirements regarding the habitability of the control room envelope (CRE) for referencing in license amendment requests (LARs). The NRC staff is also making available an associated model LAR for use by licensees to prepare such LARs. The TS modification is based on NRC staff approved changes to the improved standard technical specifications (STS) (NUREGs 1430–1434) that were proposed by the pressurized and boiling water reactor owners groups' Technical Specifications Task Force (TSTF) on behalf of the commercial nuclear electrical power generation industry, in STS change traveler TSTF–448, Revision 3 (Rev 3). Previously, on October 17, 2006, drafts of the model SE, model NSHC determination, and model LAR were published in the **Federal Register** for public comment (71 FR 61075). Based on its evaluation of the public comments received in response to that notice, the NRC staff made appropriate changes to the models, and is including the final versions of the models in this notice. This notice also contains a description of each public comment and its disposition by the NRC staff. Based on its evaluation of the public comments, the NRC staff has decided to announce the availability of the model SE and

model NSHC determination to licensees for referencing in LARs to adopt TSTF–448, Rev 3, using the consolidated line item improvement process (CLIIP). An LAR that references the model SE and model NSHC determination will permit the NRC to efficiently process a license amendment that proposes to adopt the changes in TSTF–448, Rev 3. Licensees of nuclear power reactors proposing to adopt these changes should follow the guidance in the model LAR and confirm the applicability of the model SE and model NSHC determination to their reactors.

DATES: The NRC staff hereby announces that the attached model SE and model NSHC determination (which differ only slightly from the versions previously published) may be referenced in plant specific applications to adopt the improved CRE habitability TS requirements. The staff has also posted the model LAR (which also differs only slightly from the versions previously published) on the NRC web site to assist licensees in using the CLIIP to apply for the proposed TS change. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: C. Craig Harbuck, Mail Stop: O–12H2, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–3140.

SUPPLEMENTARY INFORMATION

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes by processing proposed changes to the improved standard technical specifications (STS) (NUREGs 1430–1434) in a manner that supports subsequent license amendment requests (LARs) from licensees. The CLIIP includes an opportunity for the public to comment on a proposed change to the STS after a preliminary assessment by the NRC staff and a finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or announce the availability of the change for adoption by licensees. Licensees opting to apply for this TS change are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each LAR made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

The present notice makes available for adoption by licensees a change to establish more effective and appropriate action, surveillance, and administrative TS requirements related to ensuring CRE habitability. This change was proposed for incorporation into the STS by the owners groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF–448, Revision 3 (Rev 3). TSTF–448, Rev 3, can be viewed on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/techspecs.html.*

Applicability

This proposal to modify the TS to establish more effective and appropriate action, surveillance, and administrative requirements related to maintaining CRE habitability, as proposed in TSTF–448, Rev 3, is applicable to all licensees.

To efficiently process incoming license amendment requests (LARs), the staff requests that each licensee applying for the TS changes proposed in TSTF–448, Rev 3, use the CLIIP. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the TS changes without the requested TS bases and TS bases control program. Variations from the approach recommended in this notice may require additional review by the NRC staff, and may increase the time and resources needed for the review. Significant variations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the application. Instead, licensees desiring significant variations and/or additional changes should submit an LAR that does not request to adopt TSTF–448, Rev 3, using the CLIIP.

Evaluation of Public Comments on the Model Safety Evaluation, Model No Significant Hazards Consideration Determination, and Model License Amendment Request

The NRC staff evaluated the public comments received on the model safety evaluation (SE), model no significant hazards consideration (NSHC) determination, and model license amendment request (LAR) published in the **Federal Register** on October 17, 2006 (71 FR 61075–61084). Comments were received from Progress Energy (PE) (Agency-wide Documents Access and Management System (ADAMS) Accession No. ML063260063), Strategic Teaming and Resource Sharing (STARS) (ADAMS Accession No. ML063340340), and the pressurized and boiling water reactor owners groups' Technical Specification Task Force (TSTF) (ADAMS Accession No. ML063260064). The NRC staff also had one comment. The NRC staff's disposition of each comment follows.

1. *(PE) Reference:* Model SE Section 2.3, Paragraph 8 (71 FR 61078). Comment: ''Other Technical Specifications currently exist that are directly related to control room habitability (*e.g.*, NUREG–1430, TS 3.3.16, ''Control Room Isolation—High Radiation,'' NUREG–1431, TS 3.3.7, ''CREFS Actuation Instrumentation,'' and NUREG–1432, TS 3.3.8, ''Control Room Isolation Signal (CRIS)''). It is recommended that the paragraph be revised as follows: Prior to incorporation of TSTF–448, Revision 3, the STS requirements addressing CRE boundary operability resided only in the following CRE ventilation system specifications:

Disposition: The NRC staff accepted the comment and incorporated the recommended change into the model SE.

2. *(PE) Reference:* Model SE Section 2.4, Paragraph 1 (71 FR 61078). Comment: [The SE] characterizes the six year surveillance frequency for demonstrating unfiltered leakage into the control room envelope (CRE) is within limits as a relatively long test interval (frequency). When compared with the 15 year test frequency justified for the integrated leak rate test of containment, the six year frequency seems exceedingly short. This is particularly true given the safety (risk) significance of containment relative to the CRE boundary. Therefore, the bases for the six year frequency should be included in the model safety evaluation. Additionally, the model safety evaluation should allow sites the option to justify a site specific test frequency based on unique site characteristics using a risk-informed approach. (*e.g.*, Regulatory Guide 1.177—An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications)

Disposition: The NRC staff determined that explicitly suggesting in the model LAR that an applicant propose longer test intervals based on risk considerations is inappropriate because such a request would exceed the scope of changes covered by TSTF–448, Rev 3, would require staff

evaluation beyond that described in the model SE, and could not be considered under the CLIIP. The proposed TS Bases for the in-leakage surveillance gives the basis for the six-year frequency by referencing the TS CRE Habitability Program, which requires this surveillance to be performed ''in accordance with the testing methods and at the Frequencies specified in Sections C.1 and C.2 of Regulatory Guide 1.197.'' However, the phrase ''relatively long'' in the model SE is potentially misleading and has been removed.

3. *(PE) Reference:* Model SE Section 3.4 Paragraph 1 (71 FR 61081). Comment: [The] model safety evaluation states: The program shall ensure that adequate radiation protection is provided to permit access and occupancy of the CRE under design basis accident (DBA) conditions * * *

The control room envelope boundary and programs to maintain it are providing the necessary radiological protection for occupancy of the control room. The program is independent of any ability to ''access'' the control room. Therefore, it is recommended that the sentence be revised as follows: The program shall ensure that adequate radiation protection is provided to permit occupancy of the CRE under design basis accident (DBA) conditions * * *

Disposition: Occupancy of the CRE must account for any radiation sources encountered outside the CRE while accessing (going to and from) the CRE. The proposed CRE Habitability Program TS states, ''The program shall ensure that adequate radiation protection is provided to permit access and occupancy of the CRE under design basis accident (DBA) conditions * * * .'' The recommendation is not accepted.

4. *(PE) (TSTF) (STARS) Reference:* Model LAR Section 3.2 (71 FR 61084). Comment: Section 3.2 of the model LAR requires that the applicant make three commitments. Commitments 2 and 3 state:

- 2. [LICENSEE] will revise procedures to implement the new surveillance and programmatic TS requirements related to CRE habitability.
- 3. [LICENSEE] commits to Regulatory Positions C.1 and C.2 of Regulatory Guide 1.197, ''Demonstrating Control Room Envelope Integrity at Nuclear Power Reactors,'' Revision 0, May 2003, with the following exceptions: [Add descriptions of proposed exceptions.]

In the case of commitment 2, 10 CFR 50, Appendix B, Criterion V, ''Instructions, Procedures, and Drawings,'' already requires that, ''Activities affecting quality shall be prescribed by documented instructions, procedures, or drawings, of a type appropriate to the circumstances and shall be accomplished in accordance with these instructions, procedures, or drawings.''

In the case of commitment 3, the commitment is specifically addressed by the wording that will be included in Technical Specifications per Technical Specification Task Force 448 (TSTF–448) Section 5.5.18c (5 .5.15c for boiling water reactors) which states:

> Requirements for (i) determining the unfiltered air inleakage past the CRE boundary into the CRE in accordance with the testing methods and at the Frequencies specified in Sections C.1 and C.2 of Regulatory Guide 1.197, ''Demonstrating Control Room Envelope Integrity at Nuclear Power Reactors,'' Revision 0, May 2003, and (ii) assessing CRE habitability at the Frequencies specified in Sections C.1 and C.2 of Regulatory Guide 1.197, Revision 0.
>
> [The following are exceptions to Sections C.1 and C.2 of Regulatory Guide 1.197, Revision 0: 1.; and]

Therefore, upon approval of the licensee's amendment request, proposed commitments 2 and 3 will be addressed through legally binding regulatory obligations (*i.e.*, 10 CFR 50, Appendix B and Technical Specifications) making regulatory commitments duplicative and an unnecessary burden on the licensee. It is recommended that commitments 2 and 3 be deleted from the subject model LAR.

Disposition: The NRC staff accepts the recommendation and has removed commitments 2 and 3 from Section 3.2 and Attachment 4 of the model LAR.

5. *(TSTF) Reference:* In the Notice under ''Applicability,'' the last sentence (71 FR 61076). Comment: Should a licensee submit an application that requests adoption of TSTF–448 but includes significant variations or additional changes, it would facilitate the NRC's review for the licensee to acknowledge that the change is based on TSTF–448 so that the NRC may use the model safety evaluation to the extent possible. We recommend revising the [last] sentence as follows: ''Instead, licensees desiring significant variations and/or additional changes should submit a license amendment request (LAR) that does not request to adopt TSTF–448, Rev 3, under the Consolidated Line Item Improvement Process.''

Disposition: The NRC staff accepted the comment and incorporated the recommended change into the present notice.

6. *(TSTF) Reference:* Model LAR, Section 2.2 (71 FRN 61083). Comment: We recommend that the NRC modify Section 2.2 of the Model Application, ''Optional Changes and Variations,'' to request that licensees describe which optional portions of the model Safety Evaluation are applicable.

Disposition: The NRC staff accepted the comment and incorporated the recommended change as a note at the end of the first paragraph of Section 2.2 of the model LAR.

7. *(TSTF) Reference:* Model SE Section 2.3, first paragraph (71 FR 61077). Comment: Section 2.3, ''Regulations Applicable to Control Room Habitability,'' lists General Design Criteria from 10 CFR 50, Appendix A. Many licensees are not committed to the General Design Criteria and the wording of this section may result in many plants proposing an unnecessary variation in response to the required verification that the published safety evaluation is applicable in Section 2.2 of the model application. We recommend adding the following sentence to the first paragraph prior to the last sentence, ''Any licensee commitments to these criteria are described in the plant's licensing basis documents.''

Disposition: The following optional sentence is added to the first paragraph for use by applicants whose facilities are not licensed under the General Design Criteria from 10 CFR 50, Appendix A. ''[Facilities not licensed under the General Design Criteria from 10 CFR Part 50 are licensed under similar plant-specific design criteria, as described in the facility's licensing basis documents.]''

8. *(TSTF) Reference:* Model SE Section 3.3, Evaluation 5 (71 FR 61080). Comment: Remove Mode 4 from the sentence about the applicable operational modes for new Action B of TS 3.7.[4] because the BWR/4 and BWR/6 Applicability does not include Mode 4 for this action requirement.

Disposition: The NRC staff replaced the subject sentence with ''This new condition in Action F is needed because proposed Action B will only apply in Modes 1, 2, and 3.''

9. *(TSTF) Reference:* Model SE Section 3.3, Evaluation 6 (71 FR 61081). Comment: In Evaluation 6, the next to the last sentence is overly specific concerning the wording of the licensee's Generic Letter 2003–01 response about the adequacy of existing surveillance requirements to verify CRE boundary operability, and may lead to many plants proposing an unnecessary variation in response to the required verification that the published safety evaluation is applicable in Section 2.2 of the model LAR. The acceptability of

the deletion of SR 3.7.[10].[4] is not dependent on the licensee's Generic Letter response, but on the findings in the Generic Letter. We propose revising the sentences to be consistent with the statements in Section 1.0 of the model Safety Evaluation, such as ''In Generic Letter 2003–01 (Reference 1), licensees were alerted to findings that the differential pressure surveillance is not a reliable method for demonstrating CRE boundary operability. Based on the adoption of TSTF–448, Revision 3, the licensee's proposal to delete SR 3.7.[10].[4] is acceptable.''

Response: If the language of the model SE is not consistent with the wording of the licensee's Generic Letter 2003–01 response, the licensee should explain the inconsistency in its LAR to facilitate evaluation of the inconsistency by the staff in the SE for the license amendment. To account for the possibility of an inconsistency, the model SE is revised by surrounding the sentence in brackets.

10. *(TSTF) Reference:* Model NSHC determination (71 FR 61082). Comment: In the evaluation of Criterion 2, add the word ''Accident'' before the word ''Previously'' in the title, and change ''an accident'' to ''any accident'' in the last sentence to match the wording of Criterion 2 in 10 CFR 50.92(c)(2).

Disposition: The model NSHC determination was revised as suggested.

11. *(TSTF) Reference:* Model LAR title, second sentence (71 FR 61083). Comment: Revise the sentence by inserting the phrase ''Plant Technical Specifications'' after the phrase ''to Revise'' and changing ''Tstf-448'' to ''TSTF–448.''

Disposition: The model LAR was revised as suggested.

12. *(TSTF) Reference:* Model LAR, Section 2.2, third paragraph (71 FR 61083). Comment: Change the date ''June 2003'' to ''June 2001.''

Disposition: The model LAR was revised as suggested.

13. *(TSTF) (STARS) Reference:* Model LAR, lists of Attachments in cover letter, and Attachment 3 cover page title (71 FR 61083 and 4). Comment: Place brackets around references to the revised TS pages in the LAR cover letter and the Attachment 3 cover page title, and replace ''Proposed'' with ''Revised'' in the Attachment 3 cover page title. Providing smooth revised TS pages should be optional in the LAR. Also, make the Attachment 4 cover page title consistent with the title as stated in the LAR cover letter by removing ''list of.''

Disposition: The model LAR was revised as suggested. Finally, because the revised model LAR contains no list of regulatory commitments, the NRC staff added brackets around appropriate text in the model LAR to indicate that including regulatory commitments is optional.

14. *(TSTF) Reference:* Model LAR cover letter, next to last paragraph (71 FR 61083). Comment: Revise the oath or affirmation statement to match the phrasing contained in Regulatory Issue Summary (RIS) 2001–18, ''Requirements for Oath or Affirmation.''

Disposition: The model LAR was revised to match RIS 2001–18.

15. *(TSTF) Reference:* Model LAR, Section 3.2 (71 FR 61084). Comment: Commitment 1 states, ''[LICENSEE] commits to the guidance of NEI 99–03, Revision 0, ''Control Room Habitability Assessment Guidance'' dated June 2001, which provides guidance and details on the assessment and management of control room envelope (CRE) habitability.''

This commitment should be deleted. A licensee general commitment to NEI 99–03, Revision 0, is not relied upon in TSTF–448 or the model Safety Evaluation as a basis for finding the proposed changes acceptable. The analysis in the model Safety Evaluation does not support a conclusion that the NRC Staff has a ''significant interest'' in the matter to warrant a commitment.

There are only two references to NEI 99–03 in TSTF–448 and in the model Safety Evaluation:

a. The model SE, Section 3.4, ''TS 5.5.[18], CRE Habitability Program,'' refers to NEI 99–03, Revision 0, as one of two documents (with Regulatory Guide 1.196) containing guidance related to configuration control and maintenance of the control room envelope boundary. TSTF–448, Revision 3, proposed Specification 5.5.[18], ''Control Room Envelope Habitability Program,'' paragraph b, requires that the licensee's Control Room Envelope Habitability Program include requirements for maintaining the control room envelope boundary in its design condition including configuration control and preventive maintenance. NEI 99–03, Revision 0, discusses configuration control and maintenance in Section 9.4, ''Configuration Control,'' which contains only generic guidance applicable to any configuration control program and which encompasses less than 2 pages of a 177 page document. A generic commitment to all of NEI 99–03, Revision 0, for this purpose is unnecessary and unjustified. The appropriate control is already provided by the Technical Specifications and NEI 99–03, [Revision 0, Section 9.4] is only one method of meeting the Technical Specification requirement.

b. The proposed Bases for SR 3.7.[10].[4] (the inleakage test) state, ''Compensatory measures are discussed in Regulatory Guide 1.196, Section C.2.7.3, (Ref. 5) which endorses, with exceptions, NEI 99–03, Section 8.4 and Appendix F (Ref. 6).'' This very specific reference in the Technical Specification Bases to portions (8 pages of the 177 page document) of NEI 99–03, [Revision 0] do not justify a generic commitment to the entire document.

Disposition: The NRC staff revised the model application to remove the commitment as suggested.

16. *(STARS) Reference:* Model LAR cover letter (71 FR 61083). Comment: After the sentence ''Attachment 4 provides a summary of the regulatory commitments made in this submittal.'' insert ''Attachment 5 provides the existing TS Bases pages marked up to show proposed change and is for information only.'' For completeness, this adds information related to Attachment 5 in the cover letter.

Disposition: The model LAR was revised by adding the sentence ''Attachment 5 provides existing TS Bases pages marked up to show the proposed changes.'' The NRC staff expects that a licensee adopting a TSTF change to the STS will also adopt associated changes to the STS Bases or provide in its LAR a justification for any deviation.

17. *(STARS) Reference:* Model LAR, Attachment 1, Section 1.0, paragraph 1 (71 FR 61083). Comment: Place the title of TS Section 5.5 in brackets to account for the possibility that some facilities may have a different title.

Disposition: The model LAR was revised as suggested.

18. *(STARS) Reference:* Model LAR cover letter (71 FR 61083) and Attachment 5 cover page (71 FR 61084). Comment: Include the phrase ''(For Information Only)'' to the title of Attachment 5.

Disposition: As noted in the disposition of Comment 16, the NRC staff expects that a licensee adopting a TSTF change to the STS will also adopt associated changes to the STS Bases or provide in its LAR a justification for any deviation. Consequently, the suggested phrase is not appropriate and is not adopted.

19. *(NRC staff) Reference:* Model SE Section 3.1, last paragraph (71 FR 61079); model LAR, Section 2.2, third paragraph (71 FR 61083); model LAR Section 3.2 and Attachment 4, first commitment (71 FR 61083). Comment: Remove option to follow guidance in March 2003 version of NEI 99–03 contingent upon showing that differences with the June 2001 version

do not conflict with staff positions in Regulatory Guide 1.196, because the NRC has not endorsed the March 2003 version.

Disposition: The model SE and model LAR have been revised to remove the option of referencing the March 2003 version of NEI 99–03, as described in the disposition of Comment 15. The NRC staff recommends that implementation of any guidance in NEI 99–03, Revision 0, dated June 2001, that a licensee elects to follow, be consistent with the NRC staff positions in Regulatory Guide 1.196.

Adoption of TSTF–448, Rev 3

Licensees wishing to adopt TSTF–448, Rev 3, must submit an LAR in accordance with applicable rules and other regulatory requirements. For each LAR, the NRC staff will publish a notice of consideration of issuance of amendment to a facility operating license, a proposed NSHC determination, and a notice of opportunity for a hearing. The NRC staff will also publish a notice of issuance of an amendment to a facility operating license to announce the modification of TS requirements related to CRE habitability, for each plant that receives the requested change.

Model Safety Evaluation

U.S. Nuclear Regulatory Commission; Office of Nuclear Reactor Regulation

Consolidated Line Item Improvement; Adoption of Changes to Standard Technical Specifications Under Technical Specifications Task Force (TSTF) Change Number TSTF–448, Revision 3 Regarding Control Room Envelope Habitability

1.0 Introduction

By application dated [ ] [as supplemented by letters dated [and]], [Name of Licensee] (the licensee) requested changes to the Technical Specifications (TS) for the [Name of Facility]. [The supplements dated [and], provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on [Date (PM/LA will fill in FR information)] (XX FR XXXX).]

On August 8, 2006, the commercial nuclear electrical power generation industry owners group Technical Specifications Task Force (TSTF) submitted a proposed change, TSTF–448, Revision 3, to the improved standard technical specifications (STS) (NUREGs 1430–1434) on behalf of the industry (TSTF–448, Revisions 0, 1, and 2 were prior draft iterations). TSTF–448, Revision 3, is a proposal to establish more effective and appropriate action, surveillance, and administrative STS requirements related to ensuring the habitability of the control room envelope (CRE).

In United States Nuclear Regulatory Commission (NRC) Generic Letter 2003–01 (Reference 1), licensees were alerted to findings at facilities that existing TS surveillance requirements for the [Control Room Envelope Emergency Ventilation System (CREEVS)] may not be adequate. Specifically, the results of ASTM E741 (Reference 2) tracer gas tests to measure control room envelope (CRE) unfiltered inleakage at facilities indicated that the differential pressure surveillance is not a reliable method for demonstrating CRE boundary operability. Licensees were requested to address existing TS as follows:

> Provide confirmation that your technical specifications verify the integrity [i.e., operability] of the CRE [boundary], and the assumed [unfiltered] inleakage rates of potentially contaminated air. If you currently have a differential pressure surveillance requirement to demonstrate CRE [boundary] integrity, provide the basis for your conclusion that it remains adequate to demonstrate CRE integrity in light of the ASTM E741 testing results. If you conclude that your differential pressure surveillance requirement is no longer adequate, provide a schedule for: (1) Revising the surveillance requirement in your technical specification to reference an acceptable surveillance methodology (e.g., ASTM E741), and (2) making any necessary modifications to your CRE [boundary] so that compliance with your new surveillance requirement can be demonstrated.
>
> If your facility does not currently have a technical specification surveillance requirement for your CRE integrity, explain how and at what frequency you confirm your CRE integrity and why this is adequate to demonstrate CRE integrity.

To promote standardization and to minimize the resources that would be needed to create and process plant-specific amendment applications in response to the concerns described in the generic letter, the industry and the NRC proposed revisions to CRE habitability system requirements contained in the STS, using the STS change traveler process. This effort culminated in Revision 3 to traveler TSTF–448, ''Control Room Habitability,'' which the NRC staff approved on [month dd, 2006].

Consistent with the traveler as incorporated into NUREG–143[0], the licensee proposed revising action and surveillance requirements in [Specification 3.7.10, ''Control Room Envelope Emergency Ventilation System (CREEVS),''] and adding a new administrative controls program, [Specification 5.5.18, ''CRE Habitability Program.''] The purpose of the changes is to ensure that CRE boundary operability is maintained and verified through effective surveillance and programmatic requirements, and that appropriate remedial actions are taken in the event of an inoperable CRE boundary.

2.0 Regulatory Evaluation

2.1 Control Room and Control Room Envelope

NRC Regulatory Guide 1.196, ''Control Room Habitability at Light-water Nuclear Power Reactors,'' Revision 0, May 2003, (Reference 4) uses the term ''control room envelope (CRE)'' in addition to the term ''control room'' and defines each term as follows:

> Control Room: The plant area, defined in the facility licensing basis, in which actions can be taken to operate the plant safely under normal conditions and to maintain the reactor in a safe condition during accident situations. It encompasses the instrumentation and controls necessary for a safe shutdown of the plant and typically includes the critical document reference file, computer room (if used as an integral part of the emergency response plan), shift supervisor's office, operator wash room and kitchen, and other critical areas to which frequent personnel access or continuous occupancy may be necessary in the event of an accident.
>
> Control Room Envelope: The plant area, defined in the facility licensing basis, that in the event of an emergency, can be isolated from the plant areas and the environment external to the CRE. This area is served by an emergency ventilation system, with the intent of maintaining the habitability of the control room. This area encompasses the control room, and may encompass other non-critical areas to which frequent personnel access or continuous occupancy is not necessary in the event of an accident.

NRC Regulatory Guide 1.197, ''Demonstrating Control Room Envelope Integrity At Nuclear Power Reactors,'' Revision 0, May 2003 (Reference 5), also contains these definitions, but uses the term CRE to mean both. This is because the protected environment provided for operators varies with the nuclear power facility. At some facilities this environment is limited to the control room; at others, it is the CRE. In this safety evaluation, consistent with the proposed changes to the STS, the CRE will be used to designate both. For consistency, facilities should use the term CRE with an appropriate facility-specific definition derived from the above CRE definition.

2.2 [Control Room Envelope Emergency Ventilation System (CREEVS)]

The [CREEVS] provides a protected environment from which operators can control the unit, during airborne challenges from radioactivity, hazardous chemicals, and fire byproducts, such as fire suppression agents and smoke, during both normal and accident conditions.

The [CREEVS] is designed to maintain a habitable environment in the control room envelope for 30 days of continuous occupancy after a Design Basis Accident (DBA) without exceeding a [5 rem whole body dose or its equivalent to any part of the body] [5 rem total effective dose equivalent (TEDE)].

The [CREEVS] consists of two redundant trains [subsystems], each capable of maintaining the habitability of the CRE. The [CREEVS] is considered operable when the individual components necessary to limit operator exposure are operable in both trains [subsystems]. A [CREEVS] train [subsystem] is considered operable when the associated:

- Fan is operable;
- High efficiency particulate air (HEPA) filters and charcoal adsorbers are not excessively restricting flow, and are capable of performing their filtration functions;
- Heater, demister, ductwork, valves, and dampers are operable, and air circulation can be maintained; and
- CRE boundary is operable (the single boundary supports both trains [subsystems]).

The CRE boundary is considered operable when the measured unfiltered air inleakage is less than or equal to the inleakage value assumed by the licensing basis analyses of design basis accident consequences to CRE occupants.

2.3 Regulations Applicable To Control Room Habitability

In Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' General Design Criteria (GDC) 1, 2, 3, 4, 5, and 19 apply to CRE habitability. A summary of these GDCs follows. [Facilities not licensed under the GDC from 10 CFR Part 50 are licensed under similar plant-specific design criteria, as described in the facility's licensing basis documents.]

GDC 1, ''Quality Standards and Records,'' requires that structures, systems, and components (SSCs) important to safety be designed, fabricated, erected, and tested to quality standards commensurate with the importance of the safety functions performed.

GDC 2, ''Design Basis for Protection Against Natural Phenomena,'' requires that structures, systems, and components (SSCs) important to safety be designed to withstand the effects of earthquakes and other natural hazards.

GDC 3, ''Fire Protection,'' requires SSCs important to safety be designed and located to minimize the effects of fires and explosions.

GDC 4, ''Environmental and Dynamic Effects Design Bases,'' requires SSCs important to safety to be designed to accommodate the effects of and to be compatible with the environmental conditions associated with normal operation, maintenance, testing, and postulated accidents, including loss-of-coolant accidents (LOCAs).

GDC 5, ''Sharing of Structures, Systems, and Components,'' requires that SSCs important to safety not be shared among nuclear power units unless it can be shown that such sharing will not significantly impair their ability to perform their safety functions, including, in the event of an accident in one unit, the orderly shutdown and cooldown of the remaining units.

GDC 19, ''Control Room,'' requires that a control room be provided from which actions can be taken to operate the nuclear reactor safely under normal conditions and to maintain the reactor in a safe condition under accident conditions, including a LOCA. Adequate radiation protection is to be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of specified values.

Prior to incorporation of TSTF–448, Revision 3, the STS requirements addressing CRE boundary operability resided only in the following CRE ventilation system specifications:

- NUREG–1430, TS 3.7.10, ''Control Room Emergency Ventilation System (CREVS);''
- NUREG–1431, TS 3.7.10, ''Control Room Emergency Filtration System (CREFS);''
- NUREG–1432, TS 3.7.11, ''Control Room Emergency Air Cleanup System (CREACS);''
- NUREG–1433, TS 3.7.4, ''[Main Control Room Environmental Control (MCREC)] System;'' and
- NUREG–1434, TS 3.7.3, ''[Control Room Fresh Air (CRFA)] System.''

In these specifications, the surveillance requirement associated with demonstrating the operability of the CRE boundary requires verifying that one [CREEVS] train [subsystem] can maintain a positive pressure of [0.125] inches water gauge, relative to the adjacent [turbine building] during the pressurization mode of operation at a makeup flow rate of [3000] cfm. Facilities that pressurize the CRE during the emergency mode of operation of the [CREEVS] have similar surveillance requirements. Other facilities that do not pressurize the CRE have only a system flow rate criterion for the emergency mode of operation. Regardless, the results of ASTM E741 (Reference 2) tracer gas tests to measure CRE unfiltered inleakage at facilities indicated that the differential pressure surveillance (or the alternative surveillance at non-pressurization facilities) is not a reliable method for demonstrating CRE boundary operability. That is, licensees were able to obtain differential pressure and flow measurements satisfying the SR limits even though unfiltered inleakage was determined to exceed the value assumed in the safety analyses.

In addition to an inadequate surveillance requirement, the action requirements of these specifications were ambiguous regarding CRE boundary operability in the event CRE unfiltered inleakage is found to exceed the analysis assumption. The ambiguity stemmed from the view that the CRE boundary may be considered operable but degraded in this condition, and that it would be deemed inoperable only if calculated radiological exposure limits for CRE occupants exceeded a licensing basis limit; e.g., as stated in GDC–19, even while crediting compensatory measures.

NRC Administrative Letter 98–10, ''Dispositioning of Technical Specifications That Are Insufficient to Assure Plant Safety,'' (AL 98–10) states that '' the discovery of an improper or inadequate TS value or required action is considered a degraded or nonconforming condition,'' which is defined in [NRC Inspection Manual Chapter 9900; see latest guidance in RIS 2005–20 (Reference 3)]. ''Imposing administrative controls in response to an improper or inadequate TS is considered an acceptable short-term corrective action. The [NRC] staff expects that, following the imposition of administrative controls, an amendment to the [inadequate] TS, with appropriate justification and schedule, will be submitted in a timely fashion.''

Licensees that have found unfiltered inleakage in excess of the limit assumed in the safety analyses and have yet to either reduce the inleakage below the limit or establish a higher bounding limit through re-analysis, have

implemented compensatory actions to ensure the safety of CRE occupants, pending final resolution of the condition, consistent with RIS 2005–20. However, based on GL 2003–01 and AL 98–10, the staff expects each licensee to propose TS changes that include a surveillance to periodically measure CRE unfiltered inleakage in order to satisfy 10 CFR 50.36(c)(3), which requires a facility's TS to include surveillance requirements, which it defines as ''requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that limiting conditions for operation will be met.'' (Emphasis added.)

The NRC staff also expects facilities to propose unambiguous remedial actions, consistent with 10 CFR 50.36(c)(2), for the condition of not meeting the limiting condition for operation (LCO) due to an inoperable CRE boundary. The action requirements should specify a reasonable completion time to restore conformance to the LCO before requiring a facility to be shut down. This completion time should be based on the benefits of implementing mitigating actions to ensure CRE occupant safety and sufficient time to resolve most problems anticipated with the CRE boundary, while minimizing the chance that operators in the CRE will need to use mitigating actions during accident conditions.

2.4 Adoption of TSTF–448, Revision 3, by [facility name]

Adoption of TSTF–448, Revision 3, will assure that the facility's TS LCO for the [CREEVS] is met by demonstrating unfiltered leakage into the CRE is within limits; i.e., the operability of the CRE boundary. In support of this surveillance, which specifies a test interval (frequency) of 6 years, TSTF–448 also adds TS administrative controls to assure the habitability of the CRE between performances of the ASTM E741 test. In addition, adoption of TSTF–448 will establish clearly stated and reasonable required actions in the event CRE unfiltered inleakage is found to exceed the analysis assumption.

The changes made by TSTF–448 to the STS requirements for the [CREEVS] and the CRE boundary conform to 10 CFR 50.36(c)(2) and 10 CFR 50.36(c)(3). Their adoption will better assure that [facility name]'s CRE will remain habitable during normal operation and design basis accident conditions. These changes are, therefore, acceptable from a regulatory standpoint.

3.0 Technical Evaluation

The NRC staff reviewed the proposed changes against the corresponding changes made to the STS by TSTF–448, Revision 3, which the NRC staff has found to satisfy applicable regulatory requirements, as described above in Section 2.0. [The emergency operational mode of the [CREEVS] at [facility name] [pressurizes] [isolates but does not pressurize] the CRE to minimize unfiltered air inleakage.] The proposed changes are consistent with this design.

3.1 Proposed Changes

The proposed amendment would strengthen CRE habitability TS requirements by changing TS [3.7.10, CREEVS] and adding a new TS administrative controls program on CRE habitability. Accompanying the proposed TS changes are appropriate conforming technical changes to the TS Bases. The proposed revision to the Bases also includes editorial and administrative changes to reflect applicable changes to the corresponding STS Bases, which were made to improve clarity, conform with the latest information and references, correct factual errors, and achieve more consistency among the STS NUREGs. [Except for plant specific differences, all of] these changes are consistent with STS as revised by TSTF–448, Revision 3.

The NRC staff compared the proposed TS changes to the STS and the STS markups and evaluations in TSTF–448. [The staff verified that differences from the STS were adequately justified on the basis of plant-specific design or retention of current licensing basis.] The NRC staff also reviewed the proposed changes to the TS Bases for consistency with the STS Bases and the plant-specific design and licensing bases, although approval of the Bases is not a condition for accepting the proposed amendment. However, TS 5.5.[11], ''TS Bases Control Program,'' provides assurance that the licensee has established and will maintain the adequacy of the Bases. The proposed Bases for TS 3.7.[10] refer to specific guidance in NEI 99–03, ''Control Room Habitability Assessment Guidance,'' Revision 0, dated June 2001 (Reference 6), which the NRC staff has formally endorsed, with exceptions, through Regulatory Guide 1.196, ''Control Room Habitability at Light-Water Nuclear Power Reactors,'' dated May 2003 (Reference 4).

3.2 Editorial Changes

The licensee proposed editorial changes to TS [3.7.10, ''CREEVS,''] to establish standard terminology, such as ''control room envelope (CRE)'' in place of ''control room,'' except for the plant-specific name for the [CREEVS], and ''radiological, chemical, and smoke hazards (or challenges)'' in place of various phrases to describe the hazards that CRE occupants are protected from by the [CREEVS]. [The licensee also proposed to correct a typographical error by replacing ''irradiate'' with ''irradiated'' in TS 3.7.10 Condition E.] These changes improve the usability and quality of the presentation of the TS, have no impact on safety, and therefore, are acceptable.

3.3 TS [3.7.10, CREEVS]

< Evaluation 1—for facilities that have adopted the [CREEVS] TS LCO Note and Action B of TSTF–287, Rev. 5 >

The licensee proposed to revise the action requirements of TS [3.7.10, ''CREEVS,''] to acknowledge that an inoperable CRE boundary, depending upon the location of the associated degradation, could cause just one, instead of both [CREEVS] [trains] to be inoperable. This is accomplished by revising Condition A to exclude Condition B, and revising Condition B to address one or more [CREEVS] [trains], as follows:

- Condition A One [CREEVS] [train] inoperable for reasons other than Condition B.
- Condition B One or more [CREEVS] [trains] inoperable due to inoperable CRE boundary in MODE 1, 2, [or] 3[, or 4].

This change clarifies how to apply the action requirements in the event just one [CREEVS] [train] is unable to ensure CRE occupant safety within licensing basis limits because of an inoperable CRE boundary. It enhances the usability of Conditions A and B with a presentation that is more consistent with the intent of the existing requirements. This change is an administrative change because it neither reduces nor increases the existing action requirements, and, therefore, is acceptable.

The licensee proposed to replace existing Required Action B.1, ''Restore control room boundary to OPERABLE status,'' which has a 24-hour Completion Time, with Required Action B.1, to immediately initiate action to implement mitigating actions; Required Action B.2, to verify, within 24 hours, that in the event of a DBA, CRE occupant radiological exposures will not exceed the calculated dose of the licensing basis analyses of DBA consequences, and that CRE occupants are protected from hazardous chemicals

and smoke; and Required Action B.3, to restore CRE boundary to operable status within 90 days.

The 24-hour Completion Time of new Required Action B.2 is reasonable based on the low probability of a DBA occurring during this time period, and the use of mitigating actions as directed by Required Action B.1. The 90-day Completion Time of new Required Action B.3 is reasonable based on the determination that the mitigating actions will ensure protection of CRE occupants within analyzed limits while limiting the probability that CRE occupants will have to implement protective measures that may adversely affect their ability to control the reactor and maintain it in a safe shutdown condition in the event of a DBA. The 90-day Completion Time is a reasonable time to diagnose, plan and possibly repair, and test most anticipated problems with the CRE boundary. Therefore, proposed Action B is acceptable.

< End of Evaluation 1 >

< Evaluation 2—for facilities that have not yet adopted the [CREEVS] TS LCO Note and Action B of TSTF–287, Rev. 5 >

The licensee proposed to establish new action requirements in TS [3.7.10, ''CREEVS,''] for an inoperable CRE boundary. Currently, if one [CREEVS] [train] is determined to be inoperable due to an inoperable CRE boundary, existing Action A would apply and require restoring the [train] (and the CRE boundary) to operable status in 7 days. If two [trains] are determined to be inoperable due to an inoperable CRE boundary, existing Action [E] specifies no time to restore the [trains] (and the CRE boundary) to operable status, but requires immediate entry into the shutdown actions of LCO 3.0.3. These existing Actions are more restrictive than would be appropriate in situations for which CRE occupant implementation of compensatory measures or mitigating actions would temporarily afford adequate CRE occupant protection from postulated airborne hazards. To account for such situations, the licensee proposed to revise the action requirements to add a new Condition B, ''One or more [CREEVS] [trains] inoperable due to inoperable CRE boundary in MODE 1, 2, [or] 3[, or 4].'' New Action B would allow 90 days to restore the CRE boundary (and consequently, the affected [CREEVS] [trains]) to operable status, provided that mitigating actions are immediately implemented and within 24 hours are verified to ensure, that in the event of a DBA, CRE occupant radiological exposures will not exceed the calculated dose of the licensing basis analyses of DBA consequences, and that CRE occupants are protected from hazardous chemicals and smoke.

The 24-hour Completion Time of new Required Action B.2 is reasonable based on the low probability of a DBA occurring during this time period, and the use of mitigating actions. The 90-day Completion Time is reasonable based on the determination that the mitigating actions will ensure protection of CRE occupants within analyzed limits while limiting the probability that CRE occupants will have to implement protective measures that may adversely affect their ability to control the reactor and maintain it in a safe shutdown condition in the event of a DBA. The 90-day Completion Time of new Required Action B.3 is a reasonable time to diagnose, plan and possibly repair, and test most anticipated problems with the CRE boundary. Therefore, proposed Action B is acceptable.

To distinguish new Condition B from the existing condition for one [CREEVS] [train] inoperable, Condition A is revised to state, ''One [CREEVS] [train] inoperable for reasons other than Condition B.'' To distinguish new Condition B from the existing condition for two [CREEVS] [trains] inoperable, Condition [E] (renumbered as Condition [F]) is revised to state, ''Two [CREEVS] [trains] inoperable during MODE 1, 2, [or] 3[, or 4] for reasons other than Condition B.'' The changes to existing Conditions A and [E] are less restrictive because these Conditions will no longer apply in the event one or two [CREEVS] [trains] are inoperable due to an inoperable CRE boundary during unit operation in Mode 1, 2, [or] 3[, or 4]. This is acceptable because the new Action B establishes adequate remedial measures in this condition. With the addition of a new Condition B, existing Conditions B, C, D, and E are re-designated C, D, E, and F, respectively.

The licensee also proposed to modify the [CREEVS] LCO by adding a note allowing the CRE boundary to be opened intermittently under administrative controls. As stated in the LCO Bases, this Note ''only applies to openings in the CRE boundary that can be rapidly restored to the design condition, such as doors, hatches, floor plugs, and access panels. For entry and exit through doors, the administrative control of the opening is performed by the person(s) entering or exiting the area. For other openings, these controls should be proceduralized and consist of stationing a dedicated individual at the opening who is in continuous communication with operators in the CRE. This individual will have a method to rapidly close the opening and to restore the CRE boundary to a condition equivalent to the design condition when a need for CRE isolation is indicated.'' The allowance of this note is acceptable because the administrative controls will ensure that the opening will be quickly sealed to maintain the validity of the licensing basis analyses of DBA consequences.

< End of Evaluation 2 >

< Evaluation 3—for B&W CREVS TS >

The existing TS 3.7.10 condition for two control room emergency ventilation system (CREVS) trains inoperable during refueling, Condition E, is revised to also apply during plant operation in Modes 5 and 6. It will state, ''Two CREVS trains inoperable [in MODE 5 or 6, or] during movement of [recently] irradiated fuel assemblies.'' This change clarifies the applicability of this condition for dual unit facilities when the unit is in Mode 5 or 6, and the other unit is moving [recently] irradiated fuel assemblies. Similarly, Condition D, for failing to meet Action A during movement of [recently] irradiated fuel assemblies, is revised to also apply in Modes 5 and 6. These changes are administrative because they only clarify the intended applicability of the existing conditions, and are, therefore, acceptable. Required Actions D.2 and E.1, to immediately suspend movement of [recently] irradiated fuel assemblies, ensures that a fuel handling accident cannot occur while the unit is in these conditions. With only one CREVS train inoperable, Required Action D.1 specifies an alternative to immediately suspending fuel movement; it requires immediately placing the operable CREVS train in its emergency operating alignment, or mode, to minimize the chance the train will fail to properly switch to this mode if called upon in response to a fuel handling accident, or other airborne hazards challenge.

< End of Evaluation 3 >

< Evaluation 4—for B&W, CE, and W [CREEVS] TS >

The licensee proposed to add a new condition to Action E of TS 3.7.1[0] that states, ''One or more [CREEVS] trains inoperable due to an inoperable CRE boundary [in Mode 5 or 6, or] during movement of [recently] irradiated fuel assemblies.'' The specified Required Action proposed for this condition is the same as for the existing condition of Action E [(revised as discussed previously) <for B&W plants if

Evaluation 3 is used>], which states ''[Two [CREEVS] trains inoperable [in MODE 5 or 6, or] during movement of [recently] irradiated fuel assemblies.'' Accordingly, the new condition is stated with the other condition in Action E using the logical connector ''*OR*'' in accordance with the STS writer's guide (TSTF–GG–05–01, ''Writer's Guide for Plant-Specific Improved Technical Specifications,'' June 2005). The practical result of this presentation in format is the same as specifying two separately numbered Actions, one for each condition. Its advantage is to make the TS Actions table easier to use by avoiding having an additional numbered row in the Actions table. The new condition in Action E is needed because proposed Action B will only apply in Modes 1, 2, 3, and 4. As such, this change will ensure that the Actions table continues to specify a condition for an inoperable CRE boundary during Modes 5 and 6 and during refueling. Therefore, this change is administrative and acceptable.

< End of Evaluation 4 >

< Evaluation 5—for BWR4 and BWR6 [CREEVS] TS >

The licensee proposed to add a new condition to Action F of TS 3.7.[4] that states, ''One or more [CREEVS] subsystems inoperable due to an inoperable CRE boundary during movement of [recently] irradiated fuel assemblies in the [[primary or] secondary] containment or during operations with a potential for draining the reactor vessel (OPDRVs).'' The specified Required Actions proposed for this condition are the same as for the other existing condition for Action F, which states, ''Two [CREEVS] subsystems inoperable during movement of [recently] irradiated fuel assemblies in the [secondary] containment or during OPDRVs.'' Accordingly, the new condition is stated with the other condition in Action F using the logical connector ''*OR*'' in accordance with the STS writer's guide (TSTF–GG–05–01, ''Writer's Guide for Plant-Specific Improved Technical Specifications,'' June 2005). The practical result of this presentation in format is the same as specifying two separately numbered Actions, one for each condition. Its advantage is to make the TS Actions table easier to use by avoiding having an additional numbered row in the Actions table. This new condition in Action F is needed because proposed Action B will only apply in Modes 1, 2, and 3. As such, this change will ensure that the Actions table continues to specify a condition for an inoperable CRE boundary during refueling and OPDRVs. Therefore, this change is administrative and acceptable.

< End of Evaluation 5 >

< Evaluation 6—for facilities that have a CRE pressurization surveillance requirement >

In the [emergency radiation state] of operation, the [CREEVS] isolates unfiltered ventilation air supply intakes, filters the emergency ventilation air supply to the CRE, and pressurizes the CRE to minimize unfiltered air inleakage past the CRE boundary. The licensee proposed to delete the CRE pressurization surveillance requirement (SR). This SR requires verifying that one [CREEVS] [train][subsystem], operating in the [emergency radiation state], can maintain a pressure of [0.125] inches water gauge, relative to the adjacent [turbine building] during the pressurization mode of operation at a makeup flow rate of [3000] cfm. The deletion of this SR is proposed because measurements of unfiltered air leakage into the CRE at numerous reactor facilities demonstrated that a basic assumption of this SR, an essentially leak-tight CRE boundary, was incorrect for most facilities. Hence, meeting this SR by achieving the required CRE pressure is not necessarily a conclusive indication of CRE boundary leak tightness, i.e., CRE boundary operability. [In its response to GL 2003–01, [dated month, dd, yyyy], the licensee reported that it had determined that the [facility name] CRE pressurization surveillance, SR 3.7.[10].[4], was inadequate to demonstrate the operability of the CRE boundary, and proposed to replace it with an inleakage measurement SR and a CRE Habitability Program in TS Section 5.5, in accordance with the approved version of TSTF–448.] Based on the adoption of TSTF–448, Revision 3, the licensee's proposal to delete SR 3.7.[10].[4] is acceptable.

<End of Evaluation 6 >

The proposed CRE inleakage measurement SR states, ''Perform required CRE unfiltered air inleakage testing in accordance with the Control Room Envelope Habitability Program.'' The CRE Habitability Program TS, proposed TS 5.5.[18], requires that the program include ''Requirements for determining the unfiltered air inleakage past the CRE boundary into the CRE in accordance with the testing methods and at the Frequencies specified in Sections C.1 and C.2 of Regulatory Guide 1.197, Revision 0 (Reference 5). This guidance references ASTM E741 (Reference 2) as an acceptable method for ascertaining the unfiltered leakage into the CRE. The licensee has [, however, not] proposed to follow this method. [The NRC staff reviewed the licensee's proposed alternative method for measuring CRE inleakage to ensure it meets the criteria for such methods given in RG 1.197.] [Insert plant-specific technical evaluation by the staff of the alternative method.] [The NRC staff finds that the proposed alternative method satisfies the criteria of RG 1.197.] Therefore, the proposed CRE inleakage measurement SR is acceptable.

3.4 TS 5.5.[18], CRE Habitability Program

The proposed administrative controls program TS is consistent with the model program TS in TSTF–448, Revision 3. In combination with SR 3.7.[10].[4], this program is intended to ensure the operability of the CRE boundary, which as part of an operable [CREEVS] will ensure that CRE habitability is maintained such that CRE occupants can control the reactor safely under normal conditions and maintain it in a safe condition following a radiological event, hazardous chemical release, or a smoke challenge. The program shall ensure that adequate radiation protection is provided to permit access and occupancy of the CRE under design basis accident (DBA) conditions without personnel receiving radiation exposures in excess of [5 rem whole body or its equivalent to any part of the body] [5 rem total effective dose equivalent (TEDE)] for the duration of the accident.

A CRE Habitability Program TS acceptable to the NRC staff requires the program to contain the following elements:

Definitions of CRE and CRE boundary. This element is intended to ensure that these definitions accurately describe the plant areas that are within the CRE, and also the interfaces that form the CRE boundary, and are consistent with the general definitions discussed in Section 2.1 of this safety evaluation. Establishing what is meant by the CRE and the CRE boundary will preclude ambiguity in the implementation of the program.

Configuration control and preventive maintenance of the CRE boundary. This element is intended to ensure the CRE boundary is maintained in its design condition. Guidance for implementing this element is contained in Regulatory Guide 1.196 (Reference 4), which endorsed, with exceptions, NEI 99–03 (Reference 6). Maintaining the CRE boundary in its design condition provides assurance that its leak-

tightness will not significantly degrade between CRE inleakage determinations.

Assessment of CRE habitability at the frequencies stated in Sections C.1 and C.2 of Regulatory Guide 1.197, Revision 0 (Reference 5), and measurement of unfiltered air leakage into the CRE in accordance with the testing methods and at the frequencies stated in Sections C.1 and C.2 of Regulatory Guide 1.197. [The licensee proposed the following exception[s] to Sections C.1 and C.2 of Regulatory Guide 1.197, to be listed in the TS with this program element.] [Insert plant-specific evaluation of licensee's proposed exceptions.] This element is intended to ensure that the plant assesses CRE habitability consistent with Sections C.1 and C.2 of Regulatory Guide 1.197 [and NRC approved exceptions]. Assessing CRE habitability at the NRC accepted frequencies provides assurance that significant degradation of the CRE boundary will not go undetected between CRE inleakage determinations. Determination of CRE inleakage using test methods acceptable to the NRC staff assures that test results are reliable for ascertaining CRE boundary operability. Determination of CRE inleakage at the NRC accepted frequencies provides assurance that significant degradation of the CRE boundary will not occur between CRE inleakage determinations.

Measurement of CRE pressure with respect to all areas adjacent to the CRE boundary at designated locations for use in assessing the CRE boundary at a frequency of [18] months on a staggered test basis (with respect to the [CREEVS] trains). This element is intended to ensure that CRE differential pressure is regularly measured to identify changes in pressure warranting evaluation of the condition of the CRE boundary. Obtaining and trending pressure data provides additional assurance that significant degradation of the CRE boundary will not go undetected between CRE inleakage determinations.

Quantitative limits on unfiltered inleakage. This element is intended to establish the CRE inleakage limit as the CRE unfiltered infiltration rate assumed in the CRE occupant radiological consequence analyses of design basis accidents. Having an unambiguous criterion for the CRE boundary to be considered operable in order to meet LCO 3.7.[10], will ensure that associated action requirements will be consistently applied in the event of CRE degradation resulting in inleakage exceeding the limit.

Consistent with TSTF–448, Revision 3, the program states that the provisions of SR 3.0.2 are applicable to the program frequencies for performing the activities required by program paragraph number c, parts (i) and (ii) (assessment of CRE habitability and measurement of CRE inleakage), and paragraph number d (measurement of CRE differential pressure). This statement is needed to avoid confusion. SR 3.0.2 is applicable to the surveillance that references the testing in the CRE Habitability Program. However, SR 3.0.2 is not applicable to Administrative Controls unless specifically invoked. Providing this statement in the program eliminates any confusion regarding whether SR 3.0.2 is applicable, and is acceptable.

Consistent with TSTF–448, Revision 3, proposed TS 5.5. [18] states that (1) a CRE Habitability Program shall be established and implemented, (2) the program shall include all of the NRC-staff required elements, as described above, and (3) the provisions of SR 3.0.2 shall apply to program frequencies. Therefore, TS 5.5.[18], which is consistent with the model program TS approved by the NRC staff in TSTF–448, Revision 3, is acceptable.

4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 and change surveillance requirements. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no-significant-hazards considerations, and there has been no public comment on the finding [xx FR xxxxx]. Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9) [and (c)(10)]. Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

6.0 Conclusion

The Commission has concluded, on the basis of the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

7.0 References

1. NRC Generic Letter 2003–01, ''Control Room Habitability,'' dated June 12, 2003, (GL 2003–01).
2. ASTM E 741–00, ''Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution,'' 2000, (ASTM E741).
3. NRC Regulatory Issue Summary 2005–20: Revision to Guidance Formerly Contained in NRC Generic Letter 91–18, ''Information to Licensees Regarding Two NRC Inspection Manual Sections on Resolution of Degraded and Nonconforming Conditions and on Operability,'' dated September 26, 2005 (RIS 2005–20).
4. Regulatory Guide 1.196, ''Control Room Habitability at Light-Water Nuclear Power Reactors,'' Revision 0, dated May 2003.
5. Regulatory Guide 1.197, ''Demonstrating Control Room Envelope Integrity at Nuclear Power Reactors,'' Revision 0, May 2003.
6. NEI 99–03,''Control Room Habitability Assessment Guidance,'' Revision 0, dated June 2001.

Principal contributors: C. Harbuck.

Model No-Significant-Hazards-Consideration Determination

Description of Amendment Request: A change is proposed to the standard technical specifications (STS) (NUREGs 1430 through 1434) and plant specific technical specifications (TS), to strengthen TS requirements regarding control room envelope (CRE) habitability by changing the action and surveillance requirements associated with the limiting condition for operation operability requirements for the CRE emergency ventilation system, and by adding a new TS administrative controls program on CRE habitability. Accompanying the proposed TS change are appropriate conforming technical changes to the TS Bases. The proposed revision to the Bases also includes editorial and administrative changes to reflect applicable changes to the corresponding STS Bases, which were made to improve clarity, conform with the latest information and references, correct factual errors, and achieve more consistency among the STS NUREGs. The proposed revision to the TS and associated Bases is consistent with STS as revised by TSTF–448, Revision 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a no-significant-hazards consideration.

Dated at Rockville, Maryland, this 9th day of January, 2007.

For the Nuclear Regulatory Commission.

Timothy J. Kobetz,

Branch Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

The following model License Amendment Request (LAR) was prepared by the NRC staff to facilitate use of the Consolidated Line Item Improvement Process (CLIIP). The model provides the expected level of detail and content for an application to revise plant technical specifications according to TSTF–448, ''Control Room Habitability,'' Revision 3, using the CLIIP. Each licensee remains responsible for ensuring that its actual application fulfills its administrative requirements as well as Nuclear Regulatory Commission regulations.

U.S. Nuclear Regular Commission,
Document Control Desk,
Washington, DC 20555.

Subject: Plant Name
Docket No. 50–
Application To Revise Technical Specifications Regarding Control Room Envelope Habitability in Accordance With TSTF–448, Revision 3, Using the Consolidated Line Item Improvement Process

Gentlemen:

In accordance with the provisions of 10 CFR 50.90 [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would modify TS requirements related to control room envelope habitability in accordance with TSTF–448, Revision 3.

Attachment 1 provides a description of the proposed changes, the requested confirmation of applicability, and plant-specific verifications. Attachment 2 provides the existing TS pages marked up to show the proposed changes. [Attachment 3 provides revised (clean) TS pages.] [Attachment [4] provides a summary of the regulatory commitments made in this submittal.] Attachment [5] provides existing TS Bases pages marked up to show the proposed changes.

[LICENSEE] requests approval of the proposed License Amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with attachments, is being provided to the designated [STATE] Official.

I declare [or certify, verify, state] under penalty of perjury that the foregoing is true and correct. (Note that request may be notarized in lieu of using this oath or affirmation statement).

If you should have any questions regarding this submittal, please contact [NAME, TELEPHONE NUMBER].

Sincerely,

[Name, Title]

Attachments:
1. Description and Assessment
2. Proposed Technical Specification Changes (Mark-Up)
[3. Revised Technical Specification Pages]
[[4]. Regulatory Commitments]
[5]. Proposed Technical Specification Bases Changes (Mark-Up)

cc: NRC Project Manager
——NRC Regional Office
——NRC Resident Inspector
——State Contact

Attachment 1—DESCRIPTION AND ASSESSMENT

1.0 Description

The proposed amendment would modify technical specification (TS) requirements related to control room envelope habitability in TS 3.7.[10], [''Control Room Envelope Emergency Ventilation System (CREEVS)''] and TS Section 5.5, [''Administrative Controls—Programs.'']

The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) STS change TSTF–448 Revision 3. The availability of this TS improvement was published in the **Federal Register** on [DATE] as part of the consolidated line item improvement process (CLIIP).

2.0 Assessment

2.1 Applicability of Published Safety Evaluation

[LICENSEE] has reviewed the safety evaluation dated [DATE] as part of the CLIIP. This review included a review of the NRC staff's evaluation, as well as the supporting information provided to support TSTF–448. [LICENSEE] has concluded that the justifications presented in the TSTF proposal and the safety evaluation prepared by the NRC staff are applicable to [PLANT, UNIT NOS.] and justify this amendment for the incorporation of the changes to the [PLANT] TS.

2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the TS changes described in the TSTF–448, Revision 3, or the applicable parts of the NRC staff's model safety evaluation dated [DATE].

Note: The Applicant should state which parts of Section 3.0 of the model SE are applicable to its facility, since these sections contain variations based on the plant-specific design and existing TS requirements.

2.3 License Condition Regarding Initial Performance of New Surveillance and Assessment Requirements

[LICENSEE] proposes the following as a license condition to support implementation of the proposed TS changes:

Upon implementation of Amendment No. xxx adopting TSTF–448, Revision 3, the determination of control room envelope (CRE) unfiltered air inleakage as required by SR 3.7.[10].[4], in accordance with TS 5.5.[18].c.(i), the assessment of CRE habitability as required by Specification 5.5.[18].c.(ii), and the measurement of CRE pressure as required by Specification 5.5.[18].d, shall be considered met. Following implementation:

(a) The first performance of SR 3.7.[10.5], in accordance with Specification 5.5.[18].c.(i), shall be within the specified Frequency of 6 years, plus the 15-month allowance of SR 3.0.2, as measured from [date], the date of the most recent successful tracer gas test, as stated in the [date] letter response to Generic Letter 2003–01, or within the next 15 months if the time period since the most recent successful tracer gas test is greater than 6 years.

(b) The first performance of the periodic assessment of CRE habitability, Specification 5.5.[18].c.(ii), shall be within 3 years, plus the 9-month allowance of SR 3.0.2, as measured from [date], the date of the most recent successful tracer gas test, as stated in the [date] letter response to Generic Letter 2003–01, or within the next 9 months if the time period since the most recent successful tracer gas test is greater than 3 years.

(c) The first performance of the periodic measurement of CRE pressure, Specification 5.5.[18].d, shall be within [18] months, plus the [138] days allowed by SR 3.0.2, as measured from [date], the date of the most recent successful pressure measurement test, or within [138] days if not performed previously.

3.0 Regulatory Analysis

3.1 No Significant Hazards Consideration Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination (NSHCD) published in the **Federal Register** as part of the CLIIP. [LICENSEE] has concluded that the proposed NSHCD presented in the **Federal Register** notice is applicable to [PLANT] and is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

[3.2 Commitments]

[Note: The Applicant should state regulatory commitments proposed in support of this LAR, if any, in this section, and restate them in optional Attachment 4.]

4.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation dated [DATE] as part of the CLIIP. [LICENSEE] has concluded that the staff's findings presented in that evaluation are applicable to [PLANT] and the evaluation is hereby incorporated by reference for this application.

Attachment 2—Proposed Technical Specification Changes (Mark-Up)

[Attachment 3—Revised Technical Specification Pages]

[Attachment 4—Regulatory Commitments]

The following table identifies those actions committed to by [LICENSEE] in this document. Any other statements in this submittal are provided for information purposes and are not considered to be regulatory commitments. Please direct questions regarding these commitments to [CONTACT NAME].]

REGULATORY COMMITMENTS	DUE DATE/EVENT

Attachment 5—Proposed Changes to Technical Specification Bases Pages (Mark-Up)

[FR Doc. E7–503 Filed 1–16–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the 2006 Annual Review for Products and Country Practices

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in connection with the 2006 GSP Annual Review to modify the list of products that are eligible for duty-free treatment under the GSP program and to modify the GSP status of certain GSP beneficiary developing countries because of country practices. This notice announces the product and country practice petitions that are accepted for further review in the 2006 GSP Annual Review, and sets forth the schedule for comment and public hearing on these petitions, for requesting participation in the hearing, and for submitting pre-hearing and post-hearing briefs. The list of accepted petitions is available at: *http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html*. This notice also announces closure of the review for case 003-CP–06 (formerly case 011–CP–05), Protection of Worker Rights in Uganda.

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee of the Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971.

DATES: The GSP regulations (15 CFR Part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified in a **Federal Register** notice. The current schedule follows. Notification of any other changes will be given in the **Federal Register**.

February 2, 2007 Due date for submission of pre-hearing briefs and requests to appear at the GSP Subcommittee Public Hearing that include the name, address, telephone, fax, e-mail address and organization of witnesses.

February 16, 2007 GSP Subcommittee Public Hearing, Rooms 1 and 2, 1724 F St NW., Washington, DC 20508, beginning at 9:30 am.

February 22, 2007 U.S. International Trade Commission (USITC)'s scheduled hearings on whether any industry in the United States is likely to be adversely affected by the waivers proposed by petition.)

March 9, 2007 Due date for submission of post-hearing briefs.

April 2007 USITC scheduled to publish report on products of cases 2006–01 to 2006–08. Comments on USITC reports on these products due 10 days after USITC date of publication.

June 30, 2007 Modifications to the list of articles eligible for duty-free treatment under the GSP resulting from the 2006 Annual Review will be announced on or about June 30, 2007, in the **Federal Register**, and any changes will take effect on the effective date announced.

SUPPLEMENTARY INFORMATION: The GSP provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the ''1974 Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

A. Petitions Requesting Modifications of Product Eligibility

In a **Federal Register** notice dated June 29, 2006, USTR announced that the

deadline for the filing of product petitions, other than those requesting waivers of ''competitive need limitations'' (CNLs), and country practice petitions for the 2006 GSP Annual Review was July 20, 2006 (71 FR 37129). The deadline for the filing of product petitions requesting waivers of the CNLs was announced to be November 17, 2006. The product petitions received have requested changes in the list of GSP-eligible products by adding new products or by waiving the CNL for a country with respect to an eligible article.

The interagency GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has reviewed the product petitions, and the TPSC has decided to accept for review the product petitions listed in ''List of Petitions Accepted in the 2006 GSP Annual Review'' posted on the USTR Web site. That list sets forth, for each type of change requested: The case number, the Harmonized Tariff Schedule of the United States (HTS) subheading number, a brief description of the product (see the HTS for an authoritative description available on the U.S. International Trade Commission (USITC) Web site (*http://www.usitc.gov/tariffschedule*), and the petitioner for each petition included in this review. Acceptance of a petition for review does not indicate any opinion with respect to the disposition on the merits of the petition. Acceptance indicates only that the listed petitions have been found eligible for review by the TPSC and that such review will take place.

B. Petitions for Review Regarding Country Practices

Pursuant to 15 CFR 2007.0(b), the GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has recommended, and the TPSC has accepted or continued the review of several country practice petitions (see ''List of Petitions Accepted in the 2006 GSP Annual Review'' posted on the USTR Web site). Acceptance of a petition for review does not indicate any opinion with respect to the disposition on the merits of the petition. Acceptance indicates only that the petition has been found eligible for review by the TPSC and that such review will take place.

C. Decision To Close a Review of Uganda Worker Rights Country Practices Petition

In the 2006 GSP Annual Review, the GSP Subcommittee of the TPSC is conducting ongoing reviews of petitions concerning the country practices of certain beneficiary developing countries of the GSP program. In the 2005 GSP Annual Review, the TPSC accepted for review a country practices petition regarding worker rights in Uganda (case 011–CP–05). The petitioner sought to remove Uganda's eligibility for GSP benefits. Uganda has made considerable progress over the last year in improving its protection of labor rights. Based on that progress, the TPSC has decided to close the review of case 003–CP–06, Protection of Worker Rights in Uganda (formerly case 011–CP–05).

Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee of the TPSC invites comments in support of or in opposition to any petition which has been accepted for the 2006 GSP Annual Review. Submissions should comply with 15 CFR part 2007, except as modified below. All submissions should identify the subject article(s) in terms of the case number and HTS subheading number, if applicable, as shown in the ''List of Petitions Accepted in the 2006 GSP Annual Review'' available at: *http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html.*

Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic e-mail submissions in response to this notice. Hand-delivered submissions will not be accepted. These submissions should be single-copy transmissions in English with the total submission not to exceed 30 single-spaced standard letter-size pages. E-mail submissions should use the following subject line: ''2006 GSP Annual Review'' followed by the Case Number and, if a product petition, the HTS subheading number found in the ''List of Petitions Accepted in the 2006 GSP Annual Review'' (for example, 2006–05 7202.99.20) and, as appropriate ''Written Comments'', ''Notice of Intent to Testify'', ''Pre-hearing brief'', ''Post-hearing brief'' or ''Comments on USITC Advice''. (For example, an e-mail subject line might read ''2006–05 7202.99.20 Written Comments''.) Documents must be submitted in English in one of the following formats: MSWord (.DOC), or text (.TXT) files. Documents may not be submitted as electronic image files or contain imbedded images (for example, ''.JPG'', ''TIF'', ''.PDF'', ''BMP'', or ''GIF''). Supporting documentation submitted as spreadsheets are acceptable as Excel files, formatted for printing on 8½ × 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page of the document. The non-confidential version must also be clearly marked at the top and bottom of each page (either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL''). Documents that are submitted without any marking might not be accepted or will be considered public documents.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-''or ''BC-'' should be followed by the name of the party (government, company, union, association, etc.) which is making the submission.

E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including the sender's e-mail address and other identifying information. The e-mail address for these submissions is *FR0618@USTR.EOP.GOV.* Documents not submitted in accordance with these instructions might not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.

Public versions of all documents relating to this review will be available for review approximately two weeks after the relevant due date by appointment in the USTR public reading room, 1724 F Street, NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m. Monday through Friday, by calling (202) 395–6186.

Notice of Public Hearing

A hearing will be held by the GSP Subcommittee of the TPSC on February 16, 2007, beginning at 9:30 a.m. at the Office of the U.S. Trade Representative, 1724 F St., NW., Washington, DC 20508. The hearing will be open to the public and a transcript of the hearing will be made available for public inspection or

can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearing must submit, following the above ''Requirements for Submissions'', the name, address, telephone number, and facsimile number and e-mail address, if available, of the witness(es) representing their organization to Marideth Sandler, Executive Director of the GSP Program by 5 p.m., February 2, 2007. Requests to present oral testimony in connection with the public hearing must be accompanied by a written brief or statement, in English, and also must be received by 5 p.m., February 2, 2007. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited above and are submitted, in English, by 5 p.m., March 9, 2007. Parties not wishing to appear at the public hearing may submit pre-hearing briefs or statements, in English, by 5 p.m., February 2, 2007, and post-hearing written briefs or statements, in English, by 5 p.m., March 9, 2007.

In accordance with sections 503(d)(1)(A) of the 1974 Act and the authority delegated by the President, pursuant to section 332(g) of the Tariff Act of 1930, the U.S. Trade Representative has requested that the USITC provide its advice on whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(d)(1) of the 1974 Act with respect to the articles of GSP beneficiary countries that are specified in the ''List of Petitions Accepted in the 2006 GSP Annual Review .'' Comments by interested persons on the USITC Report prepared as part of the product review should be submitted by 5 p.m., 10 days after the date of USITC publication of its report.

Marideth Sandler,

Executive Director, Generalized System of Preferences (GSP) Program, Office of the U.S. Trade Representative.

[FR Doc. E7–474 Filed 1–16–07; 8:45 am]

BILLING CODE 3190–W7–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information, Washington, DC 20549.

Extension: Rule 17Ad–16, SEC File No. 270–363, OMB Control No. 3235–0413.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17Ad–16: Notice of Assumption or Termination of Transfer Agent Services

Rule 17Ad–16, (17 CFR 240.17Ad–16), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), requires a registered transfer agent to provide written notice to the appropriate qualified registered securities depository when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address. In addition, transfer agents that provide such notice shall maintain such notice for a period of at least two years in an easily accessible place. This rule addresses the problem of certificate transfer delays caused by transfer requests that are directed to the wrong transfer agent or the wrong address.

We estimate that the transfer agent industry submits 600 Rule 17Ad–16 notices to appropriate qualified registered securities depositories. The staff estimates that the average amount of time necessary to create and submit each notice is approximately 15 minutes per notice. Accordingly, the estimated total industry burden is 150 hours per year (15 minutes multiplied by 600 notices filed annually).

Because the information needed by transfer agents to properly notify the appropriate registered securities depository is readily available to them and the report is simple and straightforward, the cost is minimal. The average cost to prepare and send a notice is approximately $7.50 (15 minutes at $30 per hour). This yields an industry-wide cost estimate of $4,500 (600 notices multiplied by $7.50 per notice).

The retention period for the recordkeeping requirements under Rule 17Ad–16 is two years for both the clearing agencies and transfer agents. The recordkeeping requirement under Rule 17Ad–16 is mandatory to ensure accurate securityholder records, prompt and efficient clearance and settlement of securities transactions, and to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information. Please note that 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 control number.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

January 8, 2007.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–545 Filed 1–16–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form 18–K, OMB Control No. 3235–0120, SEC File No. 270–108.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 18–K (17 CFR 249.318) is an annual report form used by foreign governments and political subdivisions with securities listed on a United States exchange. The information to be collected is intended to ensure the adequacy of information available to investors in the registration of securities and assures public availability. The information provided is mandatory. Form 18–K is a public document. Form 18–K takes approximately 8 hours to prepare and is filed by approximately 40 respondents for a total annual reporting burden of 320 hours.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 3, 2007.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E7–546 Filed 1–16–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 16, 2007:

A Closed Meeting will be held on Thursday, January 18, 2007 at 2 p.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B) and (10) and 17 CFR 200.402(a) (3), (5), (7), (8), (9)(ii), and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Closed Meeting scheduled for Thursday, January 18, 2007 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

A regulatory matter regarding a financial institution; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

January 11, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. 07–147 Filed 1–11–07; 4:25 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–38; File No. S7–02–07]

Privacy Act of 1974: Notice of Alteration to Two Existing Systems of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed alteration to two existing systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission proposes to alter the Privacy Act system of records: ''Personnel Management Employment and Staffing Files (SEC–39)'', which was previously identified in the **Federal Register** at 41 FR 41591 on September 22, 1976, 50 FR 37750 on September 17, 1985 and 62 FR 47884 on September 11, 1997.

Also, the Commission is proposing to make changes to its system of records ''Identification and Access Control Cards, Special Credentials, Press Passes, and Building Access Control Cards (SEC–46)'', originally published at 63 FR 37423, July 10, 1998.

DATES: *Effective Date:* The changes will become effective February 26, 2007 unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received.

Comment Date: To be assured of consideration, comments should be received on or before February 16, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–02–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–02–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Barbara A. Stance, Chief Privacy Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0–7, Alexandria, VA 22312–2413, (202) 551–7209.

SUPPLEMENTARY INFORMATION: The Commission proposes to alter the system of records, ''Personnel Management Employment and Staffing Files (SEC–39).'' As described in the original notice, the system contains information on applicants for SEC employment, and present and past employees. This notice is published to alter the system of records by adding two new routine uses, (1) to disclose information in connection with organizational directories or similar records for internal management purposes, and (2) to Commission contractors or their authorized employees, and other Federal agencies for the purpose of assisting the Commission in the efficient administration of its programs; by changing the name of the system manager to the Office of Human Resources; and by changing the address for submitting requests for record notification, access and contesting to the Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

The Commission also proposes to alter the system of records, ''Identification and Access Control Cards, Special Credentials, Press Passes, and Building Access Control Cards

(SEC–46).'' As described in the original notice, the system is designed to permit access to Commission facilities by Commission employees, members of the press, contractors and consultants. This notice is published to modify the system of records by changing the system name from Identification Cards, Press Passes and Proximity Access Control Cards to Identification and Access Control Cards, Special Credentials, Press Passes, and Building Access Control Cards; by changing the system location from the Office of Administrative and Personnel Management to the Office of Administrative Services; by adding three new routine uses, (1) to disclose information to other Federal agencies to verify the identity and status of the PIV Card holder, (2) to Commission contractors or their authorized employees, and other Federal agencies for the purpose of assisting the Commission in the efficient administration of its programs, and (3) in connection with organizational directories or similar records for internal management purposes; by changing the system manager and address to the Office of Administrative Services, Security Branch, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1627; by changing the address for submitting requests for record notification, access and contesting to the Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100; and by expanding the record source categories to include volunteers, on-site business owners or clients, employees of other Federal agency and visitors. This notice is also altered to incorporate requirements of Homeland Security Presidential Directive 12 (HSPD–12) by expanding the categories and individuals covered by the system to include volunteers, tenants and employees of other Federal agencies; by clarifying and expanding the categories of records in the system, adding a note explaining that, to the extent that the Commission has records of a personnel investigative nature that come from the Office of Personnel Management or its contractors, they are covered by OPM/CENTRAL–9, Personnel Investigative Records, and not this system notice; and by expanding the authority for maintenance of the system and the purpose statement to include reference to HSPD–12.

The Commission has submitted a report of the altered systems of records to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Government Reform, and the Office of Management and Budget, pursuant to 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, and Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' as amended on February 20, 1996 (61 FR 6435).

Accordingly, the Commission is altering the systems of records to read as follows:

SEC–39

SYSTEM NAME:

Personnel Management Employment and Staffing Files.

SYSTEM LOCATION:

Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0–1, Alexandria, VA 22312–2413.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on applicants for SEC employment and present and past employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records includes the following category of records:

(a) Applicant files (Computerized applications, Standard Forms 171 and resumes, attorney supplements to applications, applicant correspondence and evaluations, and summer employment files);

(b) Official personnel folders (Office of Human Resources files);

(c) Service record cards;

(d) Merit promotion posting files, including supervisory appraisals for jobs advertised under SEC Merit Promotion Program;

(e) Request to Office of Personnel Management for Schedule C personnel actions;

(f) Chronological copies of personnel actions (Standard Forms 50);

(g) Office of Personnel Management clerk-typist and clerk-steno examination papers for applicants tested under SEC's delegated recruiting authority;

(h) Division/Office/Region employee record cards or electronic media; and

(i) Regional Office employee files, including copies of applications and notifications of personnel action (Standard Forms 50) on the employee concerned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR, parts 213, 293, 302, and 335; 5 U.S.C. 3109 and Civil Service Regulations promulgated thereunder.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained in these records may be used or disclosed as follows:

1. Records in category (a) above are used by SEC staff to make referrals to supervisors or administrative assistants in offices with vacancies for which applicants may be considered. Offices may retain copies of applications/resumes and evaluations of candidates they interview whom they feel may be contenders for employment offers later in the year.

2. SEC staff uses records in category (b) above for (i) retention of official personnel documents; (ii) verification of employment; (iii) determination of qualifications for jobs and eligibility for training; and (iv) processing of personnel actions.

3. SEC staff uses records in category (c) above for (i) computation of personnel strength of divisions/offices; (ii) verification of employment for credit checks or job applications; and (iii) recording of personnel actions processed.

4. SEC staff uses records in category (d) above to maintain records required by the Office of Personnel Management of competitive promotion actions, including (i) records to determine how an announcement for a particular job reads; (ii) records for statistical reports; and (iii) records for program effectiveness studies (to send questionnaires to supervisors who made selections under the program, for example). Supervisory appraisals are scored and used in determining employee's overall standing among all applicants for the job; they are sent to selecting supervisors for review if the employee is certified for consideration (interview).

5. SEC staff uses records in category (e) above to identify Office of Personnel Management control numbers for Schedule C positions and to aid in preparing new submissions.

6. SEC staff uses records in category (f) above for statistical reports.

7. SEC staff forwards records in category (g) above to the Office of Personnel Management at the end of each month if the applicant is not hired; if applicant is hired, records are retained for one year and then destroyed.

8. SEC staff uses records in category (h) above to monitor personnel actions concerning their staffs (i.e., date of employee's last promotion, employee's position description number, etc.) and to record date personnel action requests

and reports were forwarded to the Office of Personnel.

9. SEC Regional Offices use records in category (i) above as a reference in preparing personnel actions requests on employees, determining employee eligibility for training or career development counseling and for back-up data in preparing award nominations, etc.

10. Any of the records described above may be used by the Commission in connection with any action or proceeding brought by an employee before another agency or a court of law to review personnel action taken by the Commission or the failure by the Commission to take action.

11. In any proceeding where the Federal securities laws are in issue or in which the Commission or past or present members of its staff is a party or otherwise involved in an official capacity.

12. To a Federal, State or local governmental authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

13. To a Federal, State or local governmental authority, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

14. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

15. To aid in responding to inquiries from an employee, Member of Congress, the press or others concerning personnel action taken with respect to a specified employee or employees.

16. Records in this system may, at the discretion of the Commission's staff, be disclosed to any person during the course of any inquiry or investigation conducted by the Commission staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of inquiry.

17. To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

18. To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that circular.

19. To Commission contractors or their authorized employees, and other Federal agencies, as necessary, for the purpose of assisting the Commission in the efficient administration of its programs. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

20. The information contained in this system may be used by the Commission in connection with organizational directories or similar records for internal management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic or paper form.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records in categories (a)–(g) are pulled and re-filed by Office of Human Resources staff only and that Office is locked each evening. Access to official Personnel Folders is limited to employee concerned, his/her supervisors and administrative assistant, supervisors/administrative assistants considering him/her for a job or employee's designated representative; access by other individuals on official business is on a need-to-know basis as approved by the Associate Executive Director, Office of Human Resources. Personnel folders are locked in the Diebold file each evening. Division/Office Directors and Regional Directors are responsible for keeping employee record cards, electronic media or employee files (Regional Offices only) under lock and for assuring confidentiality. The national office in Washington, DC has a 24-hour security guard.

RETENTION AND DISPOSAL:

Records in category (a) are retained six months and then destroyed. Records in category (b) are forwarded to Federal Records Center 30 days after the employee leaves the SEC by retirement, resignation or death or forwarded to agency to which employee transfers as soon as new agency requests them. Records in category (c) are retained indefinitely. Records in category (d) are retained two years and then destroyed. Records in category (e) are retained indefinitely. Records in category (f) are retained five years and then destroyed. Records in category (g) are sent to the Office of Personnel Management at the end of the month if the applicant is hired. If the applicant is not hired, records are retained one year and then destroyed. Records in category (h) are retained indefinitely. Records in category (i) are retained while employee is assigned to office and forwarded to new SEC office if he/she transfers or destroyed if employee leaves the SEC.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Executive Director, Office of Human Resources, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0–1, Alexandria, VA 22312–2413.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20579–5100.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Records in category (a) are obtained from applicant concerned and interviewer evaluating the applicant. Records in category (b) are obtained from employee and supervisors concerned. Records in category (c) are obtained from official personnel folder of the employee concerned. Records in category (d) are obtained from employees applying for job and their supervisors. Records in category (e) are

obtained from employees and supervisors concerned. Records in category (f) are obtained from employees and supervisors concerned. Records in category (g) are obtained from applicant. Records in category (h) are obtained from official personnel actions, employees and supervisors concerned. Records in category (i) are obtained from official personnel actions, employees and supervisors concerned.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

SEC–46

SYSTEM NAME:

Identification and Access Control Cards, Special Credentials, Press Passes, and Building Access Control Cards.

SYSTEM LOCATION:

Securities and Exchange Commission, Office of Administrative Services, 100 F Street, NE., Washington, DC 20549–1627.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commission employees, members of the press, contractors, volunteers, tenants, and consultants or employees of other Federal agencies who require access to Commission facilities for extended periods of time.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include Government Personal Identity Verification (PIV) Card (The SEC PIV Card provider is the General Services Administration (GSA), and the full list of card fields maintained in the GSA system is covered by the GSA system of records, GSA–GOVT–7, Personal Identity Verification Identity Management System (PIV IDMS). The SEC system of records contains the following: name, date of birth, weight, height, color of hair and eyes, photograph, employee record number, card chip number, authorized access rights, date of issuance, date of return, date background investigation completed, whether eligible for an SEC Special Credential [SEC Form 990], and date of expiration); SEC Form 980, Headquarters and Field Office Access Card (name, date of birth, weight, height, color of hair and eyes, photograph, employee record number, card chip number, authorized access rights, date of issuance, and date of expiration); SEC Form 980A, Day Pass (date, name, organization, and authorized by); SEC Form 990, Special Credential (signature of authorizing official, photograph, control number, date of issuance and date of expiration); SEC Form 2355, On-Site Business & Registered Client ID (name, requesting officer, name of company or organization, control number, identification number, date of issue, expiration date, relationship to business, date of birth, color of hair and eyes, height, weight, photograph, and authorized access rights); SEC Form 725, Identification/Access Control Card Worksheet (various personal characteristics); and local facility access card (name, authorized access rights, card number, date issued and date of expiration, company/agency name and SEC division/office).

Note: The extent to which the Commission has records of a personnel investigative nature that come from the Office of Personnel Management (OPM) or its contractors, they are covered by OPM/CENTRAL–9, Personnel Investigations Records, and not this system notice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended; Homeland Security Presidential Directive 12 (HSPD–12), Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004.

PURPOSE(S):

This system is primarily designed to permit access according to authorized access rights to Commission facilities by Commission employees, contractors, consultants, volunteers, tenants, members of the press, and employees of other Federal agencies (only if they require access to Commission facilities for extended periods of time). This system also provides the status indicator of the PIV Cards to a separate secure database as required by Homeland Security Presidential Directive (HSPD)—12 so that other Federal agencies may verify the identity and current status of the PIV cardholder.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information contained in these records may be disclosed as follows:

1. To the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Commission becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

2. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court;

3. To a Federal, State, or local agency, in response to its requests, in connection with the hiring or retention of an employee, the issuance of a security clearance, or the conducting of a security or background investigation of an individual, to the extent that the information is relevant and necessary to the requesting agency;

4. To the Office of Inspector General for investigating allegations of abuse, should it occur;

5. To other Federal agencies to verify the identity and status of the PIV Card holder;

6. To Commission contractors or their authorized employees, and other Federal agencies, as necessary, for the purpose of assisting the Commission in the efficient administration of its programs. These contractors will be required to maintain Privacy Act safeguards with respect to such records; and

7. In connection with organizational directories or similar records for internal management purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic media and in paper files.

RETRIEVABILITY:

Records may be retrieved by the employee's name or identification number.

SAFEGUARDS:

Records are safeguarded by restricted computer passwords, locked file cabinets, and safes.

RETENTION AND DISPOSAL:

Records are maintained in a computerized database and paper. Electronic records, identification cards, and passes are destroyed three months after expiration, revocation, or return to issuing office, as provided in the National Archives and Records Administration's General Records Schedule No. 11, Item 4.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Administrative Services, Security Branch, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1627.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of this record may contact the Privacy Act Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5100.

CONTESTING RECORDS PROCEDURES:

See record access procedures above.

RECORD SOURCE CATEGORIES:

The issuing official, Commission employee, contractor, volunteer, on-site business owner or client, employee of other Federal agency, visitor, or press member being issued the identification/access card provides the information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: January 11, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–547 Filed 1–16–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55057; File No. 4–529]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the International Securities Exchange, LLC and the National Association of Securities Dealers, Inc.

January 8, 2007.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on December 20, 2006, the International Securities Exchange, LLC (''ISE'') and the National Association of Securities Dealers, Inc. (''NASD'') (together with the ISE, the ''Parties'') filed with the Securities and Exchange Commission (''Commission'') an amended and restated plan for the allocation of regulatory responsibilities. The Commission is publishing this notice to solicit comments on the amended and restated 17d–2 plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every self-regulatory organization (''SRO'') registered as either a national securities exchange or registered national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)[4] or Section 19(g)(2)[5] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act[6] was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[7] With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[8] Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (''DEA'') to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.[9] When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.[10] Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. Proposed Plan

The Parties currently operate pursuant to a 17d–2 plan in which NASD has assumed certain inspection, examination, and enforcement responsibility for common members with respect to certain applicable laws, rules, and regulations (the ''current NASD–ISE 17d–2 Plan'').[11] On September 28, 2006, the Commission approved a proposed rule change submitted by ISE relating to the adoption of rules to govern its electronic trading system for equities.[12] In that filing, ISE represented that it would enter into a 17d–2 agreement with NASD to delegate to NASD all regulatory oversight and enforcement responsibilities with respect to the ISE's outbound routing facility pursuant to applicable laws.[13]

On December 20, 2006, the Parties submitted an amended and restated 17d–2 plan for review by the Commission. The amended and restated 17d–2 plan, which would replace and supersede the current NASD–ISE 17d–2 Plan and all prior amendments thereto in their entirety, is intended to reduce regulatory duplication for firms that are

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[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78q(d).

[5] 15 U.S.C. 78s(g)(2).

[6] 15 U.S.C. 78q(d)(1).

[7] *See* Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

[8] 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

[9] *See* Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

[10] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

[11] *See* Securities Exchange Act Release Nos. 42668 (April 11, 2000), 65 FR 21048 (April 19, 2000 (File No. 4–431) (notice of filing); and 42815 (May 23, 2000), 65 FR 34762 (May 31, 2000) (File No. 4–431) (order).

[12] *See* Securities Exchange Act Release No. 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (SR–ISE–2006–48).

[13] *See id.* at 71 FR 58654.

common members of both ISE and NASD and to address regulation of the ISE's outbound routing facility for its new electronic trading system for equities. The text of the plan delineates regulatory responsibilities with respect to the Parties, including responsibility for ISE rules. Included in the amended and restated plan is an exhibit (the ''ISE Certification of Common Rules,'' referred to herein as the ''Certification'') that lists every ISE rule and the federal securities laws, rules, and regulations thereunder for which, under the plan, NASD would bear responsibility for overseeing and enforcing with respect to common members. In particular, under the amended and restated 17d–2 plan, NASD would assume examination and enforcement responsibility relating to compliance by dual members and persons associated therewith with the rules of ISE that are substantially similar to the applicable rules of NASD (''Common Rules''),[14] as well as any provisions of the federal securities laws and the rules and regulations thereunder delineated in the Certification.[15] Under the plan, ISE would retain full responsibility for surveillance and enforcement with respect to trading activities or practices involving ISE's own marketplace, including, without limitation, ISE's rules relating to the rights and obligations of market makers; registration pursuant to its unique rules (*i.e.*, non-Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any rules that are not Common Rules, except for ISE rules for any ISE member that operates as a facility,[16] acts as an outbound router for the ISE, and is a member of NASD (the ''Router Member'').[17]

The text of the amended and restated 17d–2 plan is as follows:

Agreement Between NASD and International Securities Exchange LLC Pursuant to Rule 17d–2 Under the Securities Exchange Act of 1934

This Agreement, by and between the National Association of Securities Dealers, Inc. (''NASD'') and the International Securities Exchange LLC (''ISE''), is made this 20th day of December, 2006 (the ''Agreement''), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 17d–2 thereunder which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. NASD and ISE may be referred to individually as a ''party'' and together as the ''parties.''

This Agreement amends and restates the agreement entered into between the parties on April 3, 2000 and amended on April 27, 2000, entitled ''Agreement Between the National Association of Securities Dealers, Inc., NASD Regulation, Inc. and the International Securities Exchange LLC Pursuant to Section 17(d) and Rule 17d–2,'' and any subsequent amendments thereafter.

Whereas, NASD and ISE desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, NASD and ISE desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d–2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') for its approval.

Now, therefore, in consideration of the mutual covenants contained hereinafter, NASD and ISE hereby agree as follows:

1. *Definitions.*

Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) ''*ISE Rules*'' or ''*NASD Rules*'' shall mean the rules of the ISE or NASD, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) ''*Common Rules*'' shall mean the ISE Rules that are substantially similar to the applicable NASD Rules in that examination for compliance with such rules would not require NASD to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member's activity, conduct, or output in relation to such rule.

(c) ''*Dual Members*'' shall mean those ISE members that are also members of NASD and the associated persons therewith.

(d) ''*Effective Date*'' shall have the meaning set forth in paragraph 14.

(e) ''*Enforcement Responsibilities*'' shall mean the conduct of appropriate proceedings, in accordance with the NASD Code of Procedure (the Rule 9000 Series) and other applicable NASD procedural rules, to determine whether violations of pertinent laws, rules or regulations have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the NASD's Code of Procedure and sanctions guidelines.

(f) ''*Regulatory Responsibilities*'' shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on Exhibit 1 attached hereto.

2. *Regulatory and Enforcement Responsibilities.*

NASD shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, ISE furnished NASD with a current list of Common Rules and certified to NASD that such rules are substantially similar to the corresponding NASD rule (the ''Certification''). NASD hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of ISE or NASD, ISE shall submit an updated list of Common Rules to NASD for review which shall add ISE rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete ISE rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be ISE rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, NASD shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term ''Regulatory Responsibilities'' does not include, and ISE shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following:

[14] *See* paragraph 1(b) of the amended and restated 17d–2 plan (defining Common Rules).

[15] *See* paragraph 1(f) of the amended and restated 17d–2 plan. The Commission notes that there are currently no federal securities law rules listed on the Certification.

[16] *See* Section 3(a)(2) of the Act (defining ''facility''). 15 U.S.C. 78c(a)(2).

[17] Apparent violations of such rules by any such entity will be processed by, and enforcement proceedings will be conducted by, the NASD. *See* paragraph 2(d) of the amended and restated 17d–2 plan. As of the date of the amended and restated 17d–2 plan, ISE Route LLC is the only Router Member.

(a) Surveillance and enforcement with respect to trading activities or practices involving ISE's own marketplace, including without limitation ISE's rules relating to the rights and obligations of market makers;

(b) registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d–1 under the Exchange Act; and

(d) any ISE Rules that are not Common Rules, except for ISE Rules for any ISE member that operates as a facility (as defined in Section 3(a)(2) of the Exchange Act), acts as an outbound router for the ISE and is a member of NASD (''Router Member'') as provided in paragraph 6. As of the date of this Agreement, ISE Route LLC is the only Router Member.

3. *Dual Members.*

Prior to the Effective Date, ISE shall furnish NASD with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. *No Charge.*

There shall be no charge to ISE by NASD for performing the Regulatory Responsibilities and Enforcement Responsibilities under this Agreement except as hereinafter provided. NASD shall provide ISE with ninety (90) days advance written notice in the event NASD decides to impose any charges to ISE for performing the Regulatory Responsibilities under this Agreement. If NASD determines to impose a charge, ISE shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that NASD's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. *Reassignment of Regulatory Responsibilities.*

Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission, or industry agreement, restructuring the regulatory framework of the securities industry or reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

6. *Notification of Violations.*

In the event that NASD becomes aware of apparent violations of any ISE Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, NASD shall notify ISE of those apparent violations for such response as ISE deems appropriate. Apparent violations of all other applicable rules, including violations of the Common Rules, various securities acts, and rules and regulations thereunder, shall be processed by, and enforcement proceedings in respect thereto shall be conducted by NASD as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on the ISE, ISE may in its discretion assume concurrent jurisdiction and responsibility. With respect to apparent violations of any ISE Rules by any Router Member, NASD shall not make referrals to ISE pursuant to this paragraph 6. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, NASD as provided in this Agreement. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. *Continued Assistance.*

NASD shall make available to ISE all information obtained by NASD in the performance by it of the Regulatory Responsibilities hereunder in respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, NASD shall furnish ISE any information it obtains about Dual Members which reflects adversely on their financial condition. It is understood that such information is of an extremely sensitive nature and, accordingly, ISE acknowledges and agrees to take all reasonable steps to maintain its confidentiality. ISE shall make available to NASD any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

8. *Dual Member Applications.*

a. Dual Members subject to this Agreement shall be required to submit, and NASD shall be responsible for processing and acting upon all applications submitted on behalf of allied persons, partners, officers, registered personnel and any other person required to be approved by the rules of both ISE and NASD or associated with Dual Members thereof. Upon request, NASD shall advise ISE of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the rules of both ISE and NASD.

b. Dual Members shall be required to send to NASD all letters, termination notices or other material respecting the individuals listed in paragraph 8(a).

c. When as a result of processing such submissions NASD becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, NASD shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep ISE advised of its actions in this regard for such subsequent proceedings as ISE may initiate.

d. Notwithstanding the foregoing, NASD shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated therewith or other persons required to register or qualify by examination: (i) Meets the ISE requirements for general membership or for specified categories of membership or participation in the ISE, such as (A) Primary Market Maker Membership (''PMM''); (B) Competitive Market Maker Membership (''CMM''); (C) Electronic Access Membership (''EAM'') (or any similar type of ISE membership or participation that is created after this Agreement is executed); or (ii) meets the ISE requirements to be associated with, or employed by, an ISE member or participant in any capacity, such a Designated Trading Representative (''DTR'') (or any similar type of participation, employment category or title, or associate-person category or class that is created after this Agreement is executed). NASD shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 8(d), including termination or limitation on activities, of a member or a participant of the ISE, or a person associated with, or requesting association with, a member or participant of the ISE.

9. *Branch Office Information.*

NASD shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. NASD shall advise ISE monthly of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

10. *Customer Complaints.*

ISE shall forward to NASD copies of all customer complaints involving Dual Members received by ISE relating to NASD's Regulatory Responsibilities under this Agreement. It shall be NASD's responsibility to review and take appropriate action in respect to such complaints.

11. *Advertising.*

NASD shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with NASD in accordance with NASD's filing procedures and is accompanied with any applicable filing fees set forth in NASD Rules. Such review shall be made in accordance with then applicable NASD rules and interpretations. The advertising of Dual Members shall be subject only to compliance with appropriate NASD rules and interpretations.

12. *No Restrictions on Regulatory Action.*

Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

13. *Termination.*

This Agreement may be terminated by ISE or NASD at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

14. *Effective Date.*

This Agreement shall be effective upon approval of the Commission.

15. *Arbitration.*

In the event of a dispute between the parties as to the operation of this Agreement, ISE and NASD hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

16. *Separate Agreement.*

This Agreement is wholly separate from the multiparty Agreement made pursuant to Rule 17d–2 of the Exchange Act between the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange LLC, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered into on January 14, 2004, and as may be amended from time to time.

17. *Notification of Members.*

ISE and NASD shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

18. *Amendment.*

This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

19. *Limitation of Liability.*

Neither NASD nor ISE nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of NASD or ISE and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by NASD or ISE with respect to any of the responsibilities to be performed by each of them hereunder.

20. *Relief from Responsibility.*

Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d–2 thereunder, NASD and ISE join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve ISE of any and all responsibilities with respect to matters allocated to NASD pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

Exhibit 1—ISE Certification of Common Rules

ISE hereby certifies that the requirements contained in the rules listed below for ISE are identical to, or substantially similar to, the comparable NASD rules identified.

ISE Rule(s)	NASD Rule(s)
408. Prevention of the Misuse of Material, Nonpublic Information	3010(a)(2) Supervision.
409. Disciplinary Action	3070(a)(1) and (a)(10) Reporting Requirements.
604. Continuing Education for Registered Persons*	1120 Continuing Education Requirements.
622. Transfer of Accounts	11870 Customer Account Transfer Contracts.
624. Brokers' Blanket Bonds*	3020 Fidelity Bonds.
626. Telephone Solicitation*	2212 Telemarketing.
1400. Maintenance, Retention, and Furnishing of Books, Records and Other Information.	3110(a) Books and Records—Requirements.
1407. Market Maker Hedge Exemption from Nasdaq Short Sale Rule*	5100 Short Sale Rule; IM–6130 Trade Reporting of Short Sales.
2114. Doing Business with the Public [1]	2310 Recommendations to Customers (Suitability); 2320 Best Execution and Interpositioning; 2330 Customers' Securities or Funds; 2340 Customer Account Statements; 2341 Margin Disclosure Statement; 2350 Broker/Dealer Conduct on the Premises of Financial Institutions; 2360 Approval Procedures for Day-Trading Accounts; 2361 Day-Trading Risk Disclosure Statement; 2370 Borrowing From or Lending to Customers.

[1] In connection with the approval of ISE Rule 2114, the Commission noted that since the ISE is requiring Equity EAMs that do business with the public to become members of NASD, those ISE members are required to comply with NASD rules that govern the practice of members when doing business with the public. The Commission noted that, among other things, these members would be obligated to comply with these listed NASD Rules. *See* Securities Exchange Act Release No. 54401 (September 1, 2006), 71 FR 53483 (September 11, 2006) (SR–ISE–2006–53).

* ISE will be responsible for any significant differences between its rules and the comparable NASD rule identified, until such time amendments to such rule(s) may be approved.

* * * * *

III. Date of Effectiveness of the Proposed Plan and Timing for Commission Action

Pursuant to Section 17(d)(1) of the Act[18] and Rule 17d–2 thereunder,[19] after February 7, 2007, the Commission may, by written notice, declare the plan submitted by ISE and NASD, File No. 4–529, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the amended and restated 17d–2 plan and to relieve ISE of the responsibilities which would be assigned to NASD, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4–529 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–529. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the plan also will be available for inspection and copying at the principal offices of ISE and NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–529 and should be submitted on or before February 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–539 Filed 1–16–07; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78q(d)(1).

[19] 17 CFR 240.17d–2.

[20] 17 CFR 200.30–3(a)(34).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Pathways Group, Inc. (n/k/a Bicoastal Communications, Inc.); Order of Suspension of Trading

January 12, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pathways Group, Inc. (n/k/a Bicoastal Communications, Inc.) because it has not filed any periodic reports since the period ended September 30, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, *it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in securities of the above-listed company is suspended for the period from 9:30 a.m. EST on January 12, 2007, through 11:59 p.m. EST on January 26, 2007.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 07–159 Filed 1–12–07; 11:25 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55068; File No. SR–Amex–2006–17]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Procedures for At-Risk Cross Transactions

January 9, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Amex. On November 9, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On December 1, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to revise the procedures applicable to cross transactions in equity options to provide procedures for at-risk cross transactions. The text of the proposed rule change is available at the Amex, on the Amex's Web site at *http://amex.com,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 renamed the proposed procedure for equity options as ''at-risk'' cross transactions; provided that the eligible order size would be at least 50 contracts; clarified certain descriptions of the proposal in Section II.A.1 below; and made minor revisions to the text of the proposed rule change. Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] Amendment No. 2 revised the proposed rule text to clarify that, under Commentary .02(c) of Amex Rule 950—ANTE(d), the member, on behalf of the public customer whose order is subject to facilitation, must establish priority consistent with the Exchange's customer priority rules. Amendment No. 2 also made a technical correction to the Purpose section of the proposed rule change.

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to provide an alternative crossing procedure to supplement the existing facilitation cross procedure in Commentary .02 to Amex Rule 950—ANTE(d). In this manner, the Amex would permit ''at-risk'' cross transactions by member firms.

The proposal would establish an at-risk crossing procedure in equity options that permits a floor broker, after satisfying all public customer orders, to execute an at-risk cross on behalf of a member organization trading against its own customer's order between the quoted market once priority has been established. Currently, floor brokers are required to follow the facilitation crossing procedure set forth in Commentary .02(c) to Amex Rule 950—ANTE(d),[5] whereby the floor broker representing the member organization must improve the quoted market on behalf of its customer to cross or facilitate the order. Notwithstanding the procedures set forth in Commentary .02(c), as described above, Commentary .02(d) to Amex Rule 950—ANTE(d) sets forth conditions and procedures by which the member firm facilitating the order is entitled to participate from its proprietary account as the contra-side of that order to the extent of 40 percent of the remaining contracts, provided the order trades at or between the quoted market.

The purpose of the proposed revision is to provide floor brokers with a greater incentive to attract and maintain order flow on the Exchange by permitting at-risk cross transactions in between the quoted market. With an at-risk cross transaction, a customer order has the opportunity for price improvement that does not always exist under the Exchange's current facilitation cross procedure because, under the proposed at-risk cross provisions, the floor broker must cross at a price at least one minimum price variation (''MPV'') better than the best price communicated by the trading crowd. In addition, the at-risk cross procedure will provide the trading crowd with either the opportunity to buy or sell the entire customer order when represented, or trade against the member firm's quote, which will be at risk to the market.

A facilitation order is currently defined by Amex Rule 950—ANTE(e) as ''an order which is only executed, in whole or in part, in a cross transaction with an order for a public customer of the member organization.'' Commentary .02 to Amex Rule 950—ANTE(d) provides the current procedure for executing facilitation cross transactions. According to the Commentary, a floor broker holding an order for a member firm's public customer and a facilitation order is permitted to cross the orders if: (1) The floor broker discloses on its order ticket for the public customer order which is subject to facilitation, all the terms of such order, including, if applicable, any contingency involving other options, underlying securities, or related securities; (2) the floor broker requests bids and offers for the option series subject to facilitation, then discloses the public customer order and any contingency respecting such order which is subject to facilitation and identifies the order as being subject to facilitation; and (3) after providing an opportunity for such bids and offers to be made, the floor broker on behalf of the public customer whose order is subject to facilitation, either bids above the highest bid or offers below the lowest offer on the market. After all other market participants are given an opportunity to accept the bid or offer made on behalf of the public customer whose order is subject to facilitation, the floor broker may then cross all or any remaining part of such order and the facilitation order at such customer's bid or offer by announcing in public outcry that he is crossing such orders stating the quantity and price(s).

In cases where a floor broker is seeking to facilitate its own public customer order, Commentary .02(d)(1) to Amex Rule 950—ANTE(d) provides that the member firm is entitled to participate in the firm's proprietary account as the contra-side of that order up to 40 percent of the remaining contracts (the ''Member Firm Guarantee''), provided that the order trades at a price that matches or improves the market, after public customer orders on the specialist's book or customer orders represented by a floor broker in the crowd have been filled. This Member Firm Guarantee provides, under certain conditions, the ability to cross 40 percent of the customer order on behalf of a member organization before the specialist and/or registered options traders in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class-by-class basis, although the size may not be for fewer than 50 contracts. Under the proposal, the Member Firm Guarantee will remain unchanged. However, an at-risk cross transaction will not be subject to the Member Firm Guarantee.

The Amex proposes to adopt at-risk crossing procedures by revising its current facilitation cross procedures in two parts. First, the Exchange proposes to change the definition of ''facilitation order'' such that floor brokers may choose which procedure to use, either the facilitation or the at-risk cross procedure. Amex Rule 950—ANTE(e)(iv) defines a facilitation order as an ''order which is *only* executed, in whole or in part, in a cross transaction with an order for a public customer of the member organization'' (emphasis added). The proposed rule change would revise the definition so that it is ''an order which *may* be executed in a cross transaction with an order for a public customer of the member organization'' (emphasis added). Allowing for this change would provide floor brokers with the ability to continue using the facilitation cross procedure set forth in Commentary .02(d) to Amex Rule 950—ANTE(d).

Second, the Exchange proposes the following procedure for the use of members who choose to execute at-risk cross transactions. The at-risk cross transaction procedure may only be used by floor brokers attempting to cross an order of a public customer from the same member organization.[6] Floor brokers will be required to take the following steps:

- Disclose on its order ticket for the public customer order which is subject to the cross, all the terms of the order, including, if applicable, any contingency involving other options, underlying securities or related securities;
- The floor broker must request bids and offers for all components of the customer order;
- In response to the quoted market from the trading crowd, the floor broker,

[5] Telephone conversation between Jeffrey Burns, Vice President and Associate General Counsel, Amex; and Ira Brandriss, Special Counsel, and Sara Gillis, Attorney, Division of Market Regulation, Commission, on January 4, 2007. Certain additional technical corrections were made throughout the discussion of the proposed rule change pursuant to the January 4, 2007 telephone conversation with Amex staff.

[6] The minimum eligible order size for the at-risk cross transaction will be 50 contracts.

on behalf of the member organization, must first represent the public customer order to the trading crowd as customer providing the side, size and a price of the order, giving the customer an opportunity for price improvement;

• Once the trading crowd has provided a quote in response to the customer order, it will remain in effect until: (i) A reasonable amount of time has passed, (ii) there is significant change in the price of the underlying security or (iii) the market given in response to the request has been improved. In the case of a dispute, the term ''significant change'' will be interpreted on a case-by-case basis by two Floor Officials based upon the extent of the recent trading in the option and in the underlying security and any other relevant factors;

• In response to the trading crowd's quoted market, the floor broker may on behalf of the member organization improve the quoted market establishing priority; and

• The floor broker may then attempt to consummate a cross transaction at risk to the market by bidding or offering on behalf of the member firm at one MPV away from the public customer order.[7]

The following is an example of how the at-risk cross procedure will operate. Assume that the posted market at the Amex is 1.00-bid/1.15-offer for 250 contracts. A customer has a limit order to buy 500 contracts at 1.10. The floor broker enters the trading crowd and requests a larger size market and receives 1.00-bid/1.15-offer for 500 contracts. In response to the trading crowd's market, the floor broker bids 1.05 for 500 contracts for the customer.

Absent the specialist and/or Registered Options Traders selling to the customer at 1.05, thereby improving the customer's limit price, or improving the offer to 1.10 in response to the customer bid, the floor broker may then make a better offer on behalf of the member organization at 1.10 establishing priority. At this point, the floor broker could invoke the Member Firm Guarantee at 1.10 and would be unable to employ the at-risk crossing procedure.

The floor broker may then attempt to cross the customer order at 1.10. In the process of attempting the cross, the crowd could still ''break up'' the cross by selling to the customer's 1.05 bid or buying the firm's 1.10 offer, which is ''at-risk''. As a result, the customer is provided the opportunity to pay 1.05 and achieve price improvement while the marketplace is provided an opportunity for the trading crowd to purchase the firm's offer at 1.10. The member firm effectively relinquishes its guaranteed participation rights (*i.e.*, the Member Firm Guarantee) in an attempt to cross the entire order.

The Exchange believes that the proposed at-risk cross procedure better supports the auction market and provides an opportunity for customers to achieve meaningful price improvement that otherwise may not occur when a member firm is forced to use the current facilitation procedure to interact with its customer's order. Under the current facilitation cross procedure, the floor broker (in the above example) would request a market from the trading crowd and then facilitate the customer order at 1.10 subject to the Member Firm Guarantee. As proposed, in response to the trading crowd's quoted market, the floor broker may determine which procedure best represents the customer and the member firm.

For a floor broker to use the at-risk cross procedure outlined above, the floor broker must be attempting to cross an order of a public customer from the same member organization. Once the cross transaction has occurred, the order cannot then be broken up by a superior bid or offer from the trading crowd.

As noted above, the Exchange proposes to revise the procedures applicable to cross transactions in equity options to provide procedures for at-risk cross transactions. The purpose of the proposed revision is to provide floor brokers with a greater incentive to attract and maintain order flow on the Exchange and improve the auction marketplace because the at-risk cross procedure allows floor brokers the ability to cross transactions in between the quoted market. The Exchange believes that the at-risk cross procedure will also encourage price improvement because the trading crowd will have a greater incentive to make larger, tighter markets in response to customer orders that it wants to trade against.

Section 11(a)(1) of the Act[8] makes it unlawful for a member of an exchange to effect a transaction for its own account on that exchange unless a specific exception applies. The exceptions are set forth in Section 11(a)(1) and in various rules adopted by the Commission subsequent to the enactment of Section 11. In connection with the use of affiliated or ''house'' floor brokers by Amex members, Section 11(a)(1)(G) of the Act provides an exemption from the prohibitions of Section 11(a) for transactions effected for a member's own account (''G Orders'') if the member meets a business mix test that requires it to be primarily engaged in the business of underwriting and distributing securities, selling securities to customers and/or acting as a broker and provided more than 50 percent of its gross revenues is derived from such businesses and related activities.[9] However, all G Orders must yield priority to any bid or offer at the same price for the account of a person who is not, or is not associated with, a member. Therefore, if a G Order is entered by a floor broker as part of an at-risk cross transaction, the G Order will not be permitted an execution ahead of any non-member order on the book.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[11] in general and furthers the objectives of Section 6(b)(5)[12] in particular in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, to foster cooperation and coordination with persons engaged in facilitating transactions in securities and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

[7] The Exchange has represented that if there is a public customer order on the book or represented in the trading crowd that has priority over the at-risk cross, the member firm may only participate in those contracts remaining after the public customer's order has been filled. Telephone conversation between Jeffrey Burns, Vice President and Associate General Counsel, Amex; and Ira Brandriss, Special Counsel, and Sara Gillis, Attorney, Division of Market Regulation, Commission, on November 28, 2006.

[8] 15 U.S.C. 78k(a)(1).

[9] Rule 11a1–1(T)(b) under the Act provides additional guidance to members seeking to meet the business mix test requirements of Section 11(a)(1)(G)(i). 17 CFR 240.11a1–1(T).

[10] Because the ANTE System is not programmed to recognize ''G'' orders and provide for the order to yield to all non-member accounts, affiliated floor brokers are prohibited from sending ''G'' orders in options into the ANTE System. This prohibition is necessary in order to prevent a violation of Section 11(a)(1) of the Act by a member using an affiliated broker to represent a ''G'' order.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–17 and should be submitted on or before February 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–538 Filed 1–16–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55073 File No. SR–BSE–2006–48]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Implement a Quote Mitigation Plan

January 9, 2007.

I. Introduction

On November 15, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Boston Options Exchange (''BOX'') Rules to add a Quote Mitigation Plan. The proposed rule change was published for comment in the **Federal Register** on November 27, 2006.[3] The Commission received one comment letter on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

The purpose of the proposed rule change is to mitigate quote traffic and address quote capacity issues by, under certain circumstances, ''bundling'' quotes so that options data is submitted to the Options Price Reporting Authority (''OPRA'') over short intervals rather than on a continuous basis. Specifically, BOX proposes to mitigate quotes in the following manner:

- BOX proposes to ''let the market decide'' which instruments would be considered to be ''less interesting'' by basing this determination on the open interest in contracts at the Options Clearing Corporation for each instrument. Those series with lower open interest are likely to be of less interest to options traders and investors. The precise threshold of open interest which will determine whether the broadcast of a series is subject to mitigation or not will vary according to the degree BOX is meeting its stated goals of reducing overall traffic. BOX anticipates that this threshold could be as high as 300 to 400 contracts, but that it will be no lower than 50 contracts. BOX does not propose to apply mitigation to instruments which have been listed for fewer than ten trading sessions, regardless of the open interest.
- BOX would ''bundle'' at intervals of up to 1,000 milliseconds (and no less than 200 milliseconds) any changes to its broadcast for those instruments which have fallen below the threshold in the previous point.
- BOX would use variable rates of ''bundling'' delays for the three different types of broadcast updates: changes in price, increases in quantity without a change in price, and decreases in quantity without a change in price. Under this proposal, changes in prices may be subject to less delay than changes to quantity at same price. For example, BOX may apply a ''bundling interval'' of 400 milliseconds to updates regarding a price change while using a figure of 1,000 milliseconds for updates concerning only a change in quantity at the same price. The appropriate mix will be determined by the relative success BOX is meeting in its overall goals of traffic reduction.

The Exchange does not propose to apply the above-described bundling to message traffic relating to price improvement auctions or NBBO exposure mechanisms, nor to trade reporting messages. Furthermore, no bundling of quotes is proposed for inbound orders and quotes which are sent to BOX by users. Instead,

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54779 (November 17, 2006), 71 FR 68655.

[4] *See* letter to Nancy Morris, Secretary, Commission, from Christopher Nagy, Chair, SIFMA Options Committee (''SIFMA''), dated December 20, 2006. SIFMA supports BSE's quote mitigation proposal discussed herein and recommends its implementation on an industry-wide basis. Specifically, SIFMA believes that the adoption of an industry-wide, uniform ''holdback timer'' proposal, like the strategy approved by this order, would provide the most effective means of quote mitigation. SIFMA expressed concern that a lack of uniformity among quote mitigation strategies implemented by the various options exchanges may impose a burden on member firms and result in confusion among market participants. Additional concerns raised in SIFMA's December 20, 2006 comment letter relating to other proposed rule changes filed by the options exchanges will be more fully addressed in any subsequent releases issued by the Commission.

messaging will be bundled only for outbound updates.

The Exchange believes this proposal is an optimal trade-off between costs and benefits and that it is fully compliant with its firm quote obligations. BOX has indicated that its target reduction in outbound peak traffic is 15% to 20% of what the traffic would have been had no mitigation been applied. Box has also represented that the reduction in overall traffic, as opposed to peaks, will be lower, but still significant, with a target of 8% to 10%.

III. Discussion

After careful review of the proposal and consideration of the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal to ''bundle'' quotes should reduce the volume of options quote traffic disseminated to OPRA and help to address capacity concerns on the Exchange. Because the contemplated delays in data transmission are very brief, the Commission does not believe that ''bundling'' quotes will adversely affect market transparency or negatively affect market participants or investors. Furthermore, the Commission believes that BOX's quote mitigation proposal is designed to provide the Exchange with a mechanism, that should reduce overall peak market data traffic with a relatively small impact on the quality of information available to options market users.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–BSE–2006–48), be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–526 Filed 1–16–07; 8:45 am]

BILLING CODE 8011–01–P

[5] In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55062; File No. SR–CBOE–2006–88]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change To Codify a Fee Schedule for the Sale of Open and Close Volume Data on CBOE Listed Options by Market Data Express, LLC

January 8, 2007.

On November 3, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 codify a fee schedule for the sale of open and close volume data on CBOE listed options by Market Data Express, LLC (''MDX''), a wholly-owned subsidiary of CBOE. The proposed rule change was published for comment in the **Federal Register** on November 27, 2006.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

In the Notice, the Exchange represented that it creates volume data for each CBOE listed option that consists of opening buys and opening sells and closing buys and closing sells (''Open/Close Data''). CBOE further represented that MDX offers this Open/Close Data for sale to CBOE members and non-members and that the fees assessed by MDX for the Open/Close Data are set forth in the Price List on MDX's Web site. CBOE members and non-members are charged the same fees for the Open/Close Data.

Under the proposal, customers may purchase Open/Close Data on a subscription basis or by ad hoc request. Daily Open/Close Data covering all CBOE listed options[4] would be available for purchase by subscribing to the Daily Update service at a cost of $600 per month. Subscribers to the Daily Update service would receive a daily data file via download from MDX's Web site. Historical Open/Close Data covering all CBOE listed options may be purchased on an ad hoc request basis and is delivered via DVD. The charge for Historical Open/Close Data covering all CBOE listed options would be $7,200 per year for requests for one to four years of data. Requests for five or more years of Historical Open/Close Data would receive a 50% discount beginning with the fifth year of data (*i.e.*, MDX charges $7,200 for each of the first four years of data and $3,600 for year five and for each subsequent year of data). Alternatively, a customer may purchase Historical Open/Close Data on an individual CBOE listed option at a cost of $4.50 per listed option per month. This data would be available via download from MDX's Web site. A 50% discount would be applied for requests for ten or more years of data, beginning with the tenth year of data.

The Commission has reviewed carefully the proposed rule change and finds that the proposedrule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(4) of the Act,[5] which requires, among other things, CBOE's rules be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and issuers and other persons using its facilities.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–2006–88) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–540 Filed 1–16–07; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54771 (November 16, 2006), 71 FR 68657 (the ''Notice'').

[4] Although the proposed rule change refers to Open/Close Data covering all CBOE listed securities, the CBOE confirmed that the Open/Close Data is available solely for all CBOE listed options. Telephone conversation between Jaime Galvan, Assistant Secretary, CBOE and David Michehl, Special Counsel, Division of Market Regulation, Commission on January 8, 2007.

[5] 15 U.S.C. 78f(b)(4).

[6] In approving this proposed rule change the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55070; File No. SR–CHX–2006–37]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Participant Fees and Credits

January 9, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the CHX. On December 21, 2006, the CHX filed Amendment No. 1 to the proposed rule change. The CHX has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by the CHX pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Participant Fees and Credits (the ''Fee Schedule'') to reduce specialist fixed fees that are applicable during the period when the CHX transitions to its new trading model. The text of this proposed rule change is available at the CHX, on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm*, and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the Exchange's new trading model, the CHX is transitioning from a floor-based exchange, with a single specialist firm assigned to trade designated issues, to a fully-automated electronic facility, with issues eligible for trading by multiple market makers and other eligible CHX participants. This transition commenced during the week of October 23, 2006, and is expected to be completed by mid-January. The CHX's transition to its new trading model is structured on an issue-by-issue basis. Once an issue is ''converted,'' it is then eligible for trading in the CHX electronic matching engine and is no longer traded by a CHX specialist.

In connection with this transition, the CHX previously submitted a series of comprehensive revisions to its Fee Schedule to address various aspects of the new trading model, including the transition away from a specialist system.[5] The initial revision to the Fee Schedule provided that, with respect to the specialist fixed fee,[6] during the transition period, such transitional fixed fees will continue to be charged on securities traded by specialists as the Exchange transitions to its new trading model, on a prorated basis.[7] The proration provision was intended to eliminate the fixed fee as soon as an issue makes the transition to the new trading model and is no longer traded by the CHX specialist.

After further consideration and additional dialogue with CHX participants, the Exchange believes that further refinement of this provision is appropriate. Specifically, the Exchange proposes to modify Section K of the Fee Schedule to provide for a monthly credit of $25,000 per specialist firm, to be applied against each firm's monthly transitional fixed fee. The $25,000 monthly credit would be applied against the first $25,000 in monthly specialist fixed fees otherwise due to the CHX from a participant firm. If the participant firm's fixed fee liability is less than $25,000, the CHX would apply a credit equal to the amount of the fixed fee liability, but would not issue a refund to such participant firm for the remaining balance of the credit, nor would the CHX carry forward the balance of the credit for application to future fixed fee liabilities.

For example, if a specialist firm's monthly fixed fee liability was $32,000, the CHX would apply the $25,000 credit and the firm would be billed for the remaining balance of $7,000 in net fixed fees. If a specialist firm's monthly fixed fee liability was $10,000, the CHX would apply a credit of $10,000, offsetting the entire liability, and the CHX would not bill the specialist firm for any fixed fees that month. The CHX would not issue a refund of $15,000 to the specialist firm on account of the unused portion of the available credit, and the unused portion would not be available to offset fixed fee liabilities in future months.

The CHX believes that this credit, which was negotiated after substantial discussion with its specialist community, is warranted under the circumstances. The credit addresses the contention of certain specialists that specialist fixed fees should be eliminated more quickly, because legacy technology and other pre-new trading model systems (which are funded in part by the specialist fixed fee) are not as useful to them. More significantly, it permits the Exchange to roll out its new trading model on terms that the Exchange believes to be most prudent from a technology perspective,[8] while reducing the costs that must continue to be borne by specialist firms as a result

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 54657 (October 26, 2006), 71 FR 64590 (November 2, 2006) (SR–CHX–2006–29).

[6] The specialist fixed fee is a long-standing fee that is allocated on a monthly basis among CHX specialist firms. It provides the CHX with a means of allocating certain expenses, relating to systems and infrastructure, that support the CHX specialist system.

[7] To determine the amount of the fixed fee during each month of this transition period, the Exchange will calculate the aggregate fixed fees for the month based on the total number of issues traded by specialists as of the day before the Exchange begins to trade the first specialist-traded security in the new model. The Exchange then will only charge a specialist firm the fixed fees associated with the securities that it traded as specialist during each month, prorating the fee based on the date that an issue makes its transition to the Matching System for trading, as applicable.

[8] The CHX has given considerable thought to establishing an implementation schedule that minimizes the risks associated with implementing significant new technology. Generally speaking, this schedule involves first migrating issues that customarily have lower trading volumes, followed by issues with higher trading volumes, so that technology staff can assess the impact of gradual increases in trading volumes and more readily identify problems. The CHX believes that this strategy is more prudent than a ''hard cutover,'' which would involve simultaneous migration of all issues to the new trading model technology.

of the rollout schedule.[9] Moreover, the proposed credit would provide specialist firms with a specified reduction in their fixed fees during the transition period, permitting them to budget accordingly.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act[10] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a member due, fee or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

[9] Certain issues have higher fixed fees relative to other issues. Accordingly, the new trading model rollout schedule has economic consequences for CHX specialist firms, because specialist fixed fees are eliminated entirely once an issue transitions to the CHX new trading model and is no longer traded by a specialist. Absent the credit described in this submission, therefore, a specialist firm likely would request immediate transition of issues with the highest fixed fees to the new trading model, whereas the CHX might prefer to delay transition of such issues until later in the overall new trading model implementation process, in order to better manage the overall implementation plan.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on December 21, 2006, the date on which the CHX filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2006–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2006–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CHX.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2006–37 and should be submitted on or before February 7, 2007.

[14] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–536 Filed 1–16–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55060; File No. SR–ISE–2006–72]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Special Order Fees

January 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2006, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by ISE. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to adopt a customer fee for special orders. The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and *http://www.iseoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has asked the Commission to waive the 30-day operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). See discussion *infra* Section III.

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend ISE's Schedule of Fees to adopt a customer fee for special orders. The Exchange currently waives transaction fees for customers, except for when those transactions occur in Premium Products.[6] The Exchange has noted an increase in volume in certain customer order transactions, particularly in transactions that result from customer orders that are entered as responses to special order broadcasts. These special order broadcasts are sent to Exchange members when certain types of orders are entered, such as facilitations, solicitations, block orders, and orders entered in the Exchange's Price Improvement Mechanism. Customers, who have access to highly developed trading systems enter orders in response to these special order broadcasts, much like a broker or dealer would. Customers that possess this advanced trading technology are able to quickly receive and process substantial amounts of market-wide and ISE data, thereby allowing them to selectively respond to special order broadcasts.

The advanced trading systems utilized by these customers provide them with the ability to rapidly respond to updates to the special order broadcasts and market-wide data (such as changes to the NBBO and the underlying market) by aggressively submitting orders within the 3 second exposure period. The Exchange thus proposes to charge an execution and comparison fee of $0.15 and $0.03 per contract, respectively, for these customer orders to put theses customers on more equal footing with ISE members who currently pay a fee for this functionality. The proposed fee will only apply to responses sent by customers during the 3 second exposure period that all special orders are subject to.

The Exchange believes that the proposed fee is necessary to equitably allocate the associated costs amongst ISE market participants that fully utilize the special order broadcasts, a functionality that is available only to ISE members and customers who possess highly developed technology. The development and ongoing maintenance associated with the broadcasts of, and updates to, special orders, is a costly expenditure of ISE resources. ISE believes that the proposed fee is objective in that it is based on the behavior of market participants and the type of orders submitted. As noted above, since the behavior of these public customers is similar to the behavior of an ISE member, it is fair for the Exchange to charge these customers the same fees as those charged to ISE members.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.[11]

A proposed rule change filed under Commission Rule 19b–4(f)(6)[12] normally does not become operative prior to thirty days after the date of filing. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change to become operative immediately because this proposal is substantially similar to a Boston Options Exchange proposed rule change that was recently approved by the Commission.[13] The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to allocate reasonable dues, fees, and other charges among its members and other persons using its facilities. For these reasons, the Commission designates the proposed rule change as effective and operative upon filing.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File

[6] Premium Products is defined in the Schedule of Fees as the products enumerated therein.

[7] 15 U.S.C. 78f(b)(5).

[8] The staff of the SEC revised this language to correct an error in the statutory basis proposed rule change. Telephone Conference between Samir Patel, Assistant General Counsel, ISE, and Ronesha A. Butler, Special Counsel, Division of Market Regulation, Commission, on January 5, 2007.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] Pursuant to Rule 19b–4(f)(6)(iii), the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change. *See* 17 CFR 240.19b–4(f)(6)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] *See* Securities Exchange Act Release No. 54328 (August 16, 2006), 71 FR 49493 (August 23, 2006).

[14] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

No. SR–ISE–2006–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2006–72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File No. SR–ISE–2006–72 and should be submitted on or before February 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–478 Filed 1–16–07; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55061; File No. SR–NASDAQ–2006–061]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ Stock Market LLC To Codify Sponsored Access Rule

January 8, 2007.

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] The NASDAQ Stock Market LLC (''Nasdaq'') is filing with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is filing with the Commission a proposed rule change to update and clarify the requirements for members that provide electronic access to Nasdaq's execution services, and to codify these requirements in Nasdaq's rules.

Nasdaq has designated this proposal as one effecting a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing.

Nasdaq has provided the Commission with written notice of its intent to file this proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change pursuant to Section 19(b)(3)[3] and Rule 19b–4(f)(6) thereunder.[4] The proposed rule change will become operative 30 days after the date of the filing.

The text of the proposed rule change is below. The proposed new language is italicized.

* * * * *

4611. Nasdaq Market Center Participant Registration

(a)–(c) No change.

(d) Members may provide sponsored access in accordance with the provisions below:

(1) Definition. Sponsored Access is the practice by a member firm (''Sponsoring Member'') of providing access to the Nasdaq Execution System (''Nasdaq'') on an agency basis to another firm or customer (''Sponsored Firm''). Sponsored access can be of two forms: (a) pass-through access, whereby a Sponsored Firm enters orders that pass through the Sponsoring Member's systems and then into Nasdaq (''Pass-through Sponsored Access''), and (b) direct access, whereby the Sponsored Firm enters orders directly into Nasdaq (''Direct Sponsored Access'').

(2) Sponsoring Members that provide Sponsored Access to Nasdaq shall be responsible for complying with the obligations in Rule 4611 with respect to any activity conducted by a Sponsored Firm using a market participant identifier (''MPID'') assigned to the Sponsoring Member.

(3) A Sponsoring Member that provides Direct Sponsored Access to Nasdaq shall execute and file with Nasdaq the Addendum to the Nasdaq Services Agreement for Sponsored Access to Nasdaq (''Sponsored Access Agreement'') and any other such agreements as specified by Nasdaq. Sponsored Firms shall also execute and file with Nasdaq a Sponsored Access Agreement and any other such agreements as specified by Nasdaq.

Interpretive Material 4611–1—Sponsored Access

(1) Compliance with Nasdaq Supervision and Customer Protection Requirements

Sponsoring Members have responsibility for the conduct of their Sponsored Firms as if the conduct were their own. Sponsoring Members that provide Sponsored Access, whether Pass-through or Direct, have a continuing obligation to comply with all Nasdaq rules and procedures and the federal securities laws and rules, and must, in accordance with Rule 3010, have supervisory systems and written procedures reasonably designed to achieve compliance with these obligations. For example, Sponsoring Members must have systems and written procedures to supervise the activity of Sponsored Firms, including obligations with respect to the Nasdaq and SEC short sale rules (Rule 3350 and SEC Rule 10a–1 and Regulation SHO), and the requirements articulated in Rule 3370. Further, Sponsoring Members must satisfy their obligations under IM–2110–2 or Rule 6440 to not trade ahead of customers. Similarly, a limit order from a Sponsored Firm is subject to the SEC limit order display rule (Rule 604 under Regulation NMS) and the order must be handled in compliance with the rule. Sponsoring Members also must possess sufficient information about their Sponsored Firms to satisfy the ''know your customer'' obligation that is embedded in the Nasdaq Conduct Rules.

(2) Compliance With Other Nasdaq Requirements

(a) Rule 8210. Sponsoring Members are responsible for complying with all

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3).

[4] 17 CFR 240.19b-4.(f)(6).

requests for information pursuant to Rule 8210. The Sponsored Access Agreement described in Rule 4611(d)(3) shall provide that Sponsored Firms and Sponsoring Members must comply with Rule 8210.

(b) Fees. Sponsoring Members are responsible for paying all Nasdaq fees accrued under their MPIDs, irrespective of the fact that particular charges may be associated with orders entered by Sponsored Firms.

(c) Services Agreement; Termination. The fact that a member is providing Sponsored Access does not alter Nasdaq's rights with regard to the Sponsoring Member that are articulated in Nasdaq's agreements with members (e.g., the Nasdaq Services Agreement). In particular, if the Sponsoring Member's provision of Sponsored Access threatens the integrity of Nasdaq systems, Nasdaq reserves the right under the Nasdaq Services Agreement to unilaterally and immediately terminate the Sponsoring Member's access.

(d) Examinations. Sponsoring Members are reminded that, as a self-regulatory organization responsible for examining the activity of a member, Nasdaq may examine the Sponsoring Member's books, records, and facilities to determine whether a violation of Nasdaq rules and/or federal securities laws, rules, and regulations have occurred. Such examination may include an examination of the Sponsoring Member's internal systems, as well as the member's records regarding its customers and their activity.

(3) Obligation To Ensure Accuracy of Orders Entered into Nasdaq

Sponsoring Members have an obligation under Nasdaq Rule 3010 to have in place a supervisory system and written supervisory procedures reasonably designed to ensure that orders placed by Sponsored Firms into Nasdaq are not entered in error or in a manner inconsistent with Nasdaq rules. Sponsoring Members should consider the following factors when developing a supervisory system and written supervisory procedures:

(a) Sponsoring Member order management systems should include controls that limit the use of such systems to authorized persons, check for order accuracy, prevent orders that exceed preset credit- and order-size parameters from being transmitted to Nasdaq, and prevent the unwanted generation, cancellation, repricing, resizing, duplication, or re-transmission of orders.

(b) Safeguards should be in place to ensure that the operation, testing, or maintenance of a Sponsoring Member's order management system does not result in the inadvertent disabling of Nasdaq, mistaken executions, errors, or other trading problems.

(c) Sponsoring Members and Direct Sponsored Access Sponsored Firms should ensure that they do not test their systems' connectivity to Nasdaq by sending orders that are not executable, such as by sending orders during normal market hours that are priced far outside a security's current price. Firms must test pursuant to established protocols and test messages should be clearly denoted as such.

(d) Before sponsoring access to Nasdaq, a Sponsoring Member must have a supervisory system and written supervisory procedures in place reasonably designed to ensure that such orders are not entered in error or in a manner inconsistent with Nasdaq rules (including, but not limited to, Rule 3310 and IM–3310) or with the Nasdaq Services Agreement.

(e) Procedures that are available to adjudicate clearly erroneous transactions are to be used only in cases of clear or obvious errors and should not be used as a proxy for proper system use or trading procedures. Other errors, whether as a result of a system problem or human error, will not be dealt with through the rules applicable to clearly erroneous transactions.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to amend the rules governing Nasdaq to update and codify the requirements applicable to Nasdaq members that provide access to other firms and customers to the Nasdaq execution system (''Sponsored Access''). With one exception, members will be subject to the requirements articulated in NASD Notice to Members 98–66 (''Notice to Members'' or ''Notice'') and which were reiterated and updated by the NASD in Notice to Members 04–66.[5]

Notice to Members 98–66, which was filed with the Commission as an interpretation of the NASD rules and the Nasdaq subscriber agreement, clarified that members could provide Sponsored Access and remain in compliance with their rule and contract obligations to safeguard Nasdaq equipment and to prevent unauthorized access to Nasdaq systems.[6] In addition, the Notice re-emphasized members' existing obligations to monitor the trading activity by their customers, including those being provided Sponsored Access, and to have written procedures governing customer trading. Notice to Members 04–66 also re-asserted that members are responsible for all trading conducted in their name, and that the member is responsible for the fees associated with that trading.

The proposed rule change amends the Nasdaq rules governing Nasdaq's execution system to articulate specifically that members providing Sponsored Access are responsible for all activity conducted using their market participant identifier (''MPID''). In addition, the proposal adds an Interpretive Material to Rule 4611 (IM–4611–1—Sponsored Access) that discusses members' ongoing responsibilities to comply with all Nasdaq rules and operating procedures, as well as the federal securities laws and rules, and to have systems and written procedures reasonably designed to achieve compliance with these obligations. For example, IM–4611–1 discusses that members must continue to comply with the Nasdaq and SEC short sale rules, including the requirements of Rule 3370, when a firm sells securities under a Sponsored Access arrangement, and that members also must fulfill their ''know your customer'' obligations that are embedded in the Nasdaq Conduct Rules. The interpretive material also states that members must continue to satisfy any limit order protection and display obligations that arise from limit orders submitted by sponsored firms.

The interpretive material also reminds members that they remain responsible for all Nasdaq fees accrued under their MPID, irrespective of the fact that some of the fees may be attributable to orders submitted by sponsored firms.

[5] The Notice to Members described Sponsored Access as ''electronic pass-through services.''

[6] Securities Exchange Act Release No. 40354 (Aug. 24, 1998), 63 FR 46264 (Aug. 31, 1998).

Similarly, the interpretive material states that Nasdaq's rights with regard to the Sponsoring Member that are articulated in Nasdaq's agreements with members (*e.g.*, the Nasdaq Services Agreement) are not altered by fact that a member is providing Sponsored Access.

As stated earlier, with one exception, members will continue to be subject to the same requirements as imposed by the Notice to Members when providing Sponsored Access. Specifically, Nasdaq is eliminating the requirement that orders must be entered into a member's system (or a service bureau's system provided by the member) before being transmitted to Nasdaq (*i.e.*, the electronic pass-through requirement). Nasdaq does not expect many members to provide such ''direct access'' to Nasdaq. Nasdaq stresses, however, that eliminating this requirement does not diminish a member's responsibility for ensuring that trading occurring under its MPID is in compliance with Nasdaq's rules and procedures and the federal securities laws. For example, members considering providing such direct access must, in accordance with Rule 3010, have systems and written procedures to supervise the activity of a sponsored firm with direct access to Nasdaq.[7] In addition, members also must fulfill their ''know your customer'' obligations that are embedded in the Nasdaq Conduct Rules.

To limit its exposure in commercial disputes and to protect its intellectual property when a sponsored firm can submit orders to Nasdaq directly, Nasdaq is proposing to require sponsored firms with this type of access to execute an agreement (''Sponsored Access Agreement'') that will require them to abide by the Nasdaq Services Agreement, which is executed by all members accessing Nasdaq's systems.[8] Requiring the Sponsored Access Agreement ensures that Nasdaq has an agreement with the party actually submitting orders to Nasdaq, although the member remains responsible for the trading, including compliance with Nasdaq rules and procedures and the federal securities laws and rules.

An executed Sponsored Access Agreement will not be necessary when a sponsored firm does not enter orders directly into Nasdaq Market Center (*i.e.*, submits orders utilizing an electronic pass-through), because the orders are entering Nasdaq through a system provided by a party with whom Nasdaq already has an agreement: A member.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[9] in general and with section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The proposal is consistent with these obligations because it updates the standards for providing Sponsored Access, and clearly articulates the obligations in the Nasdaq's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (f)(6)(iii) of rule 19b–4 thereunder in that it effects a change that does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The proposed rule change will become operative 30 days after the date of the filing.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2006–061 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2006–061. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2006–061 and should be submitted on or before February 7, 2007.

[7] A member's system and procedures would need to be reasonably designed to achieve compliance with, for example, the requirements of Rule 3370.

[8] The Sponsoring Member also would be required to execute the Sponsored Access Agreement.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–543 Filed 1–16–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55078; File No. SR–NASD–2006–136]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Technical and Grammatical Corrections to Rule 10308

January 10, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend paragraph (a)(5)(B) of Rule 10308 of the NASD Code of Arbitration Procedure to delete unnecessary cross references in the definition of ''immediate family member,'' and to correct a grammatical error.[6] The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

10308. Selection of Arbitrators

(a) Definitions

(1) through (4) No change.

(5) ''public arbitrator''

(A) No change.

(B) For [the] purposes of this Rule, the term ''immediate family member'' means:

(i) [The] *a person's* parent, stepparent, child, or stepchild[, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)];

(ii) A member of [the] *a person's* household [of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)];

(iii) *An individual to whom* a person [who receives] *provides* financial support of more than 50 percent of *the individual's* annual income [from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)]; or

(iv) A person who is claimed as a dependent for federal income tax purposes [by a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D)].

(6) through (7) No change.

(b) through (f) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD believes that the cross-references to ''a person engaged in the conduct or activities described in paragraph (a)(4)(A) through (D)'' in the definition of immediate family member in paragraphs (a)(5)(B)(i)–(iv) of Rule 10308 are redundant when read in conjunction with other provisions of the rule. For example, Rule 10308(a)(5)(A)(vii) provides that a person may be a public arbitrator if he or she ''is not the spouse or immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).'' The definition of ''immediate family member'' in Rule 10308(a)(5)(B) states, in part, ''For the purpose of this Rule, the term ''immediate family member'' means * * * (i) the parent, stepparent, child, or stepchild, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).'' Thus, both the rule and the definition refer redundantly to ''a person [who is] engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).''

Moreover, new paragraphs (a)(5)(A)(v) and (vi) of Rule 10308 were recently added to provide that persons who are otherwise qualified may not serve as public arbitrators if they have certain family members who are employed by, or serve as officers or directors of, entities in a control relationship with a broker-dealer.[7] In these instances, there is no need to refer to paragraphs (a)(4)(A) through (D) as those paragraphs are not at issue. Rather, what is important is the family relationship itself.

For these reasons, NASD proposes to amend the examples of family relationships in the definition of ''immediate family member'' in paragraphs (a)(5)(B)(i)–(iv) of Rule 10308 in a non-substantive way to retain the relationships themselves but omit the references to paragraphs (a)(4)(A) through (D) of the rule. As noted above, because this reference is in Rule 10308(a)(5)(A)(vii), arbitrators who have an immediate family member engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) of the rule will continue to be ineligible to serve as public arbitrators. Arbitrators, who do not have immediate family members engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) of the rule, still may be subject to new paragraphs (a)(5)(A)(v) and (vi) of Rule 10308, which governs public arbitrators.

In deleting the references to paragraphs (a)(4)(A) through (D), discussed above, NASD has rearranged phrases to provide additional clarity. In so doing, NASD does not intend to make any change in the substance of the definitions or in how they are construed.

Finally, NASD proposes to correct a grammatical error in Rule 10308(a)(5)(B) by replacing the term ''for the purpose of'' with the more common phrase ''for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 3 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] NASD informed the Commission staff that a clerical error was made in its filing and the word ''individual's'' in paragraph (a)(5)(B)(iii) of Rule 10308 should be lowercase. Telephone conversation between Jean Feeney, Vice President, NASD; and Michael Hershaft, Special Counsel, Commission (Jan. 9, 2006). Because this is a non-substantive change, this amendment to the proposed rule change will not toll the 60-day abrogation period.

[6] The Commission recently approved amendments to Rule 10308, effective Jan. 15, 2007. Securities Exchange Act Release No. 54607 (Oct. 16, 2006), 71 FR 62026 (Oct. 20, 2006) (file No. SR–NASD–2005–094).

[7] *Id.*

purposes of,'' which is used in the remainder of the rule.[8]

NASD has filed this proposed rule change for immediate effectiveness so that these proposed non-substantive changes to the definition of ''immediate family member'' can become operational on January 15, 2007, the same time as the most recent changes to the definition of public arbitrator.[9] NASD believes this proposal will help clarify Rule 10308, and make it easier to determine the proper classification of an arbitrator.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is consistent with the provision of the Act noted above because it will assist in the administration of arbitrations by making Rule 10308 easier to understand and apply.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder[12] because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. As required under Rule 19b–4(f)(6)(iii),[13] NASD provided the Commission with written notice of NASD's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the filing date of the proposed rule change.

NASD has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest,[14] as such waiver is necessary so that the proposed rule changes will become effective with other amendments to Rule 10308 on January 15, 2007. For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–136 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–136. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2006–136 and should be submitted on or before February 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–525 Filed 1–16–07; 8:45 am]

BILLING CODE 8011–01–P

[8] *See, e.g.*, Rule 10308(a)(1), (2), (6), and (7).

[9] *See infra* note 7.

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55079; File No. SR–NYSE–2006–97]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to Exchange Rule 342 (''Offices—Approval, Supervision and Control'')

January 10, 2007.

I. Introduction

On October 26, 2006, the New York Stock Exchange LLC (''NYSE'' 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 amending NYSE Rule 342.30 (''Annual Reports'') to require submission of the process report prepared in connection with the Chief Executive Officer (''CEO'') certification, as required under Rule 342.30(e)(iii), to the Board of Directors and Audit Committee (if such committee exists) of the member organization on or before April 1st of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

each year. The proposed rule change was published for comment in the **Federal Register** on December 7, 2006.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Description of the Proposal

1. Background

NYSE Rule 342 requires supervision of the offices, departments and business activities of members and member organizations. NYSE Rule 342.30 requires members and member organizations to prepare an Annual Report addressing specified compliance issues by April 1 of each year. The Exchange proposed to amend Rule 342.30 to require the report required pursuant to Rule 342.30(e)(iii) (the ''Process Report'') in connection with a member organization's CEO certification to be submitted to the member organization's board of directors and audit committee (if such committee exists) on or before April 1st of each year. The purpose of the rule change was to better harmonize the requirements of Rule 342.30 with those of NYSE Rule 354 (''Reports to Control Persons'').

Background

Rule 342.30

Rule 342.30 requires each member not associated with a member organization and each member organization to file with the Exchange, by April 1st of each year, a report (the ''Annual Report'') outlining its supervision and compliance efforts in prescribed regulatory areas during the preceding year and assessing the adequacy of its ongoing compliance processes and procedures. The Annual Report submitted to the Exchange is also required to include, pursuant to Rule 342.30(e), a certification by the CEO of each member organization confirming that the member organization has in place processes to:

(A) Establish and maintain policies and procedures reasonably designed to achieve compliance with applicable Exchange rules and Federal securities laws and regulations;

(B) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and

(C) test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with Exchange and Federal securities laws and regulations.

Subsection (e)(iii) of Rule 342.30 requires these processes to be evidenced in the Process Report, which is to be reviewed by the CEO, the Chief Compliance Officer, and any other officers that the member organization may deem necessary to make the certification. Subsection (e)(iii) also requires the Process Report to be submitted to the member organization's board of directors and audit committee (if such committee exists), although the timing of this submission was not explicitly stated in the rule. Prior to the proposed rule change, the Exchange interpreted the rule to require the submission prior to CEO certification.

Rule 354

Subsection (a) of Rule 354 requires, in relevant part, that each member organization submit, by April 1st of each year, a copy of the Rule 342.30 Annual Report (also due to the Exchange by April 1st) to one or more of its control persons or, if the member organization has no control person, to the audit committee of its board of directors or its equivalent committee or group.

In order to better harmonize the Process Report submission requirements of Rule 342.30(e)(iii) with the Annual Report submission requirements of Rule 354(a), the Exchange proposed to amend Rule 342.30(e)(iii) to require each member organization to submit the Process Report to its board of directors and audit committee (if such committee exists) on or before April 1st of each year, consistent with the timing requirements of Rule 354(a) with respect to submission of the Annual Report. The Exchange stated that it believed that this would promote timely submission of the Process Report to member organizations' boards of directors and audit committees, while also serving the practical purpose of allowing member organizations to submit the Process Report together with the Annual Report so that the two may be reviewed as a single comprehensive package.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with Section 6(b)[4] of the Act in general and Section 6(b)(5) of the Act''[5] in particular, which require that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest.[6] The proposed rule change promotes timely submission of substantive regulatory material to member organizations' governing bodies by coordinating the timing requirements of Rule 342.30(e)(iii) (Process Report) and Rule 354(a) (Submission of Annual Report to Control Persons). This should promote compliance by allowing member organizations' governing bodies to review both reports at the same time. The proposed rule change will also clarify the appropriate timing for submission of the Process Report and the Annual Report.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[7] that the proposed rule change (SR–NYSE–2006–97) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–528 Filed 1–16–07; 8:45 am]

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[3] See Exchange Act Release No. 54847 (November 30, 2006), 71 FR 71012 (December 7, 2006) (the ''Notice'').

[4] 15 U.S.C. 78f(b)

[5] 15 U.S.C. 78f(b)(5)

[6] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55067; File No. SR–NYSE–2006–80]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Relating to NYSE Rule 1300 (Gold Shares) and NYSE Rule 51 (Hours of Business)

January 9, 2007.

I. Introduction

On October 2, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 1300 (Gold Shares) and NYSE Rule 51 (Hours for Business) to allow streetTRACKS® Gold Shares (''Gold Shares'') to open for

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

trading at 8:20 a.m. On November 6, 2006, the Exchange filed Amendment No. 1.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on November 28, 2006.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposed to amend NYSE Rule 1300 (Gold Shares) and NYSE Rule 51 (Hours for Business) to allow Gold Shares to open for trading at 8:20 a.m.[5] Gold Shares represent units of fractional undivided interest in and ownership of the streetTRACKS® Gold Trust (the ''Trust''). The Trust holds gold bullion and the investment objective of the Trust is to reflect the performance of the price of gold bullion, less the Trust's expenses.

Except for the new opening time, trading in Gold Shares will operate as it does today. The current assigned specialist will continue as the assigned specialist and the stock will continue to trade at its current post and panel. All Exchange systems will be operative beginning at 8:20 a.m. and throughout the trading day including those systems that provide audit trail information. The Exchange surveillances that currently operate during market hours will be in place to coincide with the 8:20 a.m. opening. Further, either a Floor Governor or two Floor Officials will be available upon the 8:20 a.m. opening. All Exchange Rules will apply upon the open at 8:20 a.m. and throughout the trading day.

The Exchange represented that the updated spot price of gold and the Intraday Indicative Value (''IIV'') for Gold Shares would be available at 8:20 a.m. on the Trust's Web site (*www.streettracksgoldshares.com*). The IIV is calculated by the Trust's Sponsor, World Trust Gold Services, LLC. The Exchange's Web site (*http://www.nyse.com*) provides a link to the Trust's Web site. The spot price of gold and the IIV on the Trust's Web site are subject to a 5 to 10 second delay.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange stated that it proposes to amend its Rules 1300 and 51 to allow the opening of Gold Shares for trading at 8:20 a.m. in order to remain competitive and in light of the fact that interest in commodity-based securities has increased. An 8:20 a.m. opening would coincide with the opening of COMEX® trading in gold futures and gold options and thus permit trading in Gold Shares to start at the same time as other gold-based instruments. The Commission believes that an 8:20 a.m. opening would give customers the opportunity to trade an equity product based on the price of gold from the time that gold futures and options on gold futures begin trading on the COMEX® and would, therefore, provide the Exchange customers with better opportunities for exercising their investment choices.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–2006–80), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E7–535 Filed 1–16–07; 8:45 am]

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[3] *See* Form 19b–4 dated November 6, 2006 (''Amendment No. 1''). Amendment No. 1 replaced the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 54801 (November 21, 2006), 71 FR 68870 (SR–NYSE–2006–80).

[5] Trading in Gold Shares has been offered on the Exchange since 2004.

[6] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55072; File Nos. SR–NYSE–2006–78; SR–NASD–2006–113]

Self-Regulatory Organizations; New York Stock Exchange LLC and the National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Changes To Amend NYSE Rules 472 and 344, and NASD Rules 1050 and 2711 Relating to Research Analyst Conflicts of Interest

January 9, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2006, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change. On December 20, 2006, NYSE filed Amendment No. 1 to its proposed rule change.[3]

On September 27, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Commission the proposed rule change. On November 17, 2006, NASD filed Amendment No. 1 to its proposed rule change.[4]

The proposed rule changes are described in Items I, II, and III below, which Items have substantially been prepared by the NYSE and NASD (the ''SROs''). The Commission is publishing this notice to solicit comments on the proposed rule changes, as amended, from interested persons.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The Exchange proposes to amend certain provisions of NYSE Rules 472 and 344. These amendments eliminate the exception for pre-publication factual verification review of research reports by non-research personnel; change the quiet periods surrounding securities offerings and the release of lock-up agreements; allow member organizations to develop policies and procedures if they choose to prohibit research analysts from holding securities for companies they cover; alter the format for certain disclosures in research reports; and extend the anti-retaliation prohibitions to all employees of a member organization, not just investment banking.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Amendment No. 1 makes minor revisions to the original filing.

[4] NASD Amendment No. 1 makes minor revisions to the original filing.

NASD is proposing to amend NASD Rules 1050 and 2711 to implement certain recommendations contained in the December 2005 *Joint Report by NASD and the NYSE on the Operation and Effectiveness of the Research Analyst Conflict of Interest Rules*.[5] NASD believes that the proposed rule changes are intended to improve the effectiveness of the research analyst conflict of interest rules and registration requirements by making certain changes to the existing provisions regarding, among other things: Disclosure of conflicts; quiet periods; restrictions on review of research reports by non-research personnel; and restrictions on personal trading by research analysts.

Below is the text of the proposed rule changes.[6] Proposed new language is *italicized*; proposed deletions are in [brackets].

A. NYSE's Proposed Rule Text

Rule 472. Communications With the Public Approval of Communications and Research Reports

(a)(1) through (2) No Change.

Investment Banking, Research Department and Subject Company Relationships and Communications

(b)(1) Research analysts may not be subject to the supervision, or control, of any employee of the member organization's investment banking department and personnel engaged in investment banking activities may not have any influence or control over the compensatory evaluation of a research analyst.

(2) Research reports may not be subject to review or approval prior to publication by Investment Banking personnel or any other employee of the member organization who is not directly responsible for investment research (''non-research personnel'') other than Legal or Compliance personnel.

[(3) Non-research personnel may review research reports prior to publication only to verify the factual accuracy of information in the research report or to identify any potential conflicts of interest that may exist, provided that:

(i) Any written communication concerning the content of research reports between non-research personnel and Research personnel must be made either through Legal or Compliance personnel or in a transmission copied to Legal or Compliance personnel; and

(ii) any oral communication concerning the content of research reports between non-research personnel and Research personnel must be documented and made either with Legal or Compliance personnel acting as intermediary or in a conversation conducted in the presence of Legal or Compliance personnel.]

(b)(4) through (6) renumbered as (b)(3) through (5).

Written Procedures

(c) No change.

Retention of Communications

(d) No change.

Restrictions on Trading Securities by Associated Persons

(e)(1) No research analyst or household member may purchase or receive an issuer's securities prior to its initial public offering (*e.g.*, so-called pre-IPO shares), if the issuer is principally engaged in the same types of business as companies (or in the same industry classification) which the research analyst usually covers in research reports.

(2) No research analyst or household member may trade in any subject company's securities or derivatives of such securities that the research analyst follows for a period of thirty (30) calendar days prior to and five (5) calendar days after the member organization's publication of research reports concerning such security or a change in rating or price target of a subject company's securities.

(3) No research analyst or household member may effect trades in a manner inconsistent with the research analyst's most current recommendations (*i.e.*, sell securities while maintaining a ''buy'' or ''hold'' recommendation, buy securities while maintaining a ''sell'' recommendation, or effecting a ''short sale'' in a security while maintaining a ''buy'' or ''hold'' recommendation on such security).

(4) No change.

(5) The prohibitions in paragraphs (e)(1) through (e)(3) do not apply when the following conditions are satisfied:

(A) The research analyst is employed by a member organization that has adopted an internal policy that prohibits research analysts from owning any securities issued by the subject company for which the research analyst provides coverage and requires analysts to completely divest themselves of their existing holdings in such securities;

(B) The research analyst abides by a reasonable plan of liquidation under which all securities issued by subject companies that the analyst follows are to be sold within 120 days of the effective date of the member organization's policy;

(C) The research analyst files such liquidation plan with the member organization's legal or compliance department within fifteen (15) days of the effective date of the member organization's policy;

(D) The research analyst receives written approval of the liquidation plan from the member organization's legal or compliance department prior to the sale of any securities under the plan; and

(E) The member organization must maintain written records sufficient to document compliance with each liquidation plan approved by its legal or compliance department for three years following the date on which the liquidation plan is approved.

(e)(5) through (6) renumbered as (e)(6) through (7).

Restrictions on Member Organization's Issuance of Research Reports and Participation in Public Appearances

(f)(1) A member organization may not publish or otherwise distribute research reports regarding an issuer and a research analyst may not recommend or offer an opinion on an issuer's securities in a public appearance, for which the member organization acted as manager [or], co-manager*, underwriter or dealer* [of] *for* an initial public offering within [forty (40)] *twenty-five (25)* calendar days following the offering date.

[(2) A member organization may not publish or otherwise distribute research reports regarding an issuer and a research analyst may not recommend or offer an opinion on an issuer's securities in a public appearance, for which the member organization acted as manager or co-manager of a secondary offering within ten (10) calendar days following the offering date. This prohibition shall not apply to public appearances or research reports published or otherwise distributed under Securities Act Rule 139 regarding issuers whose securities are actively traded, as defined in Securities Exchange Act Rule 101(c)(1) of Regulation M.

(3) No member organization that has agreed to participate or is participating as an underwriter or dealer (other than as manager or co-manager) of an issuer's initial public offering may publish or otherwise distribute a research report regarding that issuer and a research analyst may not recommend or offer an opinion on that issuer's securities in a public appearance for twenty-five (25) calendar days following the offering date.]

[(4)] *(2)* No member organization which has acted as a manager or co-

[5] *http://www.nasd.com/web/groups/rules_regs/documents/rules_regs/nasdw_015803.pdf*

[6] The rule text reflects the changes contained in SR–NYSE–2006–77 and SR–NASD–2006–112, which were filed for immediate effectiveness on September 27, 2006.

manager of a securities offering may publish or otherwise distribute a research report and a research analyst may not recommend or offer an opinion on an issuer's securities in a public appearance within [fifteen (15)] *five (5)* days prior to or after the expiration, waiver or termination of a lock-up agreement or any other agreement that the member organization has entered into with a subject company and its shareholders that restricts or prohibits the sale of the subject company's or its shareholders' securities after the completion of a securities offering. This prohibition shall not apply to public appearances or research reports published or otherwise distributed under Securities Act Rule 139 regarding issuers whose securities are actively traded, as defined in Securities Exchange Act Rule 101(c)(1) of Regulation M.

[(5)] *(3)* A member organization may permit exceptions to the prohibitions in paragraphs (f)(1)[,] *and* (2)[, and (4)] (consistent with other securities laws and rules) for research reports that are published or otherwise distributed or recommendations or opinions on an issuer's securities made in a public appearance due to significant news or events, *e.g. an announcement of earnings*, provided that such research reports are pre-approved in writing by the member organization's Legal or Compliance personnel.

[(6)] *(4)* If a member organization intends to terminate its research coverage of a subject company, notice of this termination must be made. The member organization must make available a final research report on the subject company using the means of dissemination equivalent to those it ordinarily uses to provide the customer with its research reports on the subject company. The report must be comparable in scope and detail to prior research reports and must include a final recommendation or rating, unless it is impracticable for the member organization to produce a comparable report (e.g., if the research analyst covering the subject company or sector has left the employ of the member organization, or where the member organization terminates coverage on the industry or sector). In instances where it is impracticable for the member organization to provide a final recommendation or rating, the member organization must provide the rationale for the decision to terminate coverage.

Prohibition of Offering Favorable Research for Business

(g)(1) No change.

(2) No member organization and no employee of a member organization [who is involved with the member organization's investment banking activities] may, directly or indirectly, retaliate against or threaten to retaliate against any research analyst employed by the member organization or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report written or public appearance made by the research analyst that may adversely affect the member organization's present or prospective investment banking relationship with the subject company of a research report. This prohibition shall not limit a member organization's authority to discipline or terminate a research analyst, in accordance with the member organization's policies and procedures, for any cause other than the writing of such an unfavorable research report or the making of such unfavorable public appearance.

Restrictions on Compensation to Research Analysts

(h) No change.

General Standards for All Communications

(i) No change.

Specific Standards for Communications

(j) No change.

Disclosure

(k)(1) Disclosures Required in Research Reports.

Disclosure of Member Organization's, and Research Analyst's Ownership of Securities, Receipt of Compensation, and Subject Company Relationships

[The front page cover of a research report either must include the disclosures required under this Rule or must refer the reader to the page(s) on which each such disclosure is found.] *Any member organization that has a conflict of interest or whose research analyst has a conflict of interest concerning the subject company of a research report must disclose that conflict of interest either (i) on its Web site and prominently state the following on the front page of the research report: ''[Name of firm and/or the research analyst preparing this report] has a conflict of interest that may affect the ability of the firm or the analyst to provide objective analysis about the company. For more information about this conflict of interest, please see [Reference to the firm's Web site]'' or (ii) the front page cover of a research report either must include the disclosures required under this Rule or must refer the reader to the page(s) on which each such disclosure is found.* Disclosures, and references to disclosures, must be clear, comprehensive, and prominent. *For purposes of paragraph (k)(1), ''conflict of interest'' shall include any of the following:*

(i) A member organization must disclose in research reports: a. If the member organization or its affiliates:

1. Has managed or co-managed a public offering of securities for the subject company in the past twelve (12) months;

2. Has received compensation for investment banking services from the subject company in the past twelve (12) months; or

3. Expects to receive or intends to seek compensation for investment banking services from the subject company in the next three (3) months.

b. If the member organization is making a market in the subject company's securities at the time the research report is issued;

c. If, as of the last day of the month immediately preceding the date the publication (or the end of the second most recent month if the publication is less than ten (10) calendar days after the end of the most recent month), the member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The member organization must make the required beneficial ownership computation no later than ten (10) calendar days after the end of the prior month. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934;

d. If, as of the last day of the month immediately preceding the date of publication of the research report (or the end of the second most recent month if the publication date is less than thirty (30) calendar days after the end of the most recent month):

1. The subject company currently is a client of the member organization or was a client of the member organization during the twelve (12)-month period preceding the date of distribution of the research report (In such instances, the member organization also must disclose the types of services provided to the subject company. For purposes of this paragraph, the types of services provided to the subject company may be described as investment banking services, non-investment banking-securities related services, and non-securities services.);

2. The member organization received any compensation for products or services other than for investment banking services from the subject company in the past twelve (12) months.

e. If a research report contains a price target, the valuation methods used, and any price objectives must have a reasonable basis and include a discussion of risks;

f. If a research report contains a rating, the meanings of all ratings used by the organization in its ratings system (For example, a member organization might disclose that a ''strong buy'' rating means that the rated security's price is expected to appreciate at least 10% faster than other securities in its sector over the next twelve (12)-month period. Definitions of ratings terms also must be consistent with their plain meaning. Therefore, for example, a ''hold'' rating should not mean or imply that an investor should sell a security.);

g. If a research report contains a rating, the percentage of all securities that the member organization recommends an investor ''buy,'' ''hold,'' or ''sell.'' Within each of the three (3) categories, a member organization must also disclose the percentage of subject companies that are investment banking services clients of the member organization within the previous twelve (12) months (see Rule 472.70 for further information);

h. If a research report contains either a rating or a price target, and the member organization has assigned a rating or price target to the subject company for at least one (1) year, the research report must include a chart that depicts the price of the subject company's stock over time and indicates points at which a member organization assigned or changed a rating or price target. This provision would apply only to securities that have been assigned a rating or price target for at least one (1) year, and need not extend more than three (3) years prior to the date of the research report. The information in the price chart must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than fifteen (15) calendar days after the most recent calendar quarter).

(ii) A member organization must include the following disclosures in research reports:

a. If a research analyst received any compensation:

1. From the subject company in the past twelve (12) months;

2. That is based upon (among other factors) the member organization's overall investment banking revenues.

b. If, to the extent the research analyst or an employee of the member organization with the ability to influence the substance of a research report, knows:

1. The subject company currently is a client of the member organization or was a client of the member organization during the twelve (12)-month period preceding the date of distribution of the research report. In such instances, such member organization also must disclose the types of services provided to the subject company (For purposes of paragraph (k)(1) of this Rule, the types of services provided to the subject company may be described as investment banking services, non-investment banking-securities related services, and non-securities services.). (For purpose of paragraph (k)(1) of this Rule, an employee of a member organization with the ability to influence the substance of the research report is an employee who, in the ordinary course of that person's duties, has the authority to review the particular research report and to change that research report prior to publication.);

2. That the member organization or any affiliate thereof, received any compensation for products or services other than investment banking services from the subject company in the past twelve (12) months.

(iii) A research analyst and a member organization must disclose in research reports:

a. If, to the extent the research analyst or member organization has reason to know, an affiliate of the member organization received any compensation for products or services other than investment banking services from the subject company in the past twelve (12) months;

1. This requirement will be deemed satisfied if such compensation is disclosed in research reports within thirty (30) days after completion of the most recent calendar quarter, provided that the member organization has taken steps reasonably designed to identify such compensation during that calendar quarter.

2. The member organization and the research analyst will be presumed not to have reason to know whether an affiliate received compensation for other than investment banking services from the subject company in the past twelve (12) months if the member organization maintains and enforces policies and procedures reasonably designed to prevent all research analysts and employees of the member organization with the ability to influence the substance of research reports from, directly or indirectly, receiving information from the affiliate concerning such compensation.

3. Paragraph 472(k)(1)(iii)a. shall not apply to any subject company as to which the member organization initiated coverage since the beginning of the current calendar quarter.

b. If the research analyst or a household member has a financial interest in the securities of the subject company, and the nature of the financial interest, including, without limitation, whether it consists of any option, right, warrant, futures contract, long or short position;

c. If the research analyst or a household member is an officer, director, or advisory board member of the subject company;

d. Any other actual, material conflict of interest of the research analyst, or member organization, of which the research analyst knows, or has reason to know, at the time the research report is published or otherwise distributed.

When a member organization publishes or otherwise distributes a research report covering six (6) or more subject companies (a ''compendium report'') for purposes of the disclosures required in paragraph (k)(1) of this Rule, the compendium report may direct the reader in a clear and prominent manner as to where the reader may obtain applicable current disclosures. Electronic compendium reports may include a hyperlink to the required disclosures. Paper-based compendium reports must provide either a toll-free number to call or a postal address to write for the required disclosures and may also include a web address of the member organization where the disclosures can be found.

(k)(2) Disclosures Required in Public Appearances

Disclosure of Member Organization's, and Research Analyst's Ownership of Securities, Receipt of Compensation, and Subject Company Relationships

(i) A research analyst must disclose *the following conflicts of interest* in public appearances:

a. If, as of the last day of the month before the appearance (or the end of the second most recent month if the appearance is less than ten (10) calendar days after the end of the most recent month), the member organization or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. The member organization must make the required beneficial ownership computation no later than ten (10) calendar days after the end of the prior month.

Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934;

b. If the research analyst or a household member has a financial interest in the securities of the subject company, and the nature of the financial interest, including, without limitation, whether it consists of any option, right, warrant, futures contract, long or short position;

c. If, to the extent the research analyst knows or has reason to know:

1. The subject company currently is a client of the member organization or was a client of the member organization during the twelve (12)-month period preceding the date of the public appearance by the research analyst. In such instances, the research analyst also must disclose the types of services provided to the subject company (For purposes of this paragraph, the types of services provided to the subject company may be described as investment banking services, non-investment banking-securities related services, and non-securities services.);

2. The member organization or any affiliate thereof, received any compensation from the subject company in the past twelve (12) months.

d. Any other actual, material conflict of interest of the research analyst, or member organization, of which the research analyst knows, or has reason to know, at the time the public appearance is made;

e. If the research analyst or a household member is an officer, director, or advisory board member of the subject company;

f. If the research analyst received any compensation from the subject company in the past twelve (12) months.

(k)(3) Exceptions to the Required Disclosures

(i) A member organization or a research analyst will not be required to make a disclosure required by Rule 472(k)(l)(i)a.2. and 3., (k)(1)(i)d.1., (k)(1)(ii)b.1., and (k)(2)(i)c. to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking services transactions of the subject company.

(k)(4) Third-Party Research Reports

(i) Subject to paragraph (k)(4)(ii), if a member organization distributes or makes available research reports produced by another member organization, a non-member organization affiliate of a member organization, such as a foreign or domestic broker-dealer or investment adviser, or an independent third party, the member organization must accompany the research report with the applicable disclosures, as they pertain to the member organization, that are required by paragraphs (k)(1)(i)c, (k)(1)(i)a, (k)(1)(i)b and (k)(1)(iii)d of this Rule.

a. A supervisory analyst qualified under NYSE Rule 344 must approve, pursuant to Rule 472(a)(2), by signature or initial any third-party research distributed by a member organization; and

b. A supervisory analyst or qualified person designated pursuant to Rule 342(b)(1) (e.g., a person who has taken and passed the Series 9/10, or another examination acceptable to the Exchange which demonstrates competency relevant to assigned responsibilities, including the Series 24 if taken and passed after July 1, 2001) must review third-party research distributed by a member organization to determine that the disclosures required by Rule 472(k)(1)(i)c, (k)(1)(i)a, (k)(1)(i)b and (k)(1)(iii)d are complete and accurate, and that the content of the research report is consistent with all applicable standards regarding communications with the public.

(ii) The requirements in paragraph (k)(4)(i) shall not apply to research reports prepared by an independent third party that the member organization makes available to its customers either upon request or through a member organization-maintained Web site.

Other Communications Activities

(l) No change.

Small Firm Exception

(m) The provisions of Rule 472(b)(1)[,] *and* (2) [and (3)] do not apply to member organizations that over the three previous years, on average per year, have participated in ten (10) or fewer investment banking services transactions as manager or co-manager and generated $5 million or less in gross investment banking services revenues from those transactions. For purposes of this paragraph, the term ''investment banking services transactions'' shall include both debt and equity underwritings but not municipal securities underwritings. Member organizations that qualify for this exemption must maintain records for three (3) years of any communications that, but for this exemption, would be subject to paragraphs (b)(1)[,] *and* (2)[, and (3)] of this Rule.

** * * Supplementary Material:*

.10 Definitions

(1) No change.

(2) Research Report—''Research report'' is generally defined as a written or electronic communication which includes an analysis of equity securities of individual companies or industries (*other than an open-end registered investment company that is not listed or traded on an exchange or a public direct participant program*), and provides information reasonably sufficient upon which to base an investment decision. This term does not include:

(a) The following communications, provided that they do not include an analysis, narrative discussion, recommendation or rating of individual securities or issuers:

(1) Reports discussing broad-based indices, e.g. the Russell 2000 or S&P 500 index;

(2) Reports commenting on economic, political or market conditions;

(3) Technical analysis concerning the demand and supply for a sector, index or industry based on trading volume and price;

(4) Statistical summaries of multiple companies' financial data (including listings of current ratings);

(5) Reports that recommend increasing or decreasing holdings in particular industries or sectors; or

(6) Notices of ratings or price target changes, provided that the member organization simultaneously directs the readers of the notice as to where to obtain the most recent research report on the subject company that includes the current applicable disclosures required by this rule and that such research report does not contain materially misleading disclosures, including disclosures that are outdated or no longer applicable;

(b) The following communications, even if they include information reasonably sufficient upon which to base an investment decision or a recommendation or rating of individual securities or companies:

(1) Any communication distributed to fewer than 15 persons;

(2) Periodic reports, solicitations or other communications prepared for investment company shareholders or discretionary investment account clients that discuss individual securities in the context of a fund's or account's past performance or the basis for previously made discretionary investment decisions; or

(3) Internal communications that are not given to customers; and

(c) Communications that constitute statutory prospectuses that are filed as part of the registration statement.

For purposes of approval by a supervisory analyst pursuant to Rule 472(a)(2), the term research report includes, but is not limited to, a report which recommends equity securities, derivatives of such securities, including options, debt and other types of fixed income securities, single stock futures products, and other investment vehicles subject to market risk.

.10 (3) through (5) No change.

.20 through .30 No change.

.40 For purposes of this Rule, the term ''research analyst'' includes an allied member, associated person or employee of a member organization primarily responsible for, and any person who reports directly or indirectly to such research analyst in connection with, the preparation of the substance of a research report whether or not any such person has the job title of ''research analyst''.

For purposes of this Rule, the term ''household member'' means any individual whose principal residence is the same as the research analyst's principal residence. This term does not include an unrelated person who shares the same residence as a research analyst, provided that the research analyst and unrelated person are financially independent of one another. Paragraphs (e)(1), (2), (3), (4)(i), (ii), (iii), (iv) and (v), (k)(1)(iii)b., c., and (k)(2)(i)b. and e. apply to any account in which a research analyst has a financial interest, or over which the research analyst exercises discretion or control[, other than an investment company registered under the Investment Company Act of 1940]. The trading restrictions applicable to research analysts and household members (i.e., paragraphs (e)(1), (2), (3), (4)(i), (ii), (iii), (iv) and (v))[;] *shall not include an investment company registered under the Investment Company Act of 1940 over which the research analyst or a household member has discretion or control, provided that the research analyst or household member has no financial interest in such investment company, other than a performance or management fee, and* do not apply to a ''blind trust'' account that is controlled by a person other than the research analyst or research analyst's household member where neither the research analyst nor household member knows of the account's investments or investment transactions.

.50 through .140 No change.

Rule 344. Research Analysts and Supervisory Analysts

Research analysts and supervisory analysts must be registered with, qualified by, and approved by the Exchange.

** * * Supplementary Material:*

.10 [For purposes of this Rule, the term ''research analyst'' includes a member, allied member, associated person or employee who is primarily responsible for the preparation of the substance of a research report and/or whose name appears on such report. Such research analysts must pass a qualification examination acceptable to the Exchange.] *For the purposes of this Rule, ''research analyst'' shall mean an associated person whose primary job function is to provide investment research and who is primarily responsible for the preparation of the substance of a research report or whose name appears on the report.*

.11 For purposes of this Rule, the term ''supervisory analyst'' includes [a member,] *an* allied member or employee who is responsible for preparing or approving research reports under Rule 472(a)(2). In order to show evidence of acceptability to the Exchange as a supervisory analyst, [a member,] *an* allied member, or employee may do one of the following:

(1) Present evidence of appropriate experience and pass an Exchange Supervisory Analyst Examination (Series 16).

(2) Present evidence of appropriate experience and successful completion of a specified level of the Chartered Financial Analysts Examination prescribed by the Exchange and pass only that portion of the Exchange Supervisory Analyst Examination (Series 16) dealing with Exchange rules on research standards and related matters.

The Exchange publishes a Study Outline for the Research Analyst Examination and the Supervisory Analyst Examination (Series 16).

.12 No change.

B. NASD's Proposed Rule Text

1050. Registration of Research Analysts

(a) No change.

(b) For the purposes of this Rule 1050, ''research analyst'' shall mean an associated person *whose primary job function is to provide investment research and* who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report.

(c) through (f) No change.

* * * * *

2711. Research Analysts and Research Reports

(a) Definitions

For purposes of this rule, the following terms shall be defined as provided.

(1) through (6) No Change.

(7) ''Research analyst account'' means any account in which a research analyst or member of the research analyst's household has a financial interest[,] or over which such analyst has discretion or control[, other than an investment company registered under the Investment Company Act of 1940]. *The term ''research analyst account'' shall not include an investment company registered under the Investment Company Act of 1940 over which the research analyst or a member of the research analyst's household has discretion or control, provided that the research analyst or household member has no financial interest in such investment company, other than a performance or management fee.* This term *also shall* [does] not include a ''blind trust'' account that is controlled by a person other than the research analyst or member of the research analyst's household where neither the research analyst nor a member of the research analyst's household knows of the account's investments or investment transactions.

(8) No Change.

(9) ''Research Report'' means any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries[,] *(other than an open-end registered investment company that is not listed or traded on an exchange or a public direct participation program)* and that provides information reasonably sufficient upon which to base an investment decision. This term does not include:

(A) through (C) No Change.

(10) No Change.

(b) Restrictions on Relationship With Research Department

(1) No Change.

(2) [Except as provided in paragraph (b)(3), n]*No* employee of the investment banking department or any other employee of the member who is not directly responsible for investment research (''non-research personnel''), other than legal or compliance personnel, may review or approve a research report of the member before its publication.

[(3) Non-research personnel may review a research report before its publication as necessary only to verify

the factual accuracy of information in the research report or identify any potential conflict of interest, provided that:]

[(A) Any written communication between non-research personnel and research department personnel concerning the content of a research report must be made either through authorized legal or compliance personnel of the member or in a transmission copied to such personnel; and]

[(B) Any oral communication between non-research personnel and research department personnel concerning the content of a research report must be documented and made either through authorized legal or compliance personnel acting as intermediary or in a conversation conducted in the presence of such personnel.]

(c) Restrictions on Communications With the Subject Company

(1) through (4) No Change.

(5) A research analyst is prohibited from directly or indirectly:

(A) No Change.

(B) Engaging in any communication with a current or prospective customer *or internal sales personnel* in the presence of investment banking department personnel or company management about an investment banking services transaction.

(6) through (7) No Change.

(d) through (e) No Change.

(f) Restrictions on Publishing Research Reports and Public Appearances; Termination of Coverage

[(1) No member may publish or otherwise distribute a research report and no research analyst may make a public appearance regarding a subject company for which the member acted as manager or co-manager of:]

[(A) An initial public offering, for 40 calendar days following the date of the offering; or]

[(B) A secondary offering, for 10 calendar days following the date of the offering; provided that:]

[(i) Paragraphs (f)(1)(A) and (f)(1)(B) will not prevent a member from publishing or otherwise distributing a research report, or prevent a research analyst from making a public appearance, concerning the effects of significant news or a significant event on the subject company within such 40- and 10-day periods, and provided further that legal or compliance personnel authorize publication of that research report before it is issued or authorize the public appearance before it is made; and]

[(ii) paragraph (f)(1)(B) will not prevent a member from publishing or otherwise distributing a research report pursuant to SEC Rule 139 regarding a subject company with ''actively-traded securities,'' as defined in Regulation M, 17 CFR 242.101(c)(1), and will not prevent a research analyst from making a public appearance concerning such a company.]

([2]*1*) No member that has agreed to participate or is participating as an underwriter or dealer [(other than as manager or co-manager)] of an issuer's initial public offering may publish or otherwise distribute a research report or make a public appearance regarding that issuer for 25 calendar days after the date of the offering. *This paragraph will not prevent a member from publishing or otherwise distributing a research report, or prevent a research analyst from making a public appearance, concerning the effects of significant news or a significant event on the subject company within such 25-day period, provided further that legal or compliance personnel authorize publication of that research report before it is issued or authorize the public appearance before it is made.*

([3]*2*) For purpose[s] of paragraph (f)(1)[and (f)(2)], the term ''date of the offering'' refers to the later of the effective date of the registration statement or the first date on which the security was bona fide offered to the public.

[(4) No member that has acted as a manager or co-manager of a securities offering may publish or otherwise distribute a research report or make a public appearance concerning a subject company 15 days prior to and after the expiration, waiver or termination of a lock-up agreement or any other agreement that the member has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of a securities offering. This paragraph will not prevent a member from publishing or otherwise distributing a research report concerning the effects of significant news or a significant event on the subject company within such period, provided legal or compliance personnel authorize publication of that research report before it is issued. In addition, this paragraph shall not apply to the publication or distribution of a research report pursuant to SEC Rule 139 regarding a subject company with ''actively traded securities,'' as defined in Regulation M, 17 CFR 242.101(c)(1), or to a public appearance concerning such a subject company.]

(3) Any member that has acted as a manager or co-manager of a securities offering and publishes or otherwise distributes a research report concerning a subject company during a period 15 days prior to and after the expiration, waiver or termination of a lock-up agreement or any other agreement that the member has entered into with a subject company or its shareholders that restricts or prohibits the sale of securities held by the subject company or its shareholders after the completion of a securities offering shall provide with the research report a certification, in such form as prescribed by NASD, stating that the member has a bona fide reason for issuing the research report.

([5]*4*) If a member intends to terminate its research coverage of a subject company, notice of this termination must be made. The member must make available a final research report on the subject company using the means of dissemination equivalent to those it ordinarily uses to provide the customer with its research reports on the subject company. The report must be comparable in scope and detail to prior research reports and must include a final recommendation or rating, unless it is impracticable for the member to produce a comparable report (e.g., if the research analyst covering the subject company or sector has left the member or if the member terminates coverage of the industry or sector). If it is impracticable to produce a final recommendation or rating, the final research report must disclose the member's rationale for the decision to terminate coverage.

(g) Restrictions on Personal Trading by Research Analysts

(1) through (4) No Change.

(5) The prohibitions in paragraphs (g)(1) through (g)(3) do not apply to a purchase or sale of the securities of[:]

[(A) Any registered diversified investment company as defined under Section (5)(b)(1) of the Investment Company Act of 1940; or]

[(B)] Any [other] investment fund over which neither the research analyst nor a member of the research analyst's household has any investment discretion or control, provided that *the research analyst and household member are not made aware of the fund's holdings or transactions other than through periodic shareholder reports and sales material based on such reports*[:] *and*

[(i)] The research analyst accounts collectively own interests representing no more than 1% of the assets of the fund[;].

[(ii) The fund invests no more than 20% of its assets in securities of issuers principally engaged in the same types of

business as companies that the research analyst follows; and]

[(iii) If the investment fund distributes securities in kind to the research analyst or household member before the issuer's initial public offering, the research analyst or household member must either divest those securities immediately or the research analyst must refrain from participating in the preparation of research reports concerning that issuer.]

(6) The prohibitions in paragraphs (g)(1) through (g)(3) do not apply when the following conditions are satisfied:

(A) The research analyst is employed by a member that has adopted an internal policy that prohibits research analysts from owning any securities issued by subject companies for which the research analyst provides coverage and requires those analysts to completely divest themselves of their existing holdings in such securities;

(B) The research analyst abides by a reasonable plan of liquidation under which all securities issued by companies that the analyst follows are to be sold within 120 days of the effective date of the member's policy;

(C) The research analyst files such liquidation plan with the member's legal or compliance department within 15 days of the effective date of the member's policy;

(D) The research analyst receives written approval of the liquidation plan from the member's legal or compliance department prior to the sale of any securities under the plan; and

(E) The member must maintain written records sufficient to document compliance with each liquidation plan approved by its legal or compliance department for three years following the date on which the liquidation plan is approved.

([6]*7*) Legal or compliance personnel of the member shall pre-approve all transactions of persons who oversee research analysts to the extent such transactions involve equity securities of subject companies covered by the research analysts that they oversee. This pre-approval requirement shall apply to all persons, such as the director of research, supervisory analyst, or member of a committee, who have direct influence or control with respect to the preparation of the substance of research reports or establishing or changing a rating or price target of a subject company's equity securities.

(h) Disclosure Requirements

(1) [Ownership and Material]*Definition of "*Conflict of Interest*"*

[A member must disclose in research reports and a research analyst must disclose in public appearances]*For the purposes of paragraph (h)(2), "conflict of interest" shall include any of the following:*

(A) If the research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position);

(B) If, as of the end of the month immediately preceding the date of publication of the research report or the public appearance (or the end of the second most recent month if the publication date is less than 10 calendar days after the end of the most recent month), the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934;

[(C) Any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication of the research report or at the time of the public appearance.]

[(2) Receipt of Compensation]

[(A) A member must disclose in research reports:]

([i]*C*) If the research analyst received compensation:

[a.]*(i)* Based upon (among other factors) the member's investment banking revenues; or

[b.]*(ii)* From the subject company in the past 12 months.

([ii]D) If the member or *any* affiliate *of the member*:

[a.]*(i)* Managed or co-managed a public offering of securities for the subject company in the past 12 months;

[b.]*(ii)* Received compensation for investment banking services from the subject company in the past 12 months; or

[c.]*(iii)* Expects to receive or intends to seek compensation for investment banking services from the subject company in the next 3 months.

([iii]E) If ([1]*i*) as of the end of the month immediately preceding the date of publication of the research report (or the end of the second most recent month if the publication date is less than 30 calendar days after the end of the most recent month) or ([2]*ii*) to the extent the research analyst or an employee of the member with the ability to influence the substance of the research knows:

a. The member received any compensation for products or services other than investment banking services from the subject company in the past 12 months; or

b. The subject company currently is, or during the 12-month period preceding the date of distribution of the research report was, a client of the member. In such cases, the member also must disclose the types of services provided to the subject company. For purposes of this Rule 2711(h)(1), the types of services provided to the subject company shall be described as investment banking services, non-investment banking securities-related services, and non-securities services.

([iv]*F*) If, to the extent the research analyst or an employee of the member with the ability to influence the substance of the research report knows an affiliate of the member received any compensation for products or services other than investment banking services from the subject company in the past 12 months.

([v]*G*) If, to the extent the research analyst or member has reason to know, an affiliate of the member received any compensation for products or services other than investment banking services from the subject company in the past 12 months.

[a.]*(i)* [This]*The* requirement *to disclose this conflict of interest* will be deemed satisfied if such compensation is disclosed in research reports *or on a member's Web site* within 30 days after completion of the last calendar quarter, provided that the member has taken steps reasonably designed to identify any such compensation during that calendar quarter. [This]*The disclosure* requirement shall not apply to any subject company as to which the member initiated coverage since the beginning of the current calendar quarter.

[b.]*(ii)* The research analyst and the member will be presumed not to have reason to know whether an affiliate received any compensation for products or services other than investment banking services from the subject company in the past 12 months if the member maintains and enforces policies and procedures reasonably designed to prevent the research analysts and employees of the member with the ability to influence the substance of research reports from, directly or indirectly, receiving information from the affiliate concerning whether the affiliate received such compensation.

(H) If the research analyst or member of a research analyst's household serves as an officer, director or advisory board member of the subject company.

(I) If the member was making a market in the subject company's securities at the time that the research report was published; and

(J) Any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication of the research report or at the time of the public appearance.

([vi]*K*) For the purposes of this Rule 2711(h)([2]*1*), an employee of the member with the ability to influence the substance of the research report is an employee who, in the ordinary course of that person's duties, has the authority to review the particular research report and to change that research report prior to publication.

(2) Disclosure of Conflicts of Interest

(A) Any member that has a conflict of interest or whose research analyst has a conflict of interest concerning the subject company of a research report must disclose that conflict of interest either:

(i) On its Web site and prominently state the following on the front page of the research report:

''[Name of firm and/or the research analyst preparing this report] has a conflict of interest that may affect the ability of the firm or the analyst to provide objective analysis about the company. For more information about this conflict of interest, please see [Reference to the firm's Web site]'' or

(ii) In the research report in accordance with paragraph (h)(8).

(B) A research analyst must disclose in public appearances:

(i) The conflicts of interest described in paragraphs (h)(1)(A), (B) and (J);

(ii) If, to the extent the research analyst knows or has reason to know, the member or any affiliate received any compensation from the subject company in the past 12 months;

(iii) If the research analyst received any compensation from the subject company in the past 12 months; or

([iii]*iv*) If, to the extent the research analyst knows or has reason to know, the subject company currently is, or during the 12-month period preceding the date of distribution of the research report, was, a client of the member. In such cases, the research analyst also must disclose the types of services provided to the subject company, if known by the research analyst*;[*.]*or*

(v) If the research analyst or a member of the research analyst's household serves as an officer, director or advisory board member of the subject company.

(C) A member or research analyst will not be required to make a disclosure required by paragraphs *(h)(1)(D)(ii) and (iii)*[(h)(2)(A)(ii)(b) and (c)], (h)*(1)(E)(b)*[(2)(A)(iii)(b),] or (h)(2)(B)(i*i*) and (*iv*[iii]) to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions of the subject company.

[(3) Position as Officer or Director]

[A member must disclose in research reports and a research analyst must disclose in public appearances if the research analyst or a member of the research analyst's household serves as an officer, director or advisory board member of the subject company.]

([4]*3*) Meaning of Ratings

If a research report contains a rating, the member must define in the research report the meaning of each rating used by the member in its rating system. The definition of each rating must be consistent with its plain meaning.

([5]*4*) Distribution of Ratings

(A) Through (B) No Change.

(C) The information that is disclosed under paragraphs (h)([5]*4*)(A) and (h)([5]*4*)(B) must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter) and must reflect the distribution of the most recent ratings issued by the member for all subject companies, unless the most recent rating was issued more than 12 months ago.

(D) The requirements of paragraph (h)([5]*4*) shall not apply to any research report that does not contain a rating.

([6]*5*) Price Chart

If a research report contains either a rating or a price target, and the member has assigned a rating or price target to the subject company's securities for at least one year, the research report must include a line graph of the security's daily closing prices for the period that the member has assigned any rating or price target or for a three-year period, whichever is shorter.

The line graph must:

(A) through (C) No Change.

([7]*6*) Price Targets

If a research report contains a price target, the member must disclose in the research report the valuation methods used to determine the price target. Price targets must have a reasonable basis and must be accompanied by a disclosure concerning the risks that may impede achievement of the price target.

[(8) Market Making

A member must disclose in research reports if it was making a market in the subject company's securities at the time that the research report was published.]

([9]*7*) Disclosure Required by Other Provisions

In addition to the disclosure required by this rule, members and research analysts must provide disclosure in research reports and public appearances that is required by applicable law or regulation, including NASD Rule 2210 and the antifraud provisions of the federal securities laws.

([10]*8*) Prominence of Disclosure

The disclosures required by this paragraph (h)*, other than those made pursuant to paragraph (h)(2)(A)(i),* must be presented on the front page of research reports or the front page must refer to the page on which disclosures are found. Disclosures and references to disclosures must be clear, comprehensive and prominent.

([11]*9*) Disclosures in Research Reports Covering Six or More Companies

When a member distributes a research report covering six or more subject companies (a ''compendium report''), for purposes of the disclosures required in paragraph (h), *other than those required by paragraph (h)(2),* the compendium report may direct the reader in a clear manner as to where they may obtain applicable current disclosures. Electronic compendium reports may include a hyperlink to the required disclosures. Paper-based compendium reports must provide either a toll-free number to call or a postal address to write for the required disclosures and may also include a web address of the member where the disclosures can be found.

(1[2]*0*) Records of Public Appearances

Members must maintain records of public appearances by research analysts sufficient to demonstrate compliance by those research analysts with the applicable disclosure requirements under paragraph (h) of this Rule. Such records must be maintained for three years from the date of the public appearance.

(1[3]*1*) Third-Party Research Reports

(A) Subject to paragraph (h)(1[3]*1*)(B), if a member distributes or makes available any research report that is produced by another member, a non-

member affiliate of the member or an independent third party, the member must accompany the research report with the current applicable disclosures, as they pertain to the member, that are required by paragraphs (h)(1)(B), [(h)(1)(C), (h)(2)(A)(ii) and (h)(8)] *(h)(1)(D), (h)(1)(I) and (h)(1)(J)* of this Rule.

(B) The requirements of paragraph (h)(1[3]*1*)(A) shall not apply to research reports prepared by an independent third party that the member makes available to its customers either upon request or through a member-maintained Web site.

(C) No Change.

(i) Supervisory Procedures

Each member subject to this rule must adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of this rule (including the attestation requirements of Rule 2711(d)(2)), and a senior officer of such a member must [attest] annually [to]*file with the* NASD *Member Regulation Department* by April 1 of each year *an attestation* that it has adopted and implemented those procedures.

(j) Prohibition of Retaliation Against Research Analysts

No member and no [employee of a member who is involved with the member's investment banking activities]*non-research personnel as defined in paragraph (b)(2)* may, directly or indirectly, retaliate against or threaten to retaliate against any research analyst employed by the member or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made by the research analyst that may adversely affect the member's present or prospective investment banking relationship with the subject company of a research report. This prohibition shall not limit a member's authority to discipline or terminate a research analyst, in accordance with the member's policies and procedures, for any cause other than the writing of such an unfavorable research report or the making of such an unfavorable public appearance.

(k) No Change

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II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Exchange and NASD included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Exchange and NASD have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. NYSE's Purpose

Background

Beginning in 2002, the Exchange and the National Association of Securities Dealers, Inc. implemented a series of rule changes (''SRO Rules'') to improve objectivity and transparency in equity research and provide investors with more reliable and useful information to make investment decisions. The NYSE believes that the rules were intended to restore public confidence in the validity of research and the veracity of research analysts, who are expected to function as unbiased intermediaries between issuers and the investors who buy and sell their securities. According to the NYSE, the trustworthiness of research had eroded due to the pervasive influences of investment banking and other conflicts that had manifest themselves during the market boom of the late 1990s.

Generally, the SRO Rules require clear, comprehensive and prominent disclosure of conflicts of interest in research reports and public appearances by research analysts. The rules further prohibit certain conduct—investment banking personnel involvement in the content of research and determination of analyst compensation, for example—when the conflicts are considered too pronounced to be cured by disclosure.

The SROs enacted the research analyst conflict rules in two primary tranches and, more recently, adopted additional amendments prohibiting analysts from participating in road shows. In addition, the SROs supplemented their rulemaking with two joint memoranda that provided interpretive guidance to their members on a number of issues.[7] The NASD and NYSE rules and interpretations are virtually identical and are intended to operate uniformly.

On May 10, 2002, the SEC approved the first round of proposed SRO Rules (''Round 1 Amendments'')—new NASD Rule 2711 (''Research Analysts and Research Reports'') and amendments to NYSE Rules 351 (''Reporting Requirements'') and 472 (''Communications with the Public'')—which implemented basic reforms to separate research from investment banking and to provide more extensive disclosure of conflicts of interest in research reports and public appearances.[8]

On July 29, 2003, the SEC approved a second set of amendments to the SRO Rules (''Round 2 Amendments'')[9] that achieved two purposes. First, the Round 2 Amendments implemented SRO initiatives to further promote analyst objectivity and transparency of conflicts in research reports. Second, the Round 2 Amendments implemented changes mandated by the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley'').[10] Sarbanes-Oxley required adoption by July 30, 2003 of rules ''reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances,'' and set forth certain specific rules to be promulgated. Many of those rules had already been adopted in the first round of SRO rulemaking. The Round 2 Amendments therefore implemented those specific Sarbanes-Oxley rules that did not already exist and conformed the language of the SRO Rules as necessary.

As part of the Round 2 Amendments, the SEC approved rules requiring registration and qualification requirements for research analysts. NYSE Rule 344 requires an associated person who functions as a research analyst on behalf of a member organization to register as such and pass a qualification examination. For the purposes of this requirement, a ''research analyst'' is defined as an associated person or employee who is primarily responsible for the preparation of the substance of a research report and/or whose name appears on such ''research report,'' as that term is defined in NYSE Rule 472.

The SROs jointly developed and implemented the Research Analyst Qualification Examination (Series 86/87). The examination consists of an analysis part (Series 86) and a regulatory

[7] *See* NYSE Information Memos 02–26 and 04–10 and *NASD Notices to Members* 02–39 (July 2002) and 04–18 (March 2004).

[8] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) (order approving SR–NASD–2002–021 and SR–NYSE–2002–09).

[9] *See* Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 45875 (Aug. 4, 2003) (order approving SR–NASD–2002–154 and SR–NYSE–2002–49).

[10] *See* Section 15D(a) of the Act, 15 U.S.C. 78o–6.

part (Series 87). Prior to taking either the Series 86 or 87, a candidate also must have passed the General Securities Registered Representative Examination (Series 7), the Limited Registered Representative Examination (Series 17), or the Canada Module of Series 7 (Series 37 or 38).

The SRO Rules provide three exemptions from the Series 86 examination. First, there is an exemption for research analysts who have passed Levels I and II of the Chartered Financial Analyst (''CFA'') examination and have either (1) completed the CFA Level II within 2 years of application or registration, or (2) functioned as a research analyst continuously since having passed the CFA Level II.[11]

A second exemption is available to research analysts who have passed Levels I and II of the Chartered Market Technician Examination and produce only ''technical research reports,'' as that term is defined under the SRO Rules.[12]

A third exemption—from both the Series 86 and Series 87—is available to persons who may be ''associated persons'' of a member who are employed by that member's foreign affiliate but who produce research on behalf of the U.S. member. To be eligible for the exemption, three primary conditions must be met: (1) A foreign analyst must comply with the registration and qualification requirements or other standards in an SRO-approved foreign jurisdiction whose regulatory scheme reflects a recognition of principles that are consonant with the SRO Rules and qualification standards; (2) the U.S. member must apply all of the other SROs rules and other member firm standards to the research produced by the foreign affiliate and foreign research analysts that qualify for, and rely upon, the exemption; and (3) the U.S. member must include a specific disclosure that the research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member who are not registered/qualified as a research analyst with the NYSE or NASD, but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that has been recognized for these purposes by the NYSE and NASD. Currently, the following jurisdictions satisfy the applicable SRO standards noted above: China, Hong Kong, Japan, Malaysia, Singapore, Thailand and the United Kingdom.

On April 21, 2005, the Commission approved an amendment to the SRO Rules that prohibits research analysts from participating in a road show related to an investment banking services transaction and from communicating with current or prospective customers in the presence of investment banking department personnel or company management about such an investment banking services transaction.[13] Additionally, the amendment prohibits investment banking personnel from directing a research analyst to engage in sales and marketing efforts and other communications with a current or prospective customer about an investment banking services transaction.

Joint SRO Report

As part of its May 2002 order approving new NASD Rule 2711 and amendments to NYSE Rule 472, the SEC noted that it would require NASD and the NYSE to assess the success of the rules after they have been in place for a suitable amount of time. In April 2005, the SEC staff requested a joint comprehensive report on the operation and effectiveness of the rules, together with any recommendations for changes or additions to the rules. The SRO staffs submitted that report to the SEC on December 22, 2005.

The SRO staffs concluded in the report that the SRO Rules have been effective in helping to restore integrity to research by minimizing the influences of investment banking and promoting transparency of other potential conflicts of interest. However, the SRO staffs further expressed their belief that certain changes to the SRO Rules would further improve their effectiveness by striking an even better balance between ensuring objective and reliable research on the one hand and permitting the flow of information to investors and minimizing costs and burdens to members on the other.

In formulating the recommendations for rule changes in the report, the SROs considered extensive data and qualitative feedback regarding the range of activities under the SRO Rules, including examinations, sweeps, enforcement activities, interpretive issues and registration and qualification of research analysts. The SROs also surveyed academic studies and media reports about the impact of the rules; compared the SRO Rules to the provisions of the so-called ''Global Settlement'' among the SROs, the Commission, the North American Securities Administrators Association and ten[14] of the largest investment banks; reviewed industry comment letters; and consulted with various industry representatives. The proposed rule changes would implement the recommendations of the SROs in the SRO report. A discussion of the proposed rule changes is set out below.

Exception to Definition of ''Research Report''

''Research report'' is defined in NYSE Rule 472.10(2) as a ''written or electronic communication which includes an analysis of equity securities of individual companies or industries, and provides information reasonably sufficient upon which to base an investment decision.'' The proposed rule change would expressly exclude from the definition of ''research report,'' sales material regarding open-end registered investment companies that are not listed or traded on an exchange and public direct participation programs (''DPPs''). Since these investment companies and DPPs are ''equity securities'' as defined in Section 3(a)(11)[15] of the Exchange Act, related sales material that contains an analysis of those securities and information sufficient upon which to base an investment decision technically is covered by the definition. For the following reasons, the Exchange believes sales material for both types of products should be excluded from the definition of ''research report.''

Sales material regarding investment companies is already subject to a separate regulatory regime, including NASD Rule 2210 and Securities Act Rule 482,[16] and all advertisements and sales literature regarding registered investment companies must be filed with the NASD Advertising Regulation Department (the ''Department'') within

[11] *See* Securities Exchange Act Release No. 49464 (March 24, 2004), 69 FR 16628 (March 30, 2004) (order approving SR–NASD–2004–020 and SR–NYSE–2004–03).

[12] *See* Securities Exchange Act Release No. 51240 (February 23, 2005), 70 FR 10451 (March 3, 2005) (notice of immediate effectiveness of SR–NASD–2005–022 and SR–NYSE–2005–12).

[13] *See* Securities Exchange Act Release No. 51593 (April 21, 2005), 70 FR 22168 (April 28, 2005) (order approving SR–NASD–2004–141 and SR–NYSE–2005–24). As defined under NASD Rule 2711(a)(3) and NYSE Rule 472.20, ''investment banking services'' includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.

[14] In August 2004, two additional firms settled with regulators under the same terms as the April 2003 Global Settlement.

[15] 15 U.S.C. 78c(a)(11).

[16] 17 CFR 230.482.

ten (10) business days of first use.[17] Moreover, the Exchange staff does not believe that the conflicts underpinning the SRO Rules are manifest to the same extent with respect to research on open-end investment companies that are not listed or traded on an exchange.

Similarly, the NYSE believes that sales material for public DPPs also do not present the same conflicts of interest or other regulatory concerns as research on exchange-traded securities. Publicly offered DPPs typically are limited partnerships or limited liability companies whose equity interests do not trade on an exchange and do not have an active secondary market. The DPP sponsor generally produces its sales material and sells interests in the DPP during an initial public offering on a best efforts basis. According to the NYSE, this sales material typically consists of ''tombstone'' advertisements whose content is strictly limited under Securities Act Rule 134,[18] or supplemental sales literature that must be accompanied or preceded by a prospectus for the DPP. Additionally, unlike equity research, NASD Rule 2210(c)(2)(B) requires members to file advertisements and sales literature concerning public DPPs with the Department within ten business days of first use. Thus, NASD staff review such sales material before or shortly after it is distributed to the public.

Although exchange-traded funds (''ETFs'') are open-end investment companies, they trade on an exchange and therefore those funds would not be excepted from the definition of ''research report.'' The Exchange requests comment on whether ETFs should also be excluded from the definition. In addition, the NYSE believes that NASD Advertising Regulation Department review of registered investment company and public DPP sales material reduces the likelihood that it will contain content that is not fair and balanced.

Exception to Registration and Qualification Requirements for Non-Research Personnel That Produce ''Research Reports''

The SRO Rules, in accordance with the mandates of Sarbanes-Oxley,[19] are constructed such that the author of a communication that meets the definition of a ''research report'' is a ''research analyst,'' irrespective of his or her title or primary job. This prevents firms from circumventing the rules by redirecting through other channels, such as registered representatives or traders, potentially biased research that is not subject to the SRO objectivity safeguards.

The Exchange believes it is important to maintain such communications as research reports subject to the SRO Rules and those principally responsible for their preparation as research analysts. However, the proposed rule changes would create a limited exemption from the NYSE Rule 344 registration requirements for non-research personnel that produce research reports. Thus, for example, the registration requirements would not apply to a registered representative who occasionally produces communications that technically meet the definition of a research report and are distributed to fifteen (15) or more clients, or a trader who similarly produced market commentary that included an analysis of an individual security—also considered a research report under NYSE rules.

The Exchange believes that the registration and qualification requirements were intended for those individuals whose principal job function is to produce research, while the balance of the SRO Rules are intended to foster objective analysis of equity securities and transparency of certain conflicts and to provide beneficial information to investors.

Restrictions on Investment Banking Department Relationship With Research Department

Exchange Rule 472(b)(3) permits investment banking and other non-research employees, other than legal and compliance personnel, to review a research report before publication only to verify the factual accuracy of information in the report or identify a potential conflict of interest. This provision also requires that an authorized legal or compliance official act as intermediary for all such permissible communications.

The proposed rule changes eliminate the pre-publication review of research by investment banking and other non-research personnel, other than by legal and compliance. The NYSE believes that the factual review of a research report by investment banking personnel is unnecessary in light of the numerous other sources available to verify factual information, including the subject company, and only raises concerns about the objectivity of the report. According to the NYSE, such review may invite pressure on a research analyst from investment banking personnel that could be difficult to monitor. Such factual reviews are not permitted under the terms of the Global Settlement and the Exchange staff is not aware of any evidence that the factual accuracy of research produced by firms subject to the Global Settlement has suffered. Moreover, the NYSE believes that legal and compliance can adequately perform a conflict review without sharing draft research reports with investment banking personnel and other non-research personnel.

Restrictions on Publishing Research Reports and Public Appearances

NYSE Rule 472(f) sets forth ''quiet periods'' during which a member organization is prohibited from publishing or otherwise distributing a research report and a research analyst is prohibited from making a public appearance. These quiet periods apply in two circumstances: (1) After a public offering of securities and (2) before and after the expiration, waiver or termination of a lock-up agreement entered into by a member organization with a subject company that restricts the sale of securities by that company or its shareholders.

With respect to the former, NYSE Rule 472 establishes different quiet periods depending on whether the offering is an initial public offering (''IPO'') or a secondary offering and whether the member organization acted as manager or co-manager or as an underwriter or dealer. In the current NYSE Rule 472, a member organization that acted as a manager or co-manager of an IPO may not publish or otherwise distribute research for 40 calendar days following the date of the offering; all other member organizations that participated as an underwriter or dealer in the offering are subject to a 25-day quiet period. For secondary offerings, a ten-day quiet period applies only to the manager and co-manager of the offering.

NYSE Rule 472(f)(5) contains an exception that permits publication and distribution of research or a public appearance concerning the effects of significant news or a significant event on the subject company during the quiet period. Prior guidance by the Exchange has interpreted this exception to apply only to news or events that have a material impact on, or cause a material change to, a company's operation, earnings or financial condition. There is also an exception in NYSE Rule 472(f)(2) to the secondary offering quiet period, which permits publication or

[17] An advertisement or sales literature concerning a registered investment company that includes a performance ranking or performance comparison of the investment company with other investment companies that is not generally published or are created by the fund or its affiliates must be filed with the Department at least 10 business days prior to first use or publication. NASD Rule 2210(c)(4)(A).

[18] 17 CFR 230.134.

[19] *See* Section 15D of the Act.

distribution of research pursuant to Securities Act Rule 139[20] regarding a subject company with ''actively-traded securities'' as defined in Regulation M of the Act.[21]

The Exchange proposes several changes to the quiet periods surrounding public offerings and the releases of lock-up agreements:

(a) *Quiet periods following public offerings of securities*

The proposed rule changes to NYSE Rule 472(f) create a uniform IPO quiet period for all underwriters and dealers participating in the public offering. The amended rule applies a 25-day quiet period to managers, co-managers, underwriters and dealers that participate in an IPO. The NYSE believes that the objectivity and disclosure safeguards of NYSE Rule 472 and other research rule provisions have obviated the need for a longer quiet period for managers and co-managers than other underwriters and dealers participating in an IPO. The NYSE believes that these changes will promote an enhanced flow of valuable information to investors and maintain consistency with SEC regulations.

In addition, the proposed rule changes eliminate quiet periods following a secondary offering. According to the NYSE, the success of the SRO Rules in mitigating research analyst conflicts of interest supports the repeal of the quiet periods following secondary offerings. The NYSE believes this will expand the ability of member organizations to release more information regarding a subject company's prospects and financial condition, without sacrificing the reliability of the research.

(b) *Quiet periods around releases of lock-up agreements*

The proposed rule changes reduce the quiet period surrounding the expiration, termination or waiver of a lock-up agreement from the current 15-day period to a five-day period. The Exchange believes that some quiet period must be maintained around the release of lock-up agreements because an analyst can conceivably write a research report after an offering with an honestly held positive opinion, but advantageously time the publication of the report for inappropriate reasons. Also, the NYSE believes that absent a quiet period around the expiration, termination or waiver of a lock-up agreement, member organizations may selectively time the issuance of ''booster shot'' reports intended to raise the stock price of a company just before locked-up shares become freely saleable into the market by a company or its major shareholders. NYSE believes a five-day quiet period strikes a balance between guarding investors against the selective timing of the issuance of research and allowing the prompt dissemination of valuable information flow to the marketplace.

While the Exchange may not have jurisdiction over some of the participants to such agreements (*e.g.,* the company and its shareholders), it does retain jurisdiction over its member organizations that can issue research and, as such, can limit the potential for any untoward conduct by maintaining this prohibition.

Lastly, the Exchange notes the recent strength of the IPO market and that such offerings generally contain lock-up agreements. Accordingly, the Exchange believes that at this juncture it is appropriate to maintain a form of prohibition absent some compelling empirical data/evidence to the contrary.

(c) *Exceptions to quiet periods*

As noted above, Exchange Rule 472(f)(5) contains an exception that permits publication and distribution of research or a public appearance concerning the effects of significant news or a significant event on the subject company during the quiet period, provided the reports are pre-approved in writing by legal or compliance personnel. The Exchange has interpreted this exception to apply only to news or events that have a material impact on, or cause a material change to, a company's operations, earnings or financial condition and that generally would trigger the filing requirements of SEC Form 8–K. The Exchange has previously not interpreted the exception to include earnings announcements absent some other significant news or significant event because these announcements generally are not causal events or news items that materially affect a company's operations, earnings or financial condition.

The Exchange believes that an amendment to NYSE Rule 472 is necessary to include earnings announcements in this exception. Accordingly, the proposed rule changes provide that an announcement of earnings is included in the exception to the quiet periods for significant news or events. The NYSE believes that this amendment will promote the flow of potentially important or noteworthy information to the market and investors in a timely manner.[22] According to the NYSE, the announcement of a change to earnings estimates or a release of earnings that vary from street expectations will, in many instances, be accompanied by an announcement of some type of causal events. Further, the NYSE believes that earnings announcements and guidance are necessary pipelines of information for research analysts to support the basis of their investment recommendations.

Restrictions on Personal Trading by Research Analysts

NYSE Rule 472(e) generally restricts the trading of securities by research analyst accounts.[23] Specifically, the Rule prohibits any research analyst account from:

- Purchasing or receiving any securities before the issuer's initial public offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows;
- Purchasing or selling any security issued by a company that the research analyst follows, or any option or derivative of such a security, for a period beginning thirty (30) days before and ending five (5) days after the publication of a research report concerning the company or a change in a rating or price target of the company's securities; and
- Purchasing or selling any security or option or derivative of such a security in a manner inconsistent with the analyst's most recent recommendation.

NYSE Rule 472(e)(4) includes exceptions to these trading restrictions for certain trades that:

- Are due to unanticipated significant changes in an analyst's personal financial circumstances;
- Occur within the 30-day/five-day trading blackout around the publication of a report if the report is issued due to a significant news event;
- Occur within 30 days after an analyst initiates coverage of a company;
- Involve shares of diversified registered investment companies; and
- Involve interests in an investment fund over which neither the analyst nor a household member has any investment discretion or control, the research analyst accounts collectively own no more than 1% of the fund's assets, and the fund invests no more

[20] 17 CFR 230.139.

[21] 17 CFR 242.101.

[22] *See* Securities Act Release No. 8400 and Securities Exchange Act Release No. 49424 (March 16, 2004), 69 FR 15594 (March 25, 2004).

[23] According to the NYSE, although NYSE Rule 472 does not employ the term ''research analyst account,'' the trading restrictions of NYSE Rule 472(e) and NASD Rule 2711(g) are coterminous. *See* NYSE Rule 472.40.

than 20% of its assets in securities of issuers principally engaged in the same types of business as companies that the analyst follows.

NYSE Rule 472(e)(5) currently requires legal or compliance personnel to pre-approve all trades of persons who oversee research analysts to the extent such trades involve equity securities of subject companies covered by the analysts they oversee.

The proposed rule changes would revise the exceptions to the personal trading restrictions to create an exemption for member organizations that voluntarily choose to prohibit their analysts from owning shares of the companies they cover. The proposed exemption allows such a firm to adopt policies that permit research analysts to divest their holdings in an orderly and controlled manner with the oversight of the firm's legal and compliance personnel.

With the proposed changes, NYSE Rule 472 allows member organizations that adopt ownership bans to implement the same divestiture procedures, regardless of when they adopted such a policy, that were permitted when NYSE Rule 472 first became effective, to allow analysts to divest their holdings.

NASD has chosen to amend their Rule 2711(g)(5) by expanding the exceptions to the personal trading restrictions for investment funds to include investments in any fund (including a registered diversified investment company), so long as neither the analyst nor a member of his or her household is aware of the fund's holdings or transactions other than through periodic shareholder reports and sales material based on such reports, and provided that the research analyst account owns no more than 1% of the assets of the fund, eliminating the 20% asset diversification threshold. NYSE understands that the NASD reasons that this change will simplify the ability of analysts to invest in, for example, mutual funds and hedge funds that do not disclose their holdings other than through periodic reports or sales material based on such reports. Also, according to the NYSE, NASD reasons that absent discretion or control of an account or the contemporaneous knowledge of the account's transactions, a minimal investment by a research analyst will not influence the analyst to compromise research objectivity to benefit the account.

The Exchange is not proposing to make this change. The Exchange believes that the 20% asset diversification threshold must be retained for an account to be eligible for the exception. The Exchange believes that maintaining the 20% asset diversification threshold has the potential for limiting possible conflicts of interest in the issuance research reports by analysts with a vested interest in a fund. The Exchange seeks comment on whether to maintain this separate requirement.

Disclosure Requirements

NYSE Rule 472(k) imposes a number of disclosure requirements on member organization research reports and research analyst public appearances in which the analyst makes a recommendation or offers an opinion concerning an equity security. NYSE Rule 472(k) requires specific disclosures of conflicts of interest, including whether the member organization, the research analyst or a member of the analyst's household has a financial interest in the subject company's securities or the member organization or its affiliates have received compensation from the subject company. NYSE Rule 472(k) also requires a number of non-conflicts related disclosures in research reports, including the meanings of ratings used in the member organization's rating system if the research report contains a rating, the distribution of buy, hold, and sell ratings assigned by the member organization if a research report contains a rating, and a price chart that plots the assignment or changes of the analyst's ratings and price targets for the subject company against the movement of the subject company's stock price over time if the research report contains a rating or a price target. According to the NYSE, the required disclosures must be presented on the front page of research reports or the front page must refer to the page on which the disclosures are found. Electronic research reports may utilize hyperlinks to the disclosures. Disclosures and references to disclosures must be clear, comprehensive and prominent.

The Exchange is concerned that the sheer volume of the disclosures required presently may obscure the overall message that the disclosures are attempting to convey: That the member organization or research analyst faces conflicts of interest with respect to the subject company. The NYSE believes that this problem is compounded by the fact that many member organizations include additional disclosures required by other jurisdictions, as well as sometimes lengthy disclaimers for their own purposes. To better realize the goal of the disclosure requirements, the Exchange believes that it would be more effective and useful to investors to know immediately whether the member organization or research analyst producing the research report is conflicted, while providing the reader the means to learn more about these conflicts if he or she chooses to do so. The NYSE believes that this disclosure requirement would ensure that investors obtain prominent disclosure that a research-related conflict exists, and would permit investors to find additional information about the conflict on the member organization's Web site.

To that end, the proposed rule changes would amend NYSE Rule 472(k)(1) to permit members, in lieu of publication in the research report itself, to disclose their conflicts of interest by including a prominent warning on the cover of a research report that such conflicts of interest exist, together with information on how the reader may obtain more detail about these conflicts on the member's Web site. This alternative method of disclosure would then require a member to include detailed conflicts information on its Web site. According to the NYSE, member organizations could still opt to make all of the disclosures in the report itself; however, a Web-based disclosure system can effectively alert investors that the firm has a conflict of interest that could affect the objectivity of a research report. The NYSE believes that it also provides a streamlined disclosure alternative by placing disclosures in an accessible and convenient location and minimizes costs for many firms.

Specifically, the proposed rule changes would require any member that has a conflict of interest or whose research analyst has a conflict of interest to state prominently on the front page of the research report the following:

''[Name of firm and/or the research analyst preparing this report] has a conflict of interest that may affect the ability of the firm or the analyst to provide objective analysis about the company. For more information about this conflict of interest, please see [Reference to the firm's Web site].''

According to the NYSE, conflicts of interest, as defined by the proposed rule, include any of the circumstances that currently require disclosure under NYSE Rule 472(k)(1), including if the research analyst or household member has a financial interest in the subject company; if the member organization owns 1% or more of any class of common equity securities of the subject company; receipt by the member organization of investment banking and other compensation from the subject company or the expectation to seek investment banking compensation; if the member makes a market in the

subject company's securities; if the research analyst or household member serves as an officer, director or advisory board member of the subject company; and any other actual, material conflict of interest of the research analyst or member organization of which the research analyst knows or has reason to know at the time of publication of the research report.

The proposed amendment would still require the Web-based disclosures concern actual conflicts of interest, rather than the possibility of such conflicts. According to the NYSE, a general ''health warning'' that conflicts of interest ''may or may not'' exist are neither useful nor effective.

The Exchange seeks comment on whether a similar approach could be used for disclosure of conflicts in public appearances.

The proposed rule changes would not permit Web site disclosure for certain other disclosures, such as the meanings of the member's ratings and the price chart showing the subject company's price movements against the analyst's assignments of ratings and price targets, which still require disclosure in the research report. The NYSE believes that these disclosures provide useful information that should be accessible to investors in the report and do not lend themselves easily to the terse material conflict warning that would appear on the cover of the report. Accordingly, they must be readily available to investors in the report itself.

Prohibition on Retaliation Against Research Analysts

NYSE Rule 472(g)(2) prohibits any member organization and any employee of a member organization who is involved with the member organization's investment banking activities from directly or indirectly retaliating against a research analyst as a result of an unfavorable research report or public appearance that may adversely affect the member organization's current or prospective investment banking relationship with a subject company.

The Exchange believes that under no circumstances is retaliation appropriate against a research analyst who expresses his or her genuine beliefs about a subject company. As such, the proposed rule changes extend the retaliation prohibition to all employees, not just those involved in investment banking activities.

Other Changes

The proposed rule amendments would also make certain other changes. First, the proposal would amend NYSE Rule 472.40 to clarify that the trading restrictions applicable to research analysts and household members excludes an investment company registered under the Investment Company Act of 1940 over which the research analyst or household member has discretion or control, provided that the research analyst or household member has no financial interest in such investment company, other than a performance or management fee.

Second, the proposed rule changes would amend NYSE Rule 472(b) to extend the prohibition on research analysts from engaging in communications about an investment banking services transaction with a current or prospective customer in the presence of investment banking department personnel or company management to communications with internal sales personnel. This amendment is intended to further mitigate potential conflicts of interest in intra-office communications.

In addition, changes are proposed to delete the term ''member'' as used in NYSE Rule 344 to reflect the recent reorganization of the Exchange.[24]

The Exchange will announce the effective date of the proposed rule change in an Information Memo to be published no later than 60 days following Commission approval.

2. NYSE's Statutory Basis

The statutory basis for the proposed rule changes is Section 6(b)(5) of the Act[25] which requires, among other things, that the rules of the Exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest. The Exchange believes that the proposed rule changes will enhance the clarity and consistency of the research analyst rules, thereby facilitating the goals of reducing conflicts of interest and fraudulent and manipulative practices, and providing investors with more objective, reliable information upon which to base investment decisions.

3. NASD's Purpose

Background

Beginning in 2002, NASD and the New York Stock Exchange implemented a series of rule changes to improve objectivity and transparency in equity research and provide investors with more reliable and useful information to make investment decisions. The rules were intended to restore public confidence in the validity of research and the veracity of research analysts, who are expected to function as unbiased intermediaries between issuers and the investors who buy and sell their securities. The trustworthiness of research had eroded due to the pervasive influences of investment banking and other conflicts that had manifest themselves during the market boom of the late 1990s.

Generally, the SRO Rules require clear, comprehensive and prominent disclosure of conflicts of interest in research reports and public appearances by research analysts. The rules further prohibit certain conduct—investment banking personnel involvement in the content of research and determination of analyst compensation, for example—when the conflicts are considered too pronounced to be cured by disclosure.

The SROs enacted the research analyst conflict rules in two primary tranches and, more recently, adopted additional amendments prohibiting analysts from participating in road shows. In addition, the SROs supplemented their rulemaking with two joint memoranda that provided interpretive guidance to their members on a number of issues.[26] The NASD and NYSE rules and interpretations are virtually identical and are intended to operate uniformly.

On May 10, 2002, the SEC approved the first round of SRO Rules (''Round 1 Amendments'')—new NASD Rule 2711(''Research Analysts and Research Reports'') and amendments to NYSE Rules 351 (''Reporting Requirements'') and 472 (''Communications with the Public'')—which implemented basic reforms to separate research from investment banking and to provide more extensive disclosure of conflicts of interest in research reports and public appearances.[27] On July 29, 2003, the SEC approved a second set of amendments to the SRO Rules (''Round

[24] *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (order approving SR–NYSE–2005–77).

[25] 15 U.S.C. 78f(b)(5).

[26] *See NASD Notices to Members* 02–39 (July 2002) and 04–18 (March 2004).

[27] *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) (order approving SR–NASD–2002–021 and SR–NYSE–2002–09).

2 Amendments'') [28] that achieved two purposes. First, the Round 2 Amendments implemented SRO initiatives to further promote analyst objectivity and transparency of conflicts in research reports. Second, the Round 2 Amendments implemented changes mandated by the Sarbanes-Oxley.[29] Sarbanes-Oxley required adoption by July 30, 2003 of rules ''reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances,'' and set forth certain specific rules to be promulgated. Many of those rules had already been adopted in the first round of SRO rulemaking. The Round 2 Amendments therefore implemented those specific Sarbanes-Oxley rules that did not already exist and conformed the language of the SRO Rules as necessary.

As part of the Round 2 Amendments, the SEC approved rules requiring registration and qualification of research analysts. NASD Rule 1050 requires an associated person who functions as a research analyst on behalf of a member to register as such and pass a qualification examination. For the purposes of this requirement, a ''research analyst'' is defined as ''an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a 'research report,' '' as that term is defined in NASD Rule 2711.

The SROs jointly developed and implemented the Research Analyst Qualification Examination (Series 86/87). The examination consists of an analysis part (Series 86) and a regulatory part (Series 87). Prior to taking either the Series 86 or 87, a candidate also must have passed the General Securities Registered Representative Examination (Series 7), the Limited Registered Representative Examination (Series 17), or the Canada Module of Series 7 (Series 37 or 38).

The SRO Rules provide three exemptions from the Series 86 examination. First, there is an exemption for research analysts who have passed Levels I and II of the Chartered Financial Analyst (''CFA'') examination and have either (1) completed the CFA Level II within 2 years of application or registration, or (2) functioned as a research analyst continuously since having passed the CFA Level II.[30] A second exemption is available to research analysts who have passed Levels I and II of the Chartered Market Technician Examination and produce only ''technical research reports'' as that term is defined under the SRO Rules.[31] A third exemption—from both the Series 86 and Series 87—is available to persons who may be ''associated persons'' of a member who are employed by that member's foreign affiliate but who produce research on behalf of the U.S. member. To be eligible for the exemption, three primary conditions must be met: (1) A foreign analyst must comply with the registration and qualification requirements or other standards in an SRO-approved foreign jurisdiction whose regulatory scheme reflects a recognition of principles that are consonant with the SRO Rules and qualification standards; (2) the U.S. member must apply all of the other SROs rules and other member firm standards to the research produced by the foreign affiliate and foreign research analysts that qualify for, and rely upon, the exemption; and (3) the U.S. member must include a specific disclosure that the research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member who are not registered/qualified as a research analyst with the NYSE or NASD, but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that have been recognized for these purposes by the NYSE and NASD. Currently, the following jurisdictions satisfy the applicable SRO standards noted above: China, Hong Kong, Japan, Malaysia, Singapore, Thailand and the United Kingdom.

On April 21, 2005, the Commission approved an amendment to the SRO Rules that prohibits research analysts from participating in a road show related to an investment banking services transaction and from communicating with current or prospective customers in the presence of investment banking department personnel or company management about such an investment banking services transaction.[32] Additionally, the amendment prohibits investment banking personnel from directing a research analyst to engage in sales and marketing efforts and other communications with a current or prospective customer about an investment banking services transaction.

Joint SRO Report

As part of its May 2002 order approving new NASD Rule 2711, the SEC noted that it would require NASD and the NYSE to assess the success of the rules after they have been in place for a suitable amount of time. In April 2005, the SEC staff requested a joint comprehensive report on the operation and effectiveness of the rules, together with any recommendations for changes or additions to the rules. The SRO staffs submitted that report to the SEC on December 22, 2005.

The SRO staffs concluded in the report that the SRO Rules have been effective in helping to restore integrity to research by minimizing the influences of investment banking and promoting transparency of other potential conflicts of interest. However, the SRO staffs further expressed their belief that certain changes to the SRO Rules would further improve their effectiveness by striking an even better balance between ensuring objective and reliable research on the one hand and permitting the flow of information to investors and minimizing costs and burdens to members on the other.

In formulating the recommendations for rule changes in the report, the SROs considered extensive data and qualitative feedback regarding the range of activities under the rule, including examinations, sweeps, enforcement activities, interpretive issues and registration and qualification of research analysts. The SROs also surveyed academic studies and media reports about the impact of the rules; compared the SRO Rules to the provisions of the ''Global Settlement'' among the SROs, the Commission, the North American Securities Administrators Association and ten [33] of the largest investment banks; reviewed industry comment letters; and consulted with various industry representatives. If approved, the proposed rule changes would implement NASD staff's

[28] *See* Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 45875 (August 4, 2003) (order approving SR–NASD–2002–154 and SR–NYSE–2002–49).

[29] *See* Section 15D of the Act, 15 U.S.C. 78o-6.

[30] *See* Securities Exchange Act Release No. 49464 (March 24, 2004), 69 FR 16628 (March 30, 2004) (order approving SR–NASD–2004–020 and SR–NYSE–2004–03).

[31] *See* Securities Exchange Act Release No. 51240 (February 23, 2005), 70 FR 10451 (March 3, 2005) (notice of immediate effectiveness of SR–NASD–2005–022 and SR–NYSE–2005–12).

[32] *See* Securities Exchange Act Release No. 51593 (April 21, 2005), 70 FR 22168 (April 28, 2005) (order approving SR–NASD–2004–141 and SR–NYSE–2005–24). As defined under NASD Rule 2711(a)(3) and NYSE Rule 472.20, ''investment banking services'' includes, without limitation, acting as an underwriter or participating in a selling group in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, private investment, public equity transactions (PIPEs), or similar investments; or serving as placement agent for the issuer.

[33] *See* SEC Litigation Release No. 18438, 2003 SEC LEXIS 2601 (October 31, 2003). In August 2004, two additional firms settled with regulators under the same terms as the April 2003 Global Settlement.

recommendations in the SRO report. A discussion of the proposed rule changes is set out below.

Exception to Definition of ''Research Report''

The proposed rule changes would expressly exclude from the definition of ''research report'' sales material regarding open-end registered investment companies that are not listed or traded on an exchange and public direct participation programs (''DPPs''). ''Research report'' is defined in Rule 2711(a)(9) as a ''written (including electronic) communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.'' Since these investment companies and DPPs are ''equity securities'' as defined in Section 3(a)(11) of the Securities Exchange Act of 1934, related sales material that contains an analysis of those securities and information sufficient upon which to base an investment decision technically is covered by the definition. For the following reasons, NASD believes sales material for both types of products should be excluded from the definition of ''research report.''

According to NASD, sales material regarding investment companies is already subject to a separate regulatory regime, including NASD Rule 2210 and SEC Rule 482, and all advertisements and sales literature regarding registered investment companies must be filed with the NASD Advertising Regulation Department within ten business days of first use.[34] Moreover, the NASD staff does not believe that the conflicts underpinning the SRO Rules are manifest to the same extent with respect to research on open-end investment companies that are not listed or traded on an exchange.

Similarly, NASD believes that sales material for public DPPs also do not present the same conflicts of interest or other regulatory concerns as research on exchange-traded securities. Publicly offered DPPs typically are limited partnerships or limited liability companies whose equity interests do not trade on an exchange and do not have an active secondary market. The DPP sponsor generally produces its sales material and sells interests in the DPP during an initial public offering on a best efforts basis. This sales material typically consists of ''tombstone'' advertisements whose content is strictly limited under SEC Rule 134, or supplemental sales literature that must be accompanied or preceded by a prospectus for the DPP. Additionally, unlike equity research, NASD Rule 2210(c)(2)(B) requires members to file advertisements and sales literature concerning public DPPs with the Department within ten business days of first use. Thus, NASD staff reviews such sales material before or shortly after it is distributed to the public.

Although ETFs are open-end investment companies, they trade on an exchange and therefore those funds would not be excepted from the definition of ''research report.'' NASD requests comment on whether ETFs should also be excluded from the definition. In addition, NASD believes that NASD Advertising Regulation Department review of registered investment company and public DPP sales material reduces the likelihood that it will contain content that is not fair and balanced.

Exception to Registration and Qualification Requirements for Non-Research Personnel that Produce ''Research Reports''

The SRO Rules, in accordance with the mandates of Sarbanes-Oxley, are constructed such that the author of a communication that meets the definition of a ''research report'' is a ''research analyst,'' irrespective of his or her title or primary job. NASD believes that this prevents firms from circumventing the rules by redirecting through other channels, such as registered representatives or traders, potentially biased research that is not subject to the SRO objectivity safeguards.

NASD believes it is important to maintain such communications as ''research reports'' subject to the rules and those principally responsible for their preparation as ''research analysts.'' However, the proposed rule changes would create a limited exemption from the NASD Rule 1050 registration requirements for non-research personnel that produce research reports. Thus, for example, the registration requirements would not apply to a registered representative who occasionally produces communications that technically meet the definition of a research report and are distributed to 15 or more clients, or a trader who similarly produced market commentary that included an analysis of an individual security—also considered a research report under NASD rules. NASD believes that the registration and qualification requirements were intended for those individuals whose principal job function is to produce research, while the balance of the SRO Rules are intended to foster objective analysis of equity securities and transparency of certain conflicts and to provide beneficial information to investors.

Restrictions on Investment Banking Department Relationship With Research Department

Currently, NASD Rule 2711(b) permits investment banking and other non-research employees, other than legal and compliance personnel, to review a research report before publication only to verify the factual accuracy of information in the report or identify a potential conflict of interest. The rule further requires that an authorized legal or compliance official act as intermediary for all such permissible communications.

The proposed rule change would eliminate paragraph (b)(3) of NASD Rule 2711 that permits pre-publication review of research by investment banking and other non-research personnel, other than by legal and compliance. NASD believes that review of facts in a report by investment banking and other non-research personnel is unnecessary in light of the numerous other sources available to verify factual information, including the subject company, and only raises concerns about the objectivity of the report. According to NASD, such review may invite pressure on a research analyst from such personnel that could be difficult to monitor. Such factual review is not permitted under the terms of the Global Settlement, and NASD staff is not aware of any evidence that the factual accuracy of research produced by Global Settlement firms has suffered. Moreover, NASD believes that legal and compliance can adequately perform a conflict review without sharing draft research reports with investment banking or other non-research personnel.

Restrictions on Publishing Research Reports and Public Appearances

NASD Rule 2711(f) sets forth ''quiet periods'' during which a member is prohibited from publishing or otherwise distributing a research report and a research analyst is prohibited from making a public appearance. These quiet periods apply in two circumstances: (1) After a public offering of securities and (2) before and

[34] An advertisement or sales literature concerning a registered investment company that includes a performance ranking or performance comparison of the investment company with other investment companies that is not generally published or is created by the fund or its affiliates must be filed with the NASD Advertising Regulation Department at least ten business days prior to first use or publication. NASD Rule 2210(c)(4)(A).

after the expiration, waiver or termination of a lock-up agreement entered into by a member with a subject company that restricts the sale of securities by that company or its shareholders.

With respect to the former, NASD Rule 2711(f) establishes different quiet periods depending on whether the offering is an IPO or secondary offering and whether the member acted as manager or co-manager. A member that acted as a manager or co-manager of an IPO may not publish or otherwise distribute research for 40 calendar days following the date of the offering; all other members that participated as an underwriter or dealer in the offering are subject to a 25-day quiet period. A ten-day quiet period applies only to the manager and co-manager of a secondary offering.

NASD Rule 2711(f) contains an exception that permits publication and distribution of research or a public appearance concerning the effects of ''significant news or a significant event on the subject company'' during the quiet period. The SRO staffs have interpreted this exception to apply only to news or events that have a material impact on, or cause a material change to, a company's operation, earnings or financial condition. Another exception to the secondary offering quiet period permits publication or distribution of research pursuant to SEC Rule 139 regarding a subject company with ''actively-traded securities'' as defined in SEC Regulation M.

The proposed rule changes would make several changes to the quiet period requirements surrounding public offerings and lock-up expirations. First, the proposed rule changes would unify the IPO quiet periods for all underwriters and dealers participating in the offering. As such, the proposed rule change would amend the rules to apply a 25-day quiet period to managers, co-managers, underwriters and dealers that participate in an IPO. NASD believes that the lengthier quiet period for managers and co-managers was intended to allow other voices to publicly analyze and value a subject company before managers and co-managers—those members vested with the greatest interest in seeing the stock price of the subject company go up—weighed in with their reports and public appearances. According to NASD, at the time this provision was enacted, it had been commonplace for managers and co-managers to initiate coverage with a positive rating on a company they just brought public, irrespective of whether the stock price had already risen well beyond the public offering price.

However, NASD recently has observed more circumstances in which managers and co-managers have been neutral or even negative with their initial post-quiet period report based on price appreciation or other factors. Accordingly, NASD believes that the objectivity safeguards of the SRO Rules and the certification requirement of SEC Regulation AC have obviated the need for a longer quiet period for managers and co-managers than other underwriters and dealers participating in an IPO. NASD also believes the change would promote more information flow to investors and consistency in rule application.

For some of the same reasons, the proposed rule changes would eliminate the quiet periods following a secondary offering. Coupled with the protections of SEC Regulation AC and other SRO Rule provisions, NASD believes that repeal of this provision would advance the SEC's purpose in its Securities Offering Reform rules [35] to increase the flow of information to investors about issuers, without sacrificing the reliability of the research. Along those lines, the existing SRO Rules already provide exceptions for research reports on issuers with ''actively-traded securities'' as defined in SEC Regulation M.

Second, the proposed rule changes would eliminate the quiet periods around the expiration, waiver or termination of a lock-up agreement provided, as discussed below, that members provide an additional certification, similar to Regulation AC, to having a bona fide reason for issuing research during such periods. According to NASD, the quiet periods surrounding lock-up releases are intended to prevent abusive ''booster shot'' reports by members to raise the stock price of a company just before previously locked-up shares become freely saleable into the market by a company or its major shareholders.

While NASD remains concerned that these periods pose heightened concerns about biased research, the changes to internal structure of investment banks and the other safeguards imposed by the current rules appear to have addressed these concerns and obviate the need for a quiet period that inhibits the flow of information to the marketplace. NASD has observed, for example, that negative information about a subject company is sometimes released by that company during the quiet periods, but the quiet periods prevent some members from providing analysis of this negative information to investors in a timely fashion. NASD believes that elimination of the quiet periods around lock-ups will permit such information to flow to investors without sacrificing the overall objectivity of the research.[36]

NASD Rule 2711(f) would continue to require a reasonable basis for any recommendation or price target and the valuation method used to determine a price target, while SEC Regulation AC requires certification that any such recommendation or price target is genuinely held. Accordingly, NASD believes that an effective alternative to the quiet periods would be to require that members provide an additional certification, similar to Regulation AC, to having a bona fide reason for issuing research within 15 days before and after a lock-up expiration and was not otherwise issued for any reason pertaining to conditioning the market price of the security that was the subject of the research report. NASD would set forth the language of the certification in a *Notice to Members* upon approval of the proposed rule change.

In the Joint Report, NYSE recommends an alternative proposal to reduce the duration of the quiet periods and expand the exception for research concerning the effects of significant news or a significant event on the subject company to include earnings related announcements. NASD believes its proposal is a more viable means to ensure timely information flow to investors than such an alternative approach. As the SROs have previously noted in their March 2004 joint interpretive memorandum, earnings announcements do not generally fall within the exception because ''an earnings announcement itself generally is not a causal event or news item that materially affects a company's operations, earnings or financial condition.'' NASD believes that a carve-out for earnings related announcements could lead to lock-up expirations timed to coincide with such announcements—many of which are scheduled regularly—thereby essentially negating the quiet period altogether. NASD believes that this is problematic because the significant news exception applies not only to quiet periods around lock-up expirations, but also to the quiet periods after an IPO and the blackout

[35] *See* Securities Act Release No. 8591 (July 19, 2005), 70 FR 44722 (August 3, 2005).

[36] NASD believes that practical limitations inhibit effective administration of the provision. Most notably, NASD rules do not require lock-up agreements, and NASD often has no jurisdiction over parties to them, including the subject company and its non-member shareholders. NASD therefore cannot always be the arbiter of whether certain facts constitute, for example, a waiver or termination of a lock-up—a significant impediment to our ability to enforce this provision.

periods during which analysts are prohibited from trading in securities they cover.

Restrictions on Personal Trading by Research Analysts

NASD Rule 2711(g) generally restricts the trading of securities by ''research analyst accounts.'' [37] Specifically, the rule prohibits any research analyst account from:

- Purchasing or receiving any securities before the issuer's initial public offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows;
- Purchasing or selling any security issued by a company that the research analyst follows, or any option or derivative of such a security, for a period beginning 30 days before and ending five days after the publication of a research report concerning the company or a change in a rating or price target of the company's securities; and
- Purchasing or selling any security or option or derivative of such a security in a manner inconsistent with the analyst's most recent recommendation.

NASD Rule 2711(g) includes certain limited exceptions to these trading restrictions.

The proposal would make two principal changes to the personal trading restrictions. First, the proposed rule changes would revise the exceptions to the personal trading restrictions for investment funds in paragraph (g)(5). Under the proposed rule changes, the personal trading restrictions would not apply to investments in any fund (including a registered diversified investment company), so long as neither the analyst nor a member of his or her household is aware of the fund's holdings or transactions other than through periodic shareholder reports and sales material based on such reports, and provided that the research analyst account owns no more than 1% of the assets of the fund.

NASD believes that this change would simplify the ability of analysts to invest in, for example, mutual funds and hedge funds that do not disclose their holdings other than through periodic reports or sales material based on such reports. According to NASD, absent discretion or control of an account or the contemporaneous knowledge of the account's transactions, a minimal investment by a research analyst will not influence the analyst to compromise research objectivity to benefit the account. NASD understands that NYSE is proposing to retain the 20% asset diversification threshold to be eligible for the exception. NASD seeks comment on whether to maintain that separate requirement.

Second, the proposed rule changes would create an exemption for firms that voluntarily choose to prohibit their analysts from owning shares of the companies they cover. The exemption would provide a means for analysts at such firms to divest their holdings without violating the blackout period and trading against recommendation prohibitions.

The exemption would allow such a firm to adopt policies that permit research analysts to divest their holdings in an orderly and controlled way with the oversight of the firm's legal and compliance personnel. The SROs permitted firms to allow their analysts to divest their holdings in the same manner when the rule first became effective by delaying for a certain time period implementation of the personal trading restrictions for firms that wished to ban ownership. With the recommended change, NASD Rule 2711(g) would allow firms that adopt ownership bans to implement the same divestiture procedures regardless of when they adopted such a policy.

Disclosure Requirements

NASD Rule 2711(h) imposes a number of disclosure requirements on member research reports and research analyst public appearances in which the analyst makes a recommendation or offers an opinion concerning an equity security. NASD Rule 2711(h) requires specific disclosures of conflicts of interest, including where the member firm, the research analyst or a member of the analyst's household has a financial interest in the subject company's securities or the member or its affiliates have received compensation from the subject company. NASD Rule 2711(h) also requires a number of other disclosures in research reports that are not directly related to conflicts of interest with the subject company, including the meanings of ratings used in the member's rating system, the distribution of buy, hold, and sell ratings assigned by the member, and a price chart that plots the assignment or changes of the analyst's ratings and price targets for the subject company against the movement of the subject company's stock price over time. The required disclosures must be presented on the front page of research reports or the front page must refer to the page on which the disclosures are found. Electronic research reports may utilize hyperlinks to the disclosures. Disclosures and references to disclosures must be clear, comprehensive and prominent.

According to NASD, these required disclosures promote transparency and provide important information to enable investors to assess the value of the research in making their investment decision. However, NASD believes that it would be equally effective and useful for investors to know immediately whether the member firm or research analyst producing the research report is conflicted, while providing the reader the means to learn more about these conflicts if he or she chooses to do so.

To that end, the proposed rule changes would amend the rules to permit members, in lieu of publication in the research report itself, to disclose their conflicts of interest by including a prominent warning on the cover of a research report that such conflicts of interest exist, together with information on how the reader may obtain more detail about these conflicts on the member's Web site. This alternative method of disclosure would then require a member to include detailed conflicts information on its Web site. Members could still opt to make all of the disclosures in the report itself; however, NASD believes that a Web-based disclosure system would be at least as effective and would minimize costs for many firms.

Specifically, the proposed rule changes would require any member that has a conflict of interest or whose research analyst has a conflict of interest to state prominently on the front page of the research report the following:

> [Name of firm and/or the research analyst preparing this report] has a conflict of interest that may affect the ability of the firm or the analyst to provide objective analysis about the company. For more information about this conflict of interest, please see [Reference to the firm's Web site].

The proposed rule changes would define ''conflict of interest'' to include any of the circumstances that currently require disclosure under NASD Rule

[37] NASD Rule 2711(a)(7) defines the term ''research analyst account'' to include any account in which a research analyst or member of the analyst's household has a financial interest, or over which the analyst has discretion or control, other than an investment company registered under the Investment Company Act of 1940. The proposed rule change would clarify that this definition is intended to except from the definition those registered investment companies that are managed by a research analyst or member of the research analyst's household, provided that the research analyst or household member has no financial interest in such investment other than a performance or management fee. *See* infra page 46. The term does not include a ''blind trust'' account that is controlled by a person other than the research analyst or household member and neither the analyst nor any household member knows of the account's investments or investment transactions.

2711(h), including if the research analyst or member of the research analyst's household has a financial interest in the subject company; if the member owns 1% or more of any class of common equity securities of the subject company; receipt by the member of investment banking and other compensation from the subject company or the intention to seek investment banking compensation; if the member makes a market in the subject company's securities; if the research analyst or a member of the research analyst's household serves as an officer, director or advisory board member of the subject company; and any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication of the research report.

The proposed amendment would still require that Web-based disclosure concern actual conflicts of interest, rather than the possibility of such conflicts. A general ''health warning'' that conflicts of interest ''may or may not'' exist are neither useful nor effective.

NASD specifically seeks comment on whether a similar approach could be used for disclosure of conflicts in public appearances.

The proposed rule changes would not permit Web site disclosure for certain other disclosures, such as the meanings of the member's ratings and the price chart showing the subject company's price movements against the analyst's assignments of ratings and price targets. NASD believes that those disclosures do not lend themselves easily to the terse material conflict warning that would appear on the cover of the report. Accordingly, NASD believes that they should be readily available to investors in the report itself.

Prohibition on Retaliation Against Research Analysts

NASD Rule 2711(j) currently prohibits any member and any employee of a member who is involved with the member's investment banking activities from directly or indirectly retaliating against a research analyst as a result of an unfavorable research report or public appearance that may adversely affect the member's current or prospective investment banking relationship with a subject company.

Under no circumstances is retaliation appropriate against a research analyst who expresses his or her truly held beliefs about a subject company. As such, the proposed rule changes would amend this provision to extend the retaliation prohibition to all employees, not just those involved in investment banking activities.

Other Changes

The proposed rule changes also would make certain other changes. First, the proposed rule change would amend the definition of ''research analyst account'' in NASD Rule 2711(a)(7) to clarify that it excludes an investment company registered under the Investment Company Act of 1940 over which the research analyst or household member has discretion or control, provided that the research analyst or household member has no financial interest in such investment company, other than a performance or management fee.

Second, the proposed rule changes would amend NASD Rule 2711(c)(5)(B) to extend the prohibition on research analysts from engaging in communications about an investment banking services transaction with a current or prospective customer in the presence of investment banking department personnel or company management to also apply to communications with internal sales personnel. NASD believes such change would make the provision consistent with respect to a research analyst's ability to educate investors and sales personnel about an investment banking services transaction.

Finally, the proposed rule changes would clarify that the annual attestation required by NASD Rule 2711(i) must be filed with NASD's Member Regulation Department. NASD notes that the Member Regulation Department has developed a form, available on the NASD Web site, that may be used to make the attestation electronically.

NASD will announce the effective date of the proposed rule changes in a *Notice to Members* to be published no later than 60 days following Commission approval.

4. NASD's Statutory Basis

NASD believes that the proposed rule changes are consistent with the provisions of Section 15A(b)(6) of the Act,[38] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule changes are consistent with the provisions of the Act because it promotes both objective research and increased information flow to investors and does so in an efficient and effective manner.

B. Self-Regulatory Organizations' Statements on Burden on Competition

The NYSE and NASD do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act and whether there are any differences between the NYSE and NASD proposals that present compliance or interpretive issues.

We solicit comment as to how the proposals to relocate disclosures to a member firm's Web site would affect the utility of this information to investors. Please also provide comment on whether relocating disclosures to a member firm's Web site would provide a substantial cost benefit to firms.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Numbers SR–NYSE–2006–78 and/or SR–NASD–2006–113 on the subject line.

[38] 15 U.S.C. 78o–3(b)(6).

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSE–2006–78 and/or SR–NASD–2006–113. The file numbers should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal office of the NYSE and NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Numbers SR–NYSE–2006–78 and/or SR–NASD–2006–113 and should be submitted on or before March 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–548 Filed 1–16–07; 8:45 am]

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[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55071; File No. SR–Phlx–2006–84]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Adopt an Appeal Fee

January 9, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. On December 20, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a $250.00 appeal fee for Appeals to the Board of Governors from decisions of Standing Committees[6] (''Appeal Fee''). An appeal from a decision of the Business Conduct Committee, the Hearing Officer, or a Hearing Panel, pursuant to Exchange Rule 960.9 and By-Law Article XI, Section 11–3, as well as an appeal from a decision of the Nominating, Elections and Governance Committee, pursuant to By-Law Article XI, Section 11–1, will not be subject to the Appeal Fee.[7] The Appeal Fee, which will be paid by appellant at the time of filing an appeal, will be refunded to the appellant in the event the Board of Governors overturns the decision of the Standing Committee.

This fee became effective January 1, 2007. The text of the proposed rule change is available at the Commission's Public Reference Room, the Exchange's Web site at *http://www.phlx.com/exchange/rulefilings/2006/SR–2006–84.pdf*, and at the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange represents that the purpose of the proposed rule change is to reduce the number of frivolous appeals by assessing a fee for all appeals that are upheld. Currently, three Governors hear appeals from decisions of Standing Committees, with the exception of an appeal from the Nominating, Elections and Governance Committee, which is heard by a majority of Governors who are not then candidates for office. The appeal may require several hours of time from each Governor. The Exchange believes that the appeal process is subject to abuse by members, participants, member organizations and participant organizations who incur no downside to filing repeated appeals, whether valid or otherwise. The Exchange believes that, currently, the ease with which an appeal can be filed and receive a ''second look'' at no cost creates a potential for abuse. This fee will become effective January 1, 2007.

An appeal from a decision of the Business Conduct Committee, the Hearing Officer or a Hearing Panel,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange modified the scope of its proposal to exempt appeals of decisions of the Nominating, Elections and Governance Committee from the proposed fee. Amendment No. 1 replaced the original filing in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] *See* Exchange By-Law Article X, Section 10–1 for the list of Standing Committees of the Exchange.

[7] Telephone conversation between Leah Mesfin, Special Counsel, Division of Market Regulation, Commission, and Angela Dunn, Director and Counsel, Phlx, on December 21, 2006.

pursuant to Exchange Rule 960.9 and By-Law Article XI, Section 11–3, and an appeal from a decision of the Nominating, Elections and Governance Committee, pursuant to By-Law Article XI, Section 11–1, will not be subject to the Appeal Fee. The Appeal Fee, which will be paid by appellant at the time of filing an appeal, will be refunded to the appellant in the event the Board of Governors overturns the decision of the Standing Committee.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(5) [9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove the impediments to and perfect the mechanism of a free and open market and a national market system. Finally, the proposed rule change furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 thereunder [12] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2006–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–84 and should be submitted on or before February 7, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–479 Filed 1–16–07; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78(f)(b)(5).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change the Commission considers the period to commence on December 20, 2006, the date on which the Exchange filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before March 19, 2007.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Cynthia Pitts, Administrative Officer, Office of Disaster Assistance, Small Business Administration, 409 3rd Street SW., 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Administrative Officer, Office of Disaster Assistance 202–205–7570, *cynthia.pitts#@sba.gov*. Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

Title: ''Disaster Business Loan Application''

Description of Respondents: Personnel that assist in the processing of loan applications and disbursement of loan funds to victims of Hurricanes Katrina, Rita and Wilma.

Form No: 5,1368.

Annual Responses: 12,742.

Annual Burden: 29,754.

Title: ''Alternative Creditworthiness Assessment''

Description of Respondents: Personnel that assist in the processing of loan applications and disbursement of loan funds to victims of Hurricanes Katrina, Rita and Wilma.

Form No.: 2294.

Annual Responses: 1,849.

Annual Burden: 8.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Charles W. Thomas, Director, Office of Program Development, Small Business Administration, 409 3rd Street SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles W. Thomas, Director, Office of Program Development, 202–205–6656, *charles.thomas@sba.gov*. Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Title: ''Microloan Program Electronic Reporting System (MPERS).''

Description of Respondents: Microloan Program Intermediary Lenders.

Form No: N/A.

Annual Responses: 2,500.

Annual Burden: 625.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E7–489 Filed 1–16–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10776 and # 10777]

Illinois Disaster # IL–00005

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Illinois dated 01/05/2007.

Incident: Severe storms and flooding.

Incident Period: 09/04/2006 through 09/05/2006.

Effective Date: 01/05/2007.

Physical Loan Application Deadline Date: 03/06/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 10/05/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the 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:

Winnebago.

Contiguous Counties:

Illinois; Boone, Dekalb, Ogle, Stephenson.

Wisconsin; Green, Rock.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	7.934
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 10776 6 and for economic injury is 10777 0.

The States which received an EIDL Declaration # are: Illinois, Wisconsin.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: January 5, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–481 Filed 1–16–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10780]

Missouri Disaster # MO–00007

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–1673–DR), dated 12/29/2006.

Incident: Severe Winter Storms.

Incident Period: 11/30/2006 through 12/02/2006

Effective Date: 12/29/2006.

Physical Loan Application Deadline Date: 02/27/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/29/2006, private non-profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Boone, Cole, Greene, Iron, Reynolds, St. Francois, St. Louis, St. Louis (City), Ste. Genevieve, Washington.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10780.

(Catalog of Federal Domestic Assistance Number 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–480 Filed 1–16–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10779]

Oregon Disaster # OR–00016

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oregon (FEMA–1672–DR), dated 12/29/2006.

Incident: Severe storms, flooding, landslides, and mudslides.

Incident Period: 11/05/2006 through 11/08/2006.

Effective Date: 12/29/2006.

Physical Loan Application Deadline Date: 02/27/2007.

ADDRESSES: Submit Completed Loan Applications to: U.S. Small Business

Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 12/29/2006, private non-profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clatsop, Hood River, Lincoln, Tillamook.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10779.

(Catalog of Federal Domestic Assistance Number 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–482 Filed 1–16–07; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Questionnaire about Employment or Self-Employment Outside the United States—20 CFR 404.401(b)(1), 404.415, 404.417—0960–0050.* The information collected on the SSA–7163 is needed to determine whether work performed by beneficiaries outside the United States is cause for deductions from their monthly Social Security Title II benefits; to determine which of two work tests (foreign test or regular test) is applicable; and to determine the months, if any, for which deductions should be imposed. The respondents are Title II beneficiaries living and working outside the United States.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 4,000 hours.

2. *Complaint Form for Allegations of Discrimination in Programs or Activities Conducted by the Social Security Administration—0960–0585.* The information collected on form SSA–437 is used by SSA to investigate and formally resolve complaints of discrimination based on race, color, sex, age, religion, disability, retaliation, and national origin, including limited or no ability with English in any program or activity conducted by SSA. A person who believes that he or she has been discriminated against on any of the above bases may file a written complaint of discrimination. The information will be used to identify the complainant; identify the alleged discriminatory act; ascertain the date of such alleged act; obtain the identity of any individual(s) with information about the alleged discrimination; and ascertain other relevant information that would assist in the investigation and resolution of the complaint. The respondents are individuals who believe they have been discriminated against by SSA or by SSA's employees, contractors or agents in programs or activities conducted by SSA.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 140.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 140 hours.

3. *Work Incentives Planning and Assistance Program (formerly the BPAO Program)—0960–0629.* Like the Benefits Planning Assistance Outreach (BPAO) program which it replaces, the Work Incentives Planning and Assistance (WIPA) program collects identifying information from the project sites and the community work incentives coordinators. In addition, data are collected from the beneficiaries on background employment, training, benefits and work incentives. SSA is interested in identifying beneficiary outcomes under the WIPA program to determine the extent to which beneficiaries with disabilities achieve their employment, financial and health care goals. The data will also be valuable to SSA in its analysis and future planning for Social Security Disability Insurance and Supplemental Security Income (SSI) programs.

Type of Request: Revision of an OMB-approved information collection.

Estimated Annual Burden: 5,019 hours.

Respondent	Number of annual responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
Site	147	1	2	5
CWIC	422	1	2	14
Beneficiary	60,000	1	5	5,000
Totals	60,569			5,019

4. *Expanded Monitoring Site Review Questionnaire for Volume and Fee for Service Payees (SSA–637); Expanded Monitoring Site Review Beneficiary Interview Form (SSA–639)—20 CFR 404.2035, 404.2065, 416.665, 416.701, 416.708—0960–0633.* In situations where a Social Security beneficiary or SSI recipient is incompetent or physically unable to take care of his or her own affairs, SSA may pay Social Security benefits and/or SSI payments to a relative, another person, or an organization when the best interest of the beneficiary will be served. In certain situations, SSA conducts site reviews to ensure that payees are carrying out their responsibilities according to representative payment policies and procedures. SSA is also able to identify poor payee performance, uncover misuse and initiate corrective action. Triennial site reviews are conducted for fee-for-service payees and all volume payees (*i.e.*, organizations serving 100 or more beneficiaries and individuals serving 20 or more beneficiaries). The reviews include a face-to-face meeting with the payee (and appropriate staff), examination/verification of a sample of beneficiary records and supporting documentation, and usually include beneficiary (if competent adult) or custodian (if different from payee) interviews. Forms SSA–637 and SSA–639 are used to record the information collected during these interviews. The respondents are certain representative payees and also competent Social Security beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

Estimated Annual Burden: 3,538 hours.

Form No.	Number of respondents	Reports annually	Time per response (minutes)	Total hours
SSA–637	1,763	1	75	2,204
SSA–639	8,001	1	10	1,334
Totals	9,764			3,538

5. *Direct Deposit Sign-Up Form (Country)—31 CFR 210—0960–0686.* This form captures the direct deposit information for an account at a foreign financial institution. Our International Direct Deposit program allows beneficiaries living abroad to have their benefits deposited to an account at a financial institution outside the U.S. Routing account number information varies slightly for each country, so we use a variation of the SF–1199 A for each country. The respondents are Social Security beneficiaries residing abroad.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 417 hours.

6. *Certification of Prisoner Identity Information—20 CFR 422.107—0960–0688.* When a valid agreement is in place, prison officials will verify the identity of certain incarcerated U.S. citizens who need replacement Social Security cards. Information the prison officials provide will be taken from the official prison files and will be transcribed on their letterhead. This information will be used to establish the applicant's identity in the Social Security card process. The respondents are prison officials that certify identity of prisoners applying for replacement Social Security cards.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,000.

Frequency of Response: 200.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 10,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Certification of Period of Temporary Institutionalization and Need to Maintain Home—20 CFR 416.212(b)(1)—0960–0516.* SSA is required by law to collect the information necessary to establish eligibility for continued SSI payments for temporarily institutionalized individuals. Sections 1611(e)(1)(G)&(H) of the Social Security Act require the Commissioner to establish procedures for determining that a physician has certified that the period of confinement is not likely to exceed 3 months, and for determining that the recipient needs to continue to maintain and provide for the expense of a home or living arrangement.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 5,000 hours.

2. *Blood Donor Locator Service (BDLS)—20 CFR 401.200—0960–0501.* This regulation requires requesting State agencies to provide the names and Social Security Numbers of blood donors, and a statement that the donor's blood tested positive for Human Immunodeficiency Virus (HIV) to SSA's Blood Donor Locator Service when blood donor facilities have identified donors as testing positive for HIV. This information is used by SSA to furnish the State agencies with the blood

donors' address information for the purpose of notifying them. Respondents are State agencies acting on behalf of blood donor facilities.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 10.

Frequency of Response: 5.

Number of Responses: 50.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 13 hours.

3. *Pre-1957 Military Service—Federal Benefit Questionnaire—20 CFR 404.1301–404.1371—0960–0120.* Sections 217(a) through (e) of the Social Security Act provide for the crediting of military service before 1957 to the wage earner's record. This form collects specific information about other Federal, military or civilian benefits the wage earner may receive when the applicant indicates both pre-1957 military service and the receipt of Federal benefit. This data is then used in the claims adjudication process to grant gratuitous military wage credits when applicable. This form is used to solicit sufficient information to make a determination of eligibility. Respondents are applicants for Social Security benefits on a record where the wage earner has pre-1957 military service.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 833 hours.

4. *Statement of Household Expenses and Contributions—20 CFR 416.1130–416.1148—0960–0456.* SSA needs the information about household expenses and contributions, which is collected on Form SSA–8011–F3, to determine whether the individual receives in-kind support and maintenance. This is necessary to determine eligibility for SSI and the amount payable. This form is not used for all claims and post eligibility determinations; rather, it is used only when it is necessary to document in-kind support and maintenance and only in cases where the householder's corroboration is needed. Respondents are SSI applicants and/or recipients.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 400,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 100,000 hours.

Dated: January 10, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–555 Filed 1–16–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5672]

30-Day Notice of Proposed Information Collection: DS–5090e, Human Rights Abuses Reporting Site; OMB No. 1405–0175

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Human Rights Abuses Reporting Site.

OMB Control Number: 1405–0175.

Type of Request: Extension of a Currently Approved Collection.

Originating Office: Bureau of Western Hemisphere Affairs, Office of Cuban Affairs (WHA/CCA).

Form Number: DS–5090e, Human Rights Abuses Reporting Site.

Respondents: Victims of human rights abuses in Cuba.

Estimated Number of Respondents: 7,300 annually.

Estimated Number of Responses: 7,300 annually.

Average Hours Per Response: 15 minutes per response.

Total Estimated Burden: 1,825 hours.

Frequency: On occasion.

Obligation to Respond: Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from January 17, 2007.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from the Coordinator of Cuban Affairs; Department of State; 2201 C Street, NW.; Washington, DC 20520, who may be reached at 202–647–9272, or by e-mail at *CubaHRVL@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of proposed collection: The President has asked the interagency community to use the temporary transfer of power from Fidel Castro to his brother Raul Castro in August 2006 as an historic moment to work to encourage a democratic transition in Cuba. In keeping with the recommendations of the Commission for Assistance to a Free Cuba report, the State Department will seek information from the public about human rights abuses committed by Cuban authorities, including the military and members of the security forces. The information is sought in accordance with, inter alia, 22 U.S.C. 2656 and 2304(a)(1). The principal purpose for collecting the information is to prepare and maintain a database of human rights abusers in Cuba.

The Department may use this information in connection with its responsibilities for the protection and promotion of human rights and for the conduct of foreign affairs, as well as for other appropriate purposes as a routine part of the Department's activities.

Methodology: Information will be collected through electronic submission.

Additional Information: None.

Dated: January 5, 2007.

Caleb McCarry,

Cuba Transition Coordinator, Bureau of Western Hemisphere Affairs, Department of State.

[FR Doc. E7–513 Filed 1–16–07; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City of Coronado, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) will be prepared for a project in San Diego, California, known as the State Route (SR) 75/282 Transportation Corridor Project.

FOR FURTHER INFORMATION CONTACT: Steve Healow, Federal Highway Administration, 650 Capitol Mall Suite 4–100, Sacramento, California 95814, Telephone: (916) 498–5849 or Jason A. Reynolds, California Department of Transportation, 4050 Taylor Street San Diego, CA 92110, Telephone (619) 688–0291.

SUPPLEMENTARY INFORMATION: The FHWA is issuing this notice to advise the public that an EIS will be prepared for proposed improvements to the State Routes 75 and 282 (SR 75/282) corridor between the San Diego-Coronado Bridge and the Naval Air Station North Island (NASNI) within the City of Coronado, CA. SR 75/282 serves Coronado residents, visitors and NASNI, a military airport and aircraft carrier berthing facility. The project will address current and forecast traffic congestion within the SR75/282 Transportation Corridor. The study area along the corridor varies in width, but is narrowest at the bridge and widest where Third Street and Fourth Street intersect Orange Avenue.

Alternatives under consideration include (1) Taking no action; (2) Transportation Systems Management (TSM)/Transportation Demand Management (TDM); (3) Third Street/Fourth Street couplet with grade separations at Orange Avenue; (4) Twin cell cut-and-cover tunnel with refined west portal layout and early daylight alignment compatible with NASNI Third Street Main Gate; (5A) Twin bore tunnel with refined west portal layout for improved compatibility with NASNI Third Street Main Gate; and (5B) Twin bore restricted access tunnel with entry control gate at the east portal and west portal with access directly onto McCain Boulevard at NASNI. Alternatives under consideration incorporated into and studied with the various build alternatives will be design variations of grade and alignment. Property acquisitions and utility relocations may be necessary.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the contacts provided above. Key environmental issues to be studied include, but are not limited to, air quality, noise, traffic, socioeconomic impacts, business relocations, hazardous materials, biological, water quality, coastal zone, flood plain, wetlands, visual impacts, impacts to open space and cultural resources and parking. Other key issues may arise at scoping meetings or during the environmental review process. Resources subject to Section 106 of the National Historic Preservation Act may be affected. Section 4(f) resources may also be affected. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed, or are known to have an interest in, this proposal.

The draft EIS will be available for public and agency review prior to the public hearing.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 10, 2007.

Steve Healow,

Federal Highway Administration, Sacramento, California.

[FR Doc. E7–491 Filed 1–16–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than March 19, 2007.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590, or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–___.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or via E-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Christodoulou at *gina.christodoulou@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the

information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Passenger Train Emergency Preparedness.

OMB Control Number: 2130–0545.

Abstract: The collection of information is due to the passenger train emergency preparedness regulations set forth in 49 CFR Parts 223 and 239 which require railroads to meet minimum Federal standards for the preparation, adoption, and implementation of emergency preparedness plans connected with the operation of passenger trains, including freight railroads hosting operations of rail passenger service. The regulations require luminescent or lighted emergency markings so that passengers and emergency responders can readily determine where the closest and most accessible exit routes are located and how the emergency exit mechanisms are operated. Windows and doors intended for emergency access by responders for extrication of passengers must be marked with retro-reflective material so that emergency responders, particularly in conditions of poor visibility, can easily distinguish them from the less accessible doors and windows. Records of the inspection, maintenance and repairs of emergency windows and door exits, as well as records of operational efficiency tests, will be used to ensure compliance with the regulations.

Affected Public: Businesses.

Respondent Universe: 18 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
223.9(d); 239.107—Marking of Emergency Exits.	18 railroads	10,475 decals	5 minutes	873	$27,936
—Marking door and window exits w clear instructions.	18 railroads	6,320/1,300 decals	4 min./5 min.	614	19,648
239.107(b)—Records of Inspection, Maintenance, & repair.	18 railroads	1,800 window rcds. + 1,800 door records.	20 min./3 min.	690	22,080
239.101, 239.201—Filing of Emergency Preparedness Plan.	2 railroads	1 plan	158 hours	158	9,638
—Amendments to Emergency Plans	2 railroads	1 amendment	2 hours	2	74
239.101 (ii)—Maintenance of Current Emergency Phone Numbers.	2 railroads	2 records	1 hour	2	74
—Subsequent Years	18 railroads	19 records	30 minutes	10	370
239.101(a)(3)—Joint Operations	2 railroad pairs	2 plans	16 hours	32	1,568
—Subsequent Years	1 railroad pair	1 plan	16 hours	16	784
239.101(a)(5)—Liaison with Emergency Responders.	2 railroads	1 plan	6 hours	6	222
—Subsequent Years	20 railroads	40 plans/1,200 copies	40 hrs./5 min.	1,700	71,400
239.101(a)(7)(ii) Passenger Safety Information.	5/12 railroads	1,300 cards/5 progs./5 safety messages/12 progs./12 msgs.	5 min./16 hrs./48 hrs./8 hrs.	812	31,088
239.105—Debriefing and Critique	20 railroads	5 debrief sess	27 hours	135	2,160
239.301—Operational Efficiency Tests	20 railroads	11,075 tests/rcds	15 minutes	2,768	127,328

Total Responses: 35,376.

Estimated Total Annual Burden: 7,818 hours.

Status: Extension of a Currently Approved Collection.

OMB Control Number: 2130–0511.

Abstract: The collection of information is used to prevent the unsafe movement of defective freight cars. Railroads are required to inspect freight cars for compliance and to determine restrictions on the movements of defective cars.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Burden: 40 hours.

Total Responses: 1,200.

Type of Request: Extension of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on January 11, 2007.

D.J. Stadtler,

Director, Office of Budget, Federal Railroad Administration.

[FR Doc. E7–487 Filed 1–16–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2007–26841]

Utilization of U.S. Vessels and Mariners in the Marine Transportation of Liquefied Natural Gas

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice and Request for Comments.

SUMMARY: The Maritime Administration (MARAD) seeks public comment on the use of United States vessels and mariners in the transportation of Liquefied Natural Gas (LNG) through the nation's offshore deepwater port receiving facilities. Comments should focus on the development of programs to maximize the utilization and availability of U.S. vessels and qualified U.S. citizen officers and unlicensed crews serving the international LNG tanker fleet. Comments may also include issues related to the overall safe and secure operation of deepwater port facilities.

DATES: Comments are due by February 16, 2007.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number MARAD–2007–26841] by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 7th St., SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this action. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: H. Keith Lesnick, Director, Office of Deepwater Port Licensing, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590; fax: (202) 366–5123; or e-mail *Keith.Lesnick@dot.gov*.

SUPPLEMENTARY INFORMATION: As the lead federal agency for the licensing of offshore LNG and oil deepwater port terminals, the Maritime Administration is charged with ensuring that each facility is constructed and operated in a safe and secure manner. While LNG importation has historically had an impeccable safety record, MARAD is continually seeking additional ways to ensure the safe and secure operations of deepwater port facilities to help preserve the nation's security, environmental resources, and energy supply, and to improve transportation efficiencies.

To promote the security of the United States, Congress recently amended the Deepwater Port Act through the Coast Guard and Maritime Transportation Act of 2006 (Pub. L. 109–241, (2006)) to direct the Secretary (and, by delegation, the Maritime Administrator) to develop and implement a program to promote the transportation of liquefied natural gas to the United States on United States flag vessels. The Act further directed the Secretary to give top priority to the processing of deepwater port licenses to LNG facilities that will be supplied with natural gas by United States flag vessels. Further, the Act directed that the nation of registry for, and the nationality or citizenship of, officers and crew serving on board vessels transporting natural gas to a deepwater port be considered when granting a license.

The enactment of the Coast Guard and Maritime Transportation Act of 2006 places a firm emphasis on the safe and secure transport of LNG to and from our nation's facilities. In keeping with Congressional directives, MARAD seeks public comment on efforts to expand and maximize utilization of U.S. vessels and U.S. crews on LNG vessels. In addition, MARAD seeks comments on the availability of qualified officers and crew as well as the advantages of using U.S. crews.

Authority: 49 CFR 1.66.

Dated: January 11, 2007.

By Order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–554 Filed 1–16–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2006–26754]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel EASY RIDER.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2006–26754 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before February 16, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2006–26754. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://*

dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant, the intended service of the vessel EASY RIDER is:

Intended Use: ''Day charters for pleasure cruising only.''

Geographic Region: Southern California coastal waters from Santa Barbara, south to San Diego.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: January 11, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–542 Filed 1–16–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2006–26755]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ENA'S HAVEN.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2006–26755 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before February 16, 2007.

ADDRESSES: Comments should refer to docket number MARAD–2006–26755. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ENA'S HAVEN is:

Intended Use: ''Harbor tours of Marina del Rey. Possible trips to Catalina Island in the future''

Geographic Region: Marina del Rey, CA, Santa Monica Bay, CA, Channel Islands, CA.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Dated: January 11, 2007.

By order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration,

[FR Doc. E7–544 Filed 1–16–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC on January 30, 2007 at 10:30 a.m. of the following debt management advisory committee.

Treasury Borrowing Advisory Committee of the Bond Market Association (''Committee'').

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2 section 10(d) and Public Law 103–202, section 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, section 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, section 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to

making final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, section 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Karthik Ramanathan, Director, Officer of Debt Management, at (202) 622–2042.

Dated: January 10, 2007.

Anthony W. Ryan,

Assistant Secretary, Financial Markets.

[FR Doc. 07–123 Filed 1–16–07; 8:45 am]

BILLING CODE 4810–25–M

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—February 1–2, 2007, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Carolyn Bartholomew, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on ''the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China.''

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on February 1–2, 2007 to address ''The U.S.-China Relationship: Economics and Security in Perspective.''

Background

This event is the first in a series of public hearings the Commission will hold during its 2007 report cycle to collect input from leading experts in academic, business, industry, government and the public on the impact of the economic and national security implications of the U.S. bilateral trade and economic relationship with China. The February 1–2 hearing is being conducted to obtain commentary about the status of U.S.-China relations, from economic, security, and diplomatic perspectives, in order to assess the progress our bilateral relationship since the granting of permanent normalized trade relations to China, and to identify the challenges facing our relationship in 2007.

The February 1–2 hearing will address ''The U.S.-China Relationship: Economics and Security in Perspective'' and will be Co-chaired by Chairman Carolyn Bartholomew and Vice Chairman Daniel Blumenthal.

Information on hearings, as well as transcripts of past Commission hearings, can be obtained from the USCC Web site *http://www.uscc.gov*.

Copies of the hearing agenda will be made available on the Commission's Web site *http://www.uscc.gov* as soon as available. Any interested party may file a written statement by February 1, 2007, by mailing to the contact below. On February 1, the hearing will be held in two sessions, one in the morning and one in the afternoon, and on the morning of February 2, where Commissioners will take testimony from invited witnesses. There will be a question and answer period between the Commissioners and the witnesses.

DATE AND TIME: Thursday, February 1, 2007, 9 a.m. to 4:30 p.m. Eastern Standard Time and Friday, February 2, 2007 at 9 a.m. to noon. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* in the near future.

ADDRESSES: The hearing will be held on Capitol Hill in Room 562 Dirksen Senate Office Building located at First Street and Constitution Avenue, NE., Washington, DC 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington DC 20001; *phone:* 202–624–1409, or via e-mail at *kmichels@uscc.gov*.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: January 11, 2007.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. E7–602 Filed 1–16–07; 8:45 am]

BILLING CODE 1137–00–P

Federal Register

Wednesday,
January 17, 2007

Part II

Postal Service

39 CFR Part 111

New Standards for Domestic Mailing Services; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

New Standards for Domestic Mailing Services

AGENCY: Postal Service.

ACTION: Proposed rule; notice of further rulemaking.

SUMMARY: On September 27, 2006, the Postal Service published a proposal in the **Federal Register** (71 FR 56587) providing new mailing standards to accompany the R2006–1 price change proposal currently before the Postal Rate Commission. In this revised proposal we respond to the comments we received, summarize our changes, and further revise the mailing standards.

Our pricing proposal reflects changes in operations and the marketplace and will enhance efficiency, offer more choices, and ensure that all types of mail cover their costs. We include incentives to create mailpieces compatible with our processing systems and to deposit flats and parcels closer to where they are delivered.

Our proposal includes a new ''forever stamp'' to make future price changes more convenient for consumers. The forever stamp will always equal the First-Class Mail single piece 1-ounce letter price, without the addition of extra postage. We also propose new shape-based prices for First-Class Mail, with lower rates for many letter-size pieces over 1 ounce. Our proposal will make the Priority Mail flat-rate boxes a permanent product offering, and we will add a new 1-pound pricing option for Express Mail.

For commercial mailers we propose new sorting options to reduce the number of trays in a mailing and new scheme preparations to give mailers access to lower rates and to better align flat-size mail preparation with mail processing. We also add a new automated Address Change Service to reduce the costs associated with undeliverable-as-addressed mail. First-Class Mail parcel mailers will have new barcode options, and we propose new opportunities for mailers to combine Standard Mail and Package Services parcels in the same mailing.

Periodicals mailers will have new incentives to use efficient containers, and we revise the copalletization standards as a permanent offering to encourage more publishers to combine mailings. We also add new prices for the editorial portion of a mailing to give mailers of high-editorial-content publications access to lower, destination entry rates.

DATES: We must receive your comments on or before January 31, 2007.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Joel Walker, 202–268–7261.

SUPPLEMENTARY INFORMATION: The Postal Service's request in Docket No. R2006–1 includes mail classification changes, new pricing structures, and price changes for most domestic mailing services. This proposed rule updates the revisions to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) that we would adopt to implement the R2006–1 price change proposal. We respond to comments on our September 27, 2006, **Federal Register** proposal (71 FR 56587), summarize major changes from the first proposal by class of mail and extra service, update our summary of the entire proposal, and update our proposed mailing standards. We invite your comments on all aspects of our second proposal.

You can find our September proposal at *www.usps.com/ratecase,* along with side-by-side comparisons of today's prices and those that are currently under review by the Postal Rate Commission. We also provide helpful information for mailers on our Web site, including frequently asked questions, press releases, and Mailers Companion articles related to the pricing change.

Overview

Our pricing strategy encourages an efficient mailstream to keep postage rates stable and to keep the mail a viable alternative for everyone. This revised proposal provides more detail to help mailers design mailpieces compatible with our processing systems and gives our customers the information they need to make good mailing decisions and access the lowest rates of postage.

In early February we will publish an additional **Federal Register** notice incorporating comments from this proposal to ensure mailers have adequate time to prepare for the new standards and prices. The updated notice will provide a comprehensive view of our proposal at least a month before the Postal Service Governors vote on the new prices and an early opportunity to update software and other systems.

Summary of Comments

We received comments on our mailing standards proposal from mailers, vendors, associations, and individuals. We appreciate your feedback. Of the 351 letters we received, 310 were similar comments on behalf of three nonprofit organizations that mail children's books. The other 41 comments were submitted by twenty-eight publishers, printers, and large mailers; six mailing associations; two software vendors; two individuals; one envelope vendor; one small-business owner; and one Postal Service employee.

General Comments

Many commenters commended us for publishing the proposed standards early, for planning this revised proposal and an additional notice in February, and for communicating changes via DMM Advisory, Mailers Companion, and other avenues.

Three commenters asked us to reformat our **Federal Register** proposal to provide more context to our mailing standards and to better highlight what we are changing. We appreciate this suggestion, and we added more of the current DMM text to our revisions—even if that text did not change—to provide context. We added a summary of changes to highlight the differences between our September proposal and this revised proposal. We also added more guidance throughout our mailing standards to help mailers read through our document and compare it to the current DMM.

Twelve commenters expressed concern about the timeframe for the rate change. Five commenters requested a 120-day timeframe to prepare software and other systems; two mailers asked for a two-year timeframe; and one mailer asked for a minimum of 90 days. Commenters cited concerns about the complexity of the rate case and limited resources to make the required changes.

The Postal Service Board of Governors sets the implementation date for the new prices and related changes. We published our mailing standards proposal in the **Federal Register** early in the rate change process to help mailers begin system planning and to allow for a second, updated proposal. Our February notice in advance of the Board's decision will further help mailers get ready for the change.

First-Class Mail Comments

Two commenters commended us for proposing to eliminate First-Class Mail

automation carrier route rates and for emphasizing 5-digit and 3-digit preparation schemes.

Two commenters asked us to change our preparation requirements for automation heavy letters. Our experience and testing indicate that letter-size pieces over 3 ounces are most efficiently processed when they are in envelopes. Self-mailer and booklet-type pieces weighing over 3 ounces and letter-size pieces weighing over 3.5 ounces (even when enveloped) often jam and damage our equipment, the mailpieces themselves are damaged, and our mail processing speeds are significantly reduced. Therefore we will retain the current requirements.

One commenter suggested we keep the current rigidity standards for determining nonmachinable letter-size pieces. We did not change the definition of ''rigidity'' for letters in DMM 201.2.0. One commenter asked for clarification on the applicable rate for a rigid letter-size piece. A rigid First-Class Mail letter-size piece will pay the flat-size price.

One commenter suggested a maximum weight of 3.5 ounces for all letter-size pieces, regardless of class. We propose to change the weight limit for all First-Class Mail letter-size pieces to 3.5 ounces. Because the proposed rate structure does not support a piece/pound rate for Standard Mail machinable and nonmachinable letters, we cannot propose a 3.5-ounce limit for those pieces.

Two commenters expressed concern about customers' and employees' ability to determine postage under the new shape-based pricing for First-Class Mail. To ensure a smooth transition for both retail and business mailers, we are developing an in-depth communications and training plan to ensure both employees and customers have the knowledge they need to determine the correct postage.

Six commenters asked us to clarify our definition of a ''full'' letter tray, and one commenter requested tolerance when trays are not quite filled to 85 percent capacity. Vendors commonly set presort software parameters at 85 percent capacity today, and most software includes defaults to that setting. Because fuller trays will help reduce costs and keep postage rates stable, we proposed this change to signal all mailers to set their software for trays that are at least 85 percent full. Acceptance personnel will work with mailers when they identify trays that appear less than full, as they do today, so mailers can make adjustments on future mailings.

Ten commenters requested clarification of the no-overflow tray option for automation letters. One commenter asked us to emphasize that presort bureaus likely will not use the option for combined mailings. Three commenters asked that we allow mailers to implement the no-overflow tray option selectively within a mailing.

We have been working with software vendors to identify different mail preparation scenarios and how presort software will handle them. We encourage mailers to use the option by clarifying that pieces moved back to a higher tray level will count toward the 150-piece requirement for the qualifying rate level. We acknowledge that the option may not be realistic in all mailing environments and emphasize that it is an option. We have adopted the commenters' proposal to allow mailers to selectively apply the option by 3-digit or automated area distribution center (AADC) destinations in any single mailing, and we modified the standards to reflect this change.

We received two comments about the forever stamp. The first commenter agreed with the standards as proposed but asked us to change the Domestic Mail Classification Schedule to be consistent with the DMM. The Domestic Mail Classification Schedule is consistent with the DMM. Forever stamps will be used like other First-Class postage stamps. The second commenter asked us to clarify the use of forever stamps. Forever stamps may be used on single-piece mail and may not be used for discount mailings.

We received three comments about First-Class Mail parcels. One commenter suggested we not require 5-digit/scheme and 3-digit preparation. We have adopted the suggestion to make 5-digit/scheme preparation optional to be consistent with Standard Mail parcel preparation. A second commenter asked why we would apply a surcharge to nonbarcoded First-Class Mail, Standard Mail, and Parcel Post parcels while giving a discount to barcoded Media Mail, Library Mail, and Bound Printed Matter parcels. Although the rate structures differ, we are consistent in our objective to encourage barcodes on parcels. Whether a customer pays a surcharge for failing to barcode a parcel or receives a discount for applying a barcode, we are providing an incentive to barcode parcels. A third commenter said it was not clear from the proposal if we would process First-Class Mail parcels on the Automated Package Processing System (APPS). If a mail processing facility has an APPS, that facility will very likely use it to process APPS-machinable parcels when they are not in 5-digit containers.

One commenter noted that the additional-ounce rate is not the same for all ounce increments in our proposal. Presort bureaus will have to separate pieces that cannot be delivery point barcoded by weight to ensure correct postage is paid. The commenter requested we adjust the pricing proposal by making the additional-ounce rates consistent.

The request to adjust the additional-ounce prices is outside the scope of our mailing standards proposal. The commenter is correct that pieces coded only with a 5-digit barcode because of, for example, an incomplete address or missing address elements, must be separated by ounce increment or properly documented to account for postage.

One commenter asked if we will update the rate and fee schedules for Business Reply Mail (BRM) to include First-Class Mail flats and parcels and Priority Mail rates above 13 ounces. The commenter asked us to clarify the First-Class Mail BRM rate for pieces that weigh over 3.5 ounces. BRM pays the per-piece fee plus the applicable First-Class Mail or Priority Mail rate. The rate for a letter-size piece over 3.5 ounces is the First-Class Mail flat-size rate. The application of the proposed fees for BRM mirror what is now in place.

Standard Mail Comments

Nineteen commenters disagreed with or made suggestions regarding the proposed standards for flat-size mail. Most of these commenters asked for a clearer, more objective test for flexibility to determine whether a piece may be mailed at flat-size rates. Some commenters asked us to better describe the amount of force used during the flexibility test. In response to these comments we revised the standards to change the point where pressure is applied to 1 inch from the extended outer edge, and we added a requirement that the piece must pass the test when extended from both ends. This new test more specifically identifies the types of pieces that will not process efficiently on our automated flat sorting equipment or handle efficiently in delivery. We will advise our employees to use a steady pressure that stops short of breaking the mailpiece or its contents. When they begin to feel resistance due to rigidity, the pressure should be stopped at that point.

Three commenters stated that, when describing the flexibility test, the phrase ''damage to the mailpiece'' is too subjective and could be interpreted to mean even a crease in the binding of a

magazine or catalog. We do not consider a crease in the binding to be damage to the mailpiece. Generally magazines, catalogs, and similarly bound mailpieces will meet our flexibility standards, unless they contain rigid enclosures or attachments, or they are placed in rigid packaging. We will instruct acceptance employees to exclude ordinary magazines, catalogs, and similarly bound publications from the new flexibility test. Mailers should note that boxes generally are not acceptable for efficient flats processing and delivery and would likely fail the flexibility test.

Several commenters asked us to clarify the uniform thickness standard that we proposed to expand to all flat-size mail. In response to these comments, we relaxed the current definition and redefined ''uniform thickness'' in DMM 301.1.5 to allow for a variation in thickness up to ¼ inch with selvage limitations.

Three commenters were concerned that the deflection test for flimsy automation flats might be too strict, and they asked us to clarify the test. In response to these comments, we revised the deflection test to allow deflection (''droop'') to within 1 inch of the extended length, with a maximum deflection of 4 vertical inches. An 8-inch-long piece, extended out 4 inches, could deflect down as far as 3 inches and still be an automation-compatible flat. Pieces that fail the deflection test still may be eligible for nonautomation flat-size rates. At this time, the deflection test does not apply to enhanced carrier route (ECR) flats.

To further clarify the standards for flexibility and deflection, we are developing illustrations for the DMM that show how the tests are applied.

Sixteen commenters requested clarification about the new Not Flat-Machinable category of Standard Mail. We clarified the definition of a Not Flat-Machinable piece as follows:

Not Flat-Machinable pieces are rigid, with the following dimensions:

1. At least 4 inches high, but not more than 12 inches high.
2. At least 4 inches long, but not more than 15¾ inches long.
3. At least 0.009 thick, but not more than 1¼ inches thick. (Pieces less than 5 inches long must be over ¼ inch thick.)

Almost all Not Flat-Machinable pieces will fall within this definition. But Not Flat-Machinable pieces are also:

Flexible pieces that are at least 4 inches high, but not more than 12 inches high, with either of the following dimensions:

1. Over 15 inches long, but not more than 15¾ inches long.
2. Over ¾ inches thick, but not more than 1¼ inches thick.

Or nonmachinable letter-size pieces weighing more than 3.3 ounces, unless they qualify to be mailed at automation flat-size rates.

We created a decision tree to further help mailers determine if a piece is Not Flat-Machinable. We will publish the decision tree in the DMM Advisory and in a new Quick Service Guide for Not Flat-Machinable mail. The DMM Advisory message board and the Quick Service Guides are available on Postal Explorer at *pe.usps.com.* You can receive DMM Advisory updates via e-mail by sending a message to *dmmadvisory@usps.com* (indicate ''subscribe'' in the subject line).

One commenter asked us to allow Bulk Parcel Return Service (BPRS) for returns of Not Flat-Machinable pieces. BPRS is available only for Standard Mail machinable parcels. We are not proposing to extend BPRS to Not Flat-Machinable pieces.

One commenter noted different preparation standards for NFMs weighing 6 ounces or more and NFMs weighing less than 6 ounces, stating that lighter pieces would be prepared as flats. Our preparation and labeling standards will direct NFMs to the appropriate processing facilities. The proposed preparation of NFMs 6 ounces or more mirror the preparation of Standard Mail machinable parcels that are efficiently processed at BMCs. The proposed preparation of NFMs under 6 ounces mirror the preparation of Standard Mail irregular parcels that are efficiently processed at ADCs.

One commenter noted that reconfiguring packaging is not a solution for rigid pieces that are more than .75 inch thick. Rigid pieces and pieces more than .75 inch thick cannot be processed efficiently on AFSM 100s. Our pricing proposal encourages mailers to reconfigure packaging to create flexible pieces less than .75 inch thick—for example, by redistributing contents within longer packaging.

The same commenter asked us to reassure mailers that our standards will not change after they invest in new equipment, and asked us to outline our plans for the NFM category of mail. We do not plan to categorize rigid pieces as flats because these pieces negatively impact delivery and processing operations. We will work with mailers to ensure that their pieces can be effectively and efficiently processed and delivered. The goal of the NFM category over time is to provide financial incentives to create automated flats or machinable parcels. The NFM category may be temporary if it achieves this goal.

We received 310 comments opposing the Not Flat-Machinable prices on behalf of three organizations that mail children's books. These commenters were concerned with the potential negative impact on the organizations' objectives due to the rate increase. This objection to the new rates is outside the scope of our mailing standards proposal. We encourage mailers to reconfigure their mailpieces to meet the new standards for automation flats.

Four commenters asked for a lower minimum weight for Standard Mail machinable parcels. We will address their request separately from this rate case proposal.

Two commenters noted a discrepancy at the 3-digit level between the proposed standards for irregular parcels and the proposed standards for Not Flat-Machinable pieces less than 6 ounces. We revised the proposal to require 3-digit sorting for both types of pieces.

One commenter asked us to clarify the standards for bundling parcels for destination delivery unit (DDU) entry. We require bundling only for Standard Mail irregular parcels mailed at an ECR rate to sequence carrier route mail in either line-of-travel or walk-sequence order.

Two commenters asked us to keep the processing category name ''irregular parcels'' rather than change it to ''nonmachinable parcels.'' To avoid confusion for customers, we will retain the name ''irregular parcels,'' and we made the appropriate changes throughout the standards.

One commenter noted we referenced the wrong labeling lists for area distribution center (ADC) and mixed ADC labeling for irregular parcels. We appreciate this comment. We corrected the labeling standards to reference labeling lists L603 and L604.

As we summarized in First-Class Mail, six commenters asked for clarification on our definition of a ''full'' letter tray, and one commenter requested some tolerance when trays are not quite filled to 85 percent capacity. Vendors commonly set presort software parameters at 85 percent capacity today, and most software includes defaults to that setting. Because fuller trays will help reduce costs and keep postage rates stable, we proposed this change to signal all mailers to set their software for trays that are 85 percent full. Acceptance personnel will continue to work with mailers when they identify trays that appear less than full, as they do today, so adjustments can be made on future mailings.

Also as summarized in First-Class Mail, 10 commenters requested clarification of the no-overflow tray option for automation letters. One commenter asked us to emphasize that presort bureaus likely will not use the option for combined mailings. Three commenters asked that we allow mailers to implement the no-overflow tray option selectively within a mailing.

We have been working with software vendors to identify different mail preparation scenarios and how presort software will handle them. We encourage mailers to use the option by clarifying that pieces moved back to a higher tray level will count toward the 150-piece requirement for the qualifying rate level. We acknowledge that the option may not be realistic in all mailing environments and emphasize that it is an option. We have adopted the commenters' proposal to allow mailers to selectively apply the option by 3-digit or AADC destinations in any single mailing, and we modified the standards to reflect this change.

One commenter asked us to allow full tray preparation for ECR letters to all 5-digit destinations, and for pieces weighing over 3 ounces. In response to this comment, we simplified the standards to require the same tray preparation for all automation-compatible, barcoded pieces up to 3 ounces, regardless of ZIP Code destination. We retained the 3-ounce weight limit because our experience and testing show that heavier pieces processed sequentially will slow our processing operations.

Another commenter expressed concern about allowing mailers to drop ship ECR letters to DDUs, because we would likely backhaul this mail to upstream processing facilities. We eliminated the DDU entry discount for Standard Mail letters because we often do backhaul this mail. We retained a destination sectional center facility (DSCF) entry discount for local mailers of small quantities and for letters with simplified addresses.

One commenter requested that the Postal Service not process enhanced carrier route saturation (ECRWSS) flats on automated equipment and that we should not apply the flexibility, rectangular, and uniform thickness standards to ECRWSS flats. As a reminder, current standards require most mailpieces up to ¼ inch thick to be rectangular, including ECRWSS flats. Also, most pieces mailed at ECRWSS rates are not rigid and would meet the revised uniform thickness standards that allow up to ¼ inch variation in thickness. Nonrectangular, rigid, or lumpy pieces generally are more problematic for our delivery operations. Therefore, we are retaining similar physical standards for all flat-size mailpieces.

Periodicals Comments

Two commenters objected to the $0.85 Outside-County container rate, stating that it was too expensive for many mailers. This objection to the new rate structure is outside the scope of our mailing standards proposal.

Two commenters asked us to clarify how the Outside-County container rate is applied. We revised the standards in DMM 707.1.1.3 and 707.1.2.3 to clarify how the $0.85 rate applies to sacks, trays, and pallets of Periodicals mail.

Two commenters objected to the application of the Outside-County container rate to containers of mixed class or mixed In-County and Outside-County pieces. The commenters would like us to prorate the charge to reflect only the percentage of Periodicals Outside-County mail in that mixed container. For example, if a sack contained 50 percent In-County mail and 50 percent Outside-County mail, the mailer would pay half of the $0.85 charge for that sack.

The container rate will help us cover our costs for handling Outside-County Periodicals mail. Our intent is to improve efficiency and alleviate pressure on Periodicals processing costs. We note that the container rate is an integral part of the new Periodicals pricing; we mitigated the price increase of the piece and pound rates to allow for the addition of the Outside-County container rate. To avoid imposing the Outside-County pricing structure on In-County Periodicals mail, we revised the standards to exempt carrier route, 5-digit carrier routes, and 5-digit/scheme containers of mixed In-County and Outside-County pieces from the container charge.

Four commenters objected to the options we proposed for paying the Outside-County container rate in a comailing environment. Initially we proposed that consolidators report the charge on one publisher's Form 3541, or report and pay on one consolidated statement, Form 3541–C. Three commenters asked us to allow a consolidator to prorate the container charge on each individual postage statement. The commenters felt that this method would most accurately allot the appropriate charge to each mailer and would avoid a situation where the consolidator must pay the charge and bill mailers after the mailing is entered. One commenter noted possible ramifications for sales taxes.

We added a third option to allow consolidators to prorate the container charge on each postage statement in the pool if they electronically submit their qualification report using Mail.dat. We provide the new standards and all options for calculating and paying the Outside-County container charge in DMM 707.2.2.7 and 707.16.4.

Two commenters asked us to clarify our standards for Periodicals automation flats. The standards for Periodicals automation flats are essentially unchanged. We reorganized the current UFSM 1000 criteria into the Periodicals standards in the DMM to reflect that this alternative preparation for automation flats is still available for Periodicals mail. This alternative allows Periodicals mailers to continue to claim automation rates based on the current UFSM 1000 criteria. We clarified the standards in DMM 707.25.3.1 to specify that they are an exception to the standards in DMM 301.3.3 for Periodicals flat-size mail.

One commenter asked us to expand and clarify the standards for polywrap seam placement on Periodicals mail. While we are not changing the standards for seam placement, we simplified and clarified the polywrap standards for all types of automation-rate flats, including Periodicals flats, in a **Federal Register** notice on January 5, 2007 (72 FR 468).

One commenter requested new mailing standards to allow comailing of mixed-class mail. We note the commenter's request, and we will provide the new standards in a separate rulemaking. Comailing of mixed-class mail is outside the scope of this proposal.

Package Services Comments

Three commenters opposed eliminating the single-piece Bound Printed Matter (BPM) rate for retail customers. Our proposal is designed to simplify options at the retail counter. Mailers still may use Express Mail, Priority Mail, Parcel Post, and Media Mail services in any post office. BPM is essentially a bulk service, and customers can mail residual pieces at nonpresorted BPM rates using PC Postage, meter postage, and adhesive stamps. Mailers can deposit nonpresorted BPM pieces in a collection box or with their letter carrier.

Priority Mail Comments

Two commenters supported our overall efforts to align prices with costs but expressed concern that dimensional-weight pricing may be too complex for some customers. Dimensional weighting is an industry-wide practice used by

UPS, FedEx, DHL, and other postal administrations such as Canada Post and Australia Post. Many mailers are generally familiar with dimensional weighting. Retail customers can bring Priority Mail parcels to any post office and (if necessary) we will weigh, measure, and compute postage for them. Our Point of Service (POS) terminals will determine whether to base the postage on the actual weight or the dimensional weight of the piece and will calculate the correct price.

One commenter suggested that we clarify what we mean by ''rounding off'' and ''rounding up'' when determining dimensional-weight pricing. We appreciate this suggestion and added references in the Priority Mail standards to the ''Rounding Numerical Values'' information in DMM 604.8.0.

One commenter expressed concern that dimensional-weight pricing will add complexity to retail transactions, especially in smaller post offices that lack computerized scales and terminals. We are developing a comprehensive communications and training plan to ensure all employees can efficiently determine postage for Priority Mail.

Extra Services Comments

Two commenters stated that the proposed structure for Confirm eliminates the unlimited use option and, although the fee declines with volume, mailers who use Confirm the most will pay the highest increase. This objection to the new rate structure is outside the scope of our mailing standards proposal.

One commenter asked us to explain how we would implement the new Confirm prices and how we would give credit for existing subscriptions. We are considering options to provide full value for customers currently participating in Confirm. Alternatives include ''grandfathering'' current prices and subscriptions until their scheduled expirations, or terminating current subscriptions and crediting forward the full value of any remaining time and unused scans associated with those subscriptions.

Addressing Comments

We received two comments encouraging us to adopt move update requirements for other than First-Class Mail to improve address quality and reduce undeliverable-as-addressed mail. We will continue to tighten address quality standards, but expanding the move update requirements is not a part of this proposal.

Several commenters asked that we move the proposed ZIP+4 requirements for all letters and flats out of the rate case proposal and handle them in a separate rulemaking. We wanted to provide advance notice but will provide details in a separate rulemaking.

Two commenters asked us to publish a notice for comment if we ever planned to expand the use of simplified addressing for city routes. Simplified addressing for city routes is outside the scope of this proposal.

Major Changes Since the September Proposal

First-Class Mail Changes

We added language to DMM 235.6.0 to clarify that the no-overflow option for First-Class Mail automation letters applies to pieces placed in the next tray level when a tray of 150 or more pieces can be made. We changed the application of the no-overflow option in DMM 235.6.0 to allow mailers to apply it selectively for letters to 3-digit and AADC destinations. We clarify that pieces that move back to a higher tray level count toward the 150-piece requirement for the rate level.

We relaxed the flexibility test in DMM 101.2.0 and 301.1.0 for all flat-size mail to apply pressure within 1 inch of the extended ends. We modified the uniform thickness standard in DMM 101.2.0 and 301.1.0 for all flat-size mail to allow for up to ¼-inch variance in thickness. We also relaxed the deflection test in DMM 301.3.0 for automation flats by allowing deflection to within 1 inch of the extended length, with a maximum vertical drop of 4 inches.

We made 5-digit/scheme preparation optional for First-Class Mail presort parcels to be consistent with Standard Mail parcel preparation. We added new standards in DMM 402.4.3 for placing POSTNET barcodes on First-Class Mail parcels. Mailers must place the POSTNET barcode on the address side, at least ⅛ inch from all edges of the piece. We revised ADC rate eligibility in DMM 433.4.3 to include presorted parcels in 3-digit origin/entry sacks and parcels in ADC sacks.

Standard Mail Changes

We added an option to allow mailers to prepare origin entry 3-digit/scheme trays and sacks for Standard Mail letters, flats, and parcels. The original proposal required origin entry 3-digit/scheme trays for automation letters but did not provide an option for other letters or for flats and parcels. Our revision gives mailers the option to make separate trays or sacks of mail when they have even a small quantity of mail for each 3-digit or 3-digit scheme ZIP Code area processed by the sectional center facility (SCF) servicing the origin or entry office.

We clarified in DMM 245.7.0 that the no-overflow option for automation letters applies to pieces placed in the next tray level when a full tray or a tray of 150 or more pieces can be made. We changed the application of the no-overflow option in DMM 245.7.0 to allow mailers to apply it selectively for letters to 3-digit and AADC destinations.

We expanded full-tray preparation in DMM 245.6.7 for barcoded carrier route letters (up to 3 ounces) sorted to all destinations, instead of those ZIP Codes receiving a DPS sort (ZIP Codes with ''C'' and ''D'' indicators in the USPS City State Product).

We clarified the definition of a Not Flat-Machinable piece in DMM 401.2.2.2. We clarified in DMM 243.3.0 that mailers must mark nonmachinable letters over 3.3 ounces that pay Not Flat-Machinable rates as ''Not Flat-Machinable'' or ''NFM.'' We also refer to these marking requirements in DMM 402.

We relaxed the flexibility test in DMM 301.1.0 for all flat-size mail to apply pressure within 1 inch of the extended ends. We modified the uniform thickness standard in DMM 301.1.0 for all flat-size mail to allow for up to ¼-inch variance in thickness. We also relaxed the deflection test in DMM 301.3.0 for automation flats by allowing deflection to within 1 inch of the extended length, with a maximum vertical drop of 4 inches.

We revised the standards for sorting irregular parcels and Not Flat-Machinable pieces under 6 ounces to require 3-digit sorting. We also made 5-digit and 5-digit scheme sorting optional but required for the 5-digit rate for all Standard Mail parcels and Not Flat-Machinable pieces. We removed the facing and loose packing requirements for irregular parcels in DMM 445.5.4.3.

We provided alternative labeling lists—L004 and L009—for irregular parcels over 2 ounces (except for rolls and tubes) sorted to ADCs and mixed ADCs. We corrected the standards for other irregular parcels labeled to ADCs and mixed ADCs to reference labeling lists L603 and L604.

We added new standards in DMM 402.4.3 for the placement of POSTNET barcodes on Not Flat-Machinable pieces. Mailers must place the POSTNET barcode on the address side, at least ⅛ inch from all edges of the piece. We also revised standards to apply the barcoding requirements for parcels to Not Flat-Machinable pieces with parcel barcodes.

Periodicals Changes

We revised the standards in DMM 707.1.1.3 and 707.1.2.3 to clarify how the $0.85 Outside-County container rate applies to trays, sacks, and pallets of Periodicals mail. We also exempt mixed containers of In-County and Outside-County pieces in carrier route, 5-digit carrier routes, and 5-digit/scheme containers from the $0.85 charge.

We added an option to allow consolidators to prorate the Outside-County container charge on each mailer's postage statement in a mailing pool if they electronically submit a qualification report using Mail.dat. We provide the new standards and all options for calculating and paying the Outside-County container charge in DMM 707.2.2.7 and 707.16.4. We also added new requirements for standardized documentation in 708.1.2.

We reorganized the current UFSM 1000 criteria into the Periodicals standards in the DMM to reflect that this alternative preparation for automation flats is still available for Periodicals mail. This alternative allows Periodicals mailers to continue to claim automation rates based on the current UFSM 1000 criteria. We clarified the criteria for automation flats in DMM 707.25.3.1 to specify that these standards are an exception to DMM 301.3.3 for Periodicals flat-size mail.

Updated Summary by Class of Mail

Summary of First-Class Mail

Our proposal introduces prices based on the shape of mail and our relative costs, with separate prices for letters, flats, and parcels. As shape becomes more important, weight becomes less important, and our proposal reduces prices for many letter-size pieces over 1 ounce.

The single-piece 1-ounce First-Class Mail letter price will increase $0.03, to $0.42, and the single-piece card price also will increase $0.03, to $0.27. The additional-ounce price will decrease $0.04, to $0.20.

We propose a forever stamp to make future price changes more convenient for consumers. The postage value of the forever stamp will equal the First-Class Mail single-piece 1-ounce letter rate at any time in the future, without the addition of extra postage.

Our pricing proposal will eliminate the nonmachinable surcharge. Instead, a letter-size mailpiece with nonmachinable characteristics will pay the flat-size price. Our additional handling costs are included in the proposed 1-ounce flat-size price, so no surcharge is necessary. To qualify for letter rates, the maximum weight for letter-size pieces will be 3.5 ounces.

The additional-ounce price for automation letters will decrease from $0.237 to $0.155. We will maintain the 150-piece minimum tray preparation requirement for automation First-Class Mail letters and cards. Sort levels will be 5-digit/scheme, 3-digit/scheme, 3-digit origin, AADC, and mixed AADC. We propose a simplified letter mail preparation for machinable letters, requiring mailers to sort only to the origin 3-digit, AADC, and mixed AADC levels. We propose to eliminate the carrier route automation preparation since it provides little value for our processing operations.

To ensure automated processing of flat-size mail, we will require all flats to be rectangular. The physical standards for automation flats will be the criteria for AFSM 100 pieces, with new standards for flexibility. We also propose to lessen and simplify the deflection standard.

To help reduce the number of ''air trays'' and the overall costs of handling mail in letter trays, we propose a no-overflow tray option for automation letters. In addition, to encourage fuller trays, we propose to change our definition of a ''full letter tray'' to one in which the pieces fill the length of the tray between 85 percent and 100 percent full.

The structure for discount parcels includes new workshare prices. The proposed rate levels are 5-digit, 3-digit, ADC, and single piece. To simplify the preparation of First-Class Mail parcels, we propose to make the preparation of 5-digit sacks optional. We will require at least 10 pounds of parcels for 5-digit sacks, 3-digit sacks, and ADC sacks. Remaining pieces sorted to a mixed ADC sack will pay the single-piece First-Class Mail parcel price.

Barcodes help processing on APPS, and we will give mailers the option of applying either a 5-digit UCC/EAN 128 or a POSTNET barcode on presorted parcels. Unless prepared in 5-digit/scheme containers or paid at the single-piece rates, we will apply a surcharge to all parcels that are not barcoded or weigh less than 2 ounces, or to irregularly shaped parcels such as triangles, tubes, rolls, and similar pieces.

Summary of Standard Mail

Our proposed prices encourage mail that is compatible with our operations and drop shipped closer to its destination. As in First-Class Mail, Standard Mail pricing has greater recognition of shape and reduced reliance on weight.

Automation letter sort levels will be 5-digit/scheme, 3-digit/scheme, AADC, and mixed AADC. We propose a simplified preparation to allow mailers of machinable letters to sort only to the AADC and mixed AADC levels. Mailers will have the option to prepare origin 3-digit trays for automation and machinable letters.

Nonmachinable letter sort levels will be 5-digit, 3-digit, ADC, and mixed ADC. Mailers will have the option to prepare origin 3-digit trays for nonmachinable letters. We will replace the nonmachinable surcharge with a separate rate structure for nonmachinable letters up to 3.3 ounces. Nonmachinable letters over 3.3 ounces will pay the Not Flat-Machinable rate or automation flat-size rate, if the pieces meet the standards for automation flats.

DDU entry rates will not be available for ECR letters. However, we will allow DSCF entry rates for DDU entry of some enhanced carrier route letters, including letters with simplified addresses and locally entered small-volume mailings. We will eliminate ECR automation basic rates because this preparation has little value for our mail processing operations.

To help reduce the number of ''air trays'' and the overall costs of handling mail in letter trays, we propose a no-overflow tray option for automation letters. In addition, to encourage fuller trays, we propose to change our definition of a ''full letter tray'' to one in which the pieces fill the length of the tray between 85 percent and 100 percent full.

The physical standards for automation flats will retain most of the criteria for AFSM 100 pieces, with new standards for flexibility. This change will maximize the number of flats we can process in automated operations and deliver as flats. We propose to relax the current deflection standard to better define the types of pieces we can currently process on our AFSM 100 automated flat processing equipment.

For consistency, we propose to increase the maximum size for carrier route flats so that the same maximum size applies to all flats, regardless of the rate paid. We will expand the current requirements for automation flats to all flat-size pieces to be rectangular and uniformly thick. We also provide a new, relaxed definition of ''uniformly thick'' to better define the types of pieces we can process on our automated flat processing equipment and handle efficiently at delivery.

Our proposal includes a new Not Flat-Machinable classification for rigid flat-size pieces and pieces that are currently claiming automation flat rates based on

UFSM 1000 standards. We propose no bundling for most Not Flat-Machinable pieces and to have mailers prepare pieces in 5-digit/scheme, 3-digit, ADC/bulk mail center (BMC), and mixed ADC/BMC containers. To simplify the preparation of Not Flat-Machinable pieces, we propose to make the 5-digit/scheme level optional. To give mailers access to deeper discounts, we propose 5-digit rates for 5-digit bundles prepared on pallets. In addition, we propose a DDU entry discount for Not Flat-Machinable pieces sorted to 5-digit destinations when drop shipped directly to the DDU. There will be no minimum quantity for Not Flat-Machinable pieces drop shipped to DDUs. Barcodes help processing on APPS, and we will give mailers the option of applying either a 5-digit UCC/EAN 128 or a POSTNET barcode on pieces under 6 ounces. Unless prepared in 5-digit/scheme containers, we will apply a surcharge to all Not Flat-Machinable pieces that are not barcoded.

We propose to eliminate the residual shape surcharge for Standard Mail parcels and replace it with a separate rate structure. We will no longer offer a $0.03 machinable barcode discount. Instead, parcel prices will include a requirement for barcodes. Unless prepared in 5-digit containers, we will apply a surcharge to all parcels that are not barcoded.

We will remove the bundling requirement for all Standard Mail irregular parcels except ECR pieces. We propose to reduce the required minimum quantity of irregular parcels in sacks to 10 pounds per sack.

We propose four new options for mailers to combine parcels. We propose commingling Standard Mail and Package Services machinable parcels, irregular parcels, and the new Not Flat-Machinable pieces in 5-digit containers. We would allow mailers to combine Not Flat-Machinable pieces under 6 ounces with irregular parcels in 3-digit, ADC, and mixed ADC containers. We would allow mailers to combine Not Flat-Machinable pieces weighing 6 ounces or more with machinable parcels in BMC/ASF and mixed BMC containers. We would also allow mailers to combine Standard Mail parcels, NFMs, machinable Parcel Select, and BPM parcels in 3-digit containers to certain ZIP Codes when entered at designated SCFs.

The DDU discount currently is available only for pieces sorted to carrier routes. To give mailers access to deeper destination entry discounts, we will allow a DDU entry discount for parcels sorted to 5-digit destinations when drop shipped directly to the DDU. There will be no minimum for the quantity of parcels drop shipped to a DDU.

Customized MarketMail is a type of Standard Mail that allows business mailers to send distinctive, unusually shaped advertising pieces to their customers. Mailers will still have the option to use Customized MarketMail. Rates will equal the nonentry 5-digit rate for Not Flat-Machinable pieces.

Mailers still will have the option of using detached address labels. To help cover our handling costs, we propose a new $0.015 charge for detached address labels with ECR saturation flat-size pieces. Mailers who prepare mail with addresses on their mailpieces will avoid the new charge.

Summary of Periodicals

Our proposed Periodicals prices encourage mailers to use pallets rather than sacks. We also enhance drop ship incentives to encourage mailers, including publishers of high-editorial-content publications, to enter Outside-County mail closer to its destination. Our proposal will also make the experimental copalletization standards a permanent option for mailers.

Our pricing proposal includes a new $0.85 Outside-County container rate. We will apply the container rate to any pallet, sack, or tray of Outside-County Periodicals mail, except for mixed containers of In-County and Outside-County pieces in carrier route, 5-digit carrier routes, and 5-digit\scheme containers. We also propose new drop ship prices based on nonadvertising pounds, in addition to increased per-piece drop ship discounts.

To encourage fuller letter trays, we propose to change our definition of a ''full letter tray'' to one in which the pieces fill the length of the tray between 85 percent and 100 percent full.

Summary of Package Services

Package Services includes Parcel Post, Bound Printed Matter, Media Mail, and Library Mail. Our proposal simplifies Package Services offerings and encourages more efficient handling of parcels.

Parcel Post

Currently, we charge parcels weighing less than 15 pounds and measuring more than 84 inches in combined length and girth the 15-pound rates (''balloon rate''). Under our proposal, we will charge parcels weighing less than 20 pounds and measuring more than 84 inches in combined length and girth the 20-pound rates.

We will incorporate the current $0.03 barcode discount available for machinable Parcel Select destination bulk mail center (DBMC) entry mail into the price and we will require a barcode. Nonbarcoded machinable pieces could claim only the applicable Intra-BMC/ASF rate.

We do not propose any changes to mail preparation standards for Parcel Select.

Bound Printed Matter

We will rename single-piece Bound Printed Matter ''nonpresorted'' Bound Printed Matter, and we will eliminate it as a retail option. Customers can still use PC Postage or apply meter postage or adhesive stamps to nonpresorted BPM and deposit these pieces in a collection box or give them to their letter carrier. We will increase the $0.08 discount from the parcel price for flat-size pieces to $0.16. We will not change the $0.03 per piece POSTNET barcode discount for flat-size mail and the $0.03 per piece parcel barcode discount for machinable parcels.

To reduce sacks, we propose to require 5-digit/scheme and 3-digit/scheme bundles and 5-digit/scheme sacks for presorted flat-size Bound Printed Matter. We propose to require 5-digit/scheme bundles for irregular parcels that weigh less than 10 pounds each and 5-digit/scheme sacks for machinable and irregular parcels.

Media Mail and Library Mail

To reduce sacks, we propose to require 5-digit/scheme and 3-digit/scheme bundles and 5-digit/scheme sacks for presorted flat-size Media Mail and Library Mail. We propose to require 5-digit/scheme bundles for irregular parcels and 5-digit/scheme sacks for machinable and irregular parcels.

Summary of Priority Mail

We continue to offer convenience in Priority Mail. The USPS-produced flat-rate envelope still will pay the 1-pound price, $4.65 under the proposal, regardless of weight or destination. USPS-produced flat-rate boxes will pay $8.80 under the proposal, regardless of weight or destination, and will become a permanent offering. Prices for all Priority Mail pieces weighing over 25 pounds will decrease for all zones, many by as much as 20 percent.

Currently, we charge Priority Mail pieces weighing less than 15 pounds and measuring more than 84 inches in combined length and girth the 15-pound rates (''balloon rate''). Under the proposal, we will charge Priority Mail pieces weighing less than 20 pounds and measuring more than 84 inches in

combined length and girth the 20-pound rates. We will apply the new balloon rate only to pieces addressed for local delivery and to zones 1–4.

Priority Mail pieces that exceed 1 cubic foot and are addressed to zones 5–8 could be subject to a new dimensional-weight price. We will rate postage for these pieces at the greater of their actual weight or their dimensional weight. In general, if a piece is relatively light for its size, it may be subject to a dimensional-weight price. We will calculate dimensional weight using one of two formulas, one for rectangular and one for nonrectangular pieces.

Summary of Express Mail

Express Mail pieces often contain material that ranges from a half pound to 2 pounds. Currently, these pieces pay the 2-pound price. To keep Express Mail a viable alternative for mailers, the pricing proposal adds a new 1-pound price.

The flat-rate envelope will continue to pay the half-pound price, regardless of weight.

Summary of Extra Services

Our proposal keeps insured mail reliable, easy, and affordable. All insured pieces will have a barcoded label and receive a delivery scan. We will not require a signature at delivery for insured items with an indemnity of $200 or less.

We propose new prices for Bulk Parcel Return Service, Business Reply Mail, Certificate of Mailing, Certified Mail, Collect on Delivery, Delivery Confirmation, Bulk Insurance, Express Mail Insurance, Merchandise Return Service, Money Orders, Parcel Airlift, Parcel Return Service, Registered Mail, Restricted Delivery, Return Receipt, Return Receipt for Merchandise, Signature Confirmation, and Special Handling.

Summary of Other Services

Our proposal seeks to modernize our services, improve address quality, and reduce undeliverable-as-addressed mail.

We will decrease the price for Address Change Service electronic option for First-Class Mail from $0.21 to $0.06. We will increase the price for all other classes of mail from $0.21 to $0.25. We will decrease the price for Manual Address Correction Service for all classes of mail from $0.75 to $0.50.

A new automated option for Address Change Service will allow First-Class Mail letters to receive the first two notices at no charge, then each additional notice for $0.05 each. Standard Mail letters will receive the first two notices at $0.02, then each additional notice for $0.15 each. This new option will require mailers to use the new 4-State Customer Barcode.

We propose to change the fee structure for Confirm service from the Silver, Gold, and Platinum tiers to a unit-based structure. Customers will pay standardized annual fees and purchase blocks of units that are redeemed for Confirm scans. Customers can redeem units at the rate of one unit per First-Class Mail scan or five units per scan for any other class of mail. The cost per block of units declines as volume thresholds are reached.

We no longer offer on-site meter services. We eliminate the fees associated with on-site meter service, meter resetting, examination, and checking meters in and out of service.

Individual post office box holders at different locations may experience varying price changes as we continue to align prices with our costs for each location. Our proposal will also realign the Caller Service fees.

We propose price changes for Address Sequencing Service, Mailing List Service, Permit Imprint fees, Pickup on Demand service, Premium Forwarding Service, Shipper Paid Forwarding, Stamped Cards, Stamped Envelopes, and all annual mailing fees.

We provide the updated DMM standards, and how they are applied for each type of mail, below.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C 410 (a)), we invite your comments on the following proposed revisions to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), as follows:

100 Retail Mail: Letters, Cards, Flats, and Parcels

101 Physical Standards

1.0 Physical Standards for Letters

1.1 Dimensional Standards for Letters

Letter-size mail is:

* * * * *

[Renumber item c as item d. Insert new item c as follows:]

c. Not more than 3.5 ounces.

* * * * *

1.2 Nonmachinable Criteria

A letter-size piece is nonmachinable if it has one or more of the following characteristics (see 601.1.4 to determine the length, height, top, and bottom of a mailpiece):

[Renumber items a through i as items b through j. Insert new item a as follows:]

a. Is over 3.5 ounces.

* * * * *

2.0 Physical Standards for Flats

2.1 General Definition

Flat-size mail is:

* * * * *

[Renumber item c as new item f. Insert new items c through e as follows:]

c. Flexible (see 2.2).

d. Rectangular.

e. Uniformly thick (see 2.3).

* * * * *

[Insert new 2.2 through 2.4 as follows:]

2.2 Minimum Flexibility Criteria for Rigid Pieces

Flat-size pieces must be flexible. Test flexibility as follows:

a. For pieces 10 inches or longer:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece 5 inches off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's width, exerting steady pressure.

3. Turn the piece around and repeat steps 1 and 2. The piece is flexible if both ends can bend at least 2 inches without being damaged.

b. For pieces less than 10 inches long:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece one-half of its length off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's width, exerting steady pressure.

3. Turn the piece around and repeat steps 1 and 2. The piece is flexible if both ends can bend at least 1 inch without being damaged.

2.3 Uniform Thickness

Flat-size mailpieces must be uniformly thick so that any bumps, protrusions, or other irregularities do not cause more than ¼-inch variance in thickness. (Do not consider the selvage when measuring variance in thickness.) If the contents are significantly smaller than the envelope, wrapper, or sleeve, mailers must secure those contents to prevent shifting of more than 2 inches within the mailpiece.

2.4 Flat-Size Pieces Not Eligible for Flat-Size Rates

Mailpieces that do not meet the standards in 2.1 through 2.3 are not eligible for flat-size rates and must pay applicable parcel rates.

* * * * *

5.0 Additional Physical Standards for Priority Mail

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5.2 Two or More Packages

[Revise 5.2 as follows:]

With the exception of USPS-produced Priority Mail flat-rate envelopes or boxes, two or more packages may be mailed as a single parcel if they are about the same size or shape, are securely wrapped or fastened together, and do not exceed the weight or size limits.

* * * * *

6.0 Additional Physical Standards for First-Class Mail

* * * * *

6.4 Nonmachinable Pieces

6.4.1 Nonmachinable Letters

[Revise 6.4.1 as follows:]

Letter-size pieces with one or more of the nonmachinable characteristics in 1.2 are subject to the applicable postage for a flat-size piece, based on weight.

[Revise heading and text of 6.4.2 as follows:]

6.4.2 Nonmachinable Flats

Flat-size pieces that do not meet the standards in 2.0 are subject to the applicable postage for a parcel-size piece, based on weight.

* * * * *

[Delete 8.0, Additional Physical Standards for Bound Printed Matter. Renumber 9.0 and 10.0 as new 8.0 and 9.0.]

* * * * *

102 Elements on the Face of a Mailpiece

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3.0 Placement and Content of Mail Markings

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[Revise heading of 3.3 as follows:]

3.3 Mail Markings

[Revise first sentence of 3.3 as follows:]

Mailers must print the basic required Package Services subclass marking—''Parcel Post'' or ''PP,'' ''Media Mail,'' or ''Library Mail''—on each piece claimed at the respective rate. * * *

* * * * *

110 Retail Mail: Express Mail

113 Rates and Eligibility

1.0 Express Mail Rates and Fees

* * * * *

1.2 Express Mail Rate Application

[Revise 1.2 as follows:]

Except under 1.4, Flat-Rate Envelope, Express Mail items are charged the 0.5-pound rate for items up to 0.5 pound. Items over 0.5 pound are rounded up to the next whole pound. For example, if a piece weighs 0.25 pound, the weight (postage) increment is 0.5 pound; if a piece weighs 0.75 pound, the weight (postage) increment is 1 pound; if a piece weighs 1.2 pounds, the weight (postage) increment is 2 pounds.

* * * * *

120 Retail Mail: Priority Mail

123 Rates and Eligibility

1.0 Priority Mail Rates and Fees

* * * * *

1.2 Priority Mail Rate Application

[Revise 1.2 as follows:]

Except under 1.3, 1.4, and 1.5, Priority Mail rates are charged per pound; any fraction of a pound is rounded up to the next whole pound. For example, if a piece weighs 1.2 pounds, the weight (postage) increment is 2 pounds. The minimum postage amount per addressed piece is the 1-pound rate. The Priority Mail rate up to 1 pound is based on weight only; rates for pieces weighing more than 1 pound are based on weight and zone. Other charges may apply. See Exhibit 1.3, Priority Mail Rates.

1.3 Minimum Rate for Parcels to Zones 1–4

[Revise 1.3 as follows:]

Parcels addressed for delivery to Zones 1–4 (including Local) that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable zone rate for a 20-pound parcel (balloon rate).

[Delete 1.6 and 1.7; renumber 1.4 and 1.5 as new 1.6 and 1.7. Insert new 1.4 and 1.5 as follows:]

1.4 Dimensional Weight Rate for Low-Density Parcels to Zones 5–8

Postage for parcels addressed for delivery to Zones 5–8 and exceeding 1 cubic foot (1,728 cubic inches) is based on the actual weight or the dimensional weight (as calculated in 1.4.1 or 1.4.2), whichever is greater.

1.4.1 Determining Dimensional Weight for Rectangular Parcels

Follow these steps to determine the dimensional weight for a rectangular parcel:

a. Measure the length, width, and height in inches. Round off (see 604.8.0) each measurement to the nearest whole number.

b. Multiply the length by the width by the height.

c. If the result exceeds 1,728 cubic inches, divide the result by 194 and round up (see 604.8.0) to the next whole number to determine the dimensional weight in pounds.

1.4.2 Determining Dimensional Weight for Nonrectangular Parcels

Follow these steps to determine the dimensional weight for a nonrectangular parcel:

a. Measure the length, width, and height in inches at their extreme dimensions. Round off (see 604.8.0) each measurement to the nearest whole number.

b. Multiply the length by the width by the height.

c. Multiply the result by an adjustment factor of 0.785.

d. If the final result exceeds 1,728 cubic inches, divide the result by 194 and round up (see 604.8.0) to the next whole number to determine the dimensional weight in pounds.

e. If the dimensional weight exceeds 70 pounds, the parcel pays the 70-pound rate.

1.5 Flat-Rate Boxes and Envelopes

Any amount of material may be mailed in a USPS-produced Priority Mail flat-rate box or flat-rate envelope. When sealing a flat-rate box or flat-rate envelope, the container flaps must be able to close within the normal folds. Tape may be applied to the flaps and seams to reinforce the container, provided the design of the container is not enlarged by opening the sides and the container is not reconstructed in any way.

1.5.1 Flat-Rate Boxes—Rate and Eligibility

Each USPS-produced Priority Mail flat-rate box is charged $8.80, regardless of the actual weight of the piece or its destination. Only USPS-produced flat-rate boxes are eligible for the flat-rate box rate.

1.5.2 Flat-Rate Envelopes—Rate and Eligibility

Each USPS-produced Priority Mail flat-rate envelope is charged $4.65, regardless of the actual weight of the piece or its destination. Only USPS-produced flat-rate envelopes are eligible for the flat-rate envelope rate.

* * * * *

130 Retail Mail: First-Class Mail

133 Rates and Eligibility

1.0 First-Class Mail Rates and Fees

1.1 First-Class Mail Single-Piece Rate Application

The single-piece rates for First-Class Mail are applied as follows:

* * * * *

[Revise the weight limit in item b as follows:]

b. The letter rate applies to letter-size pieces that meet the standards in 101.1.1 and weigh 3.5 ounces or less, and that are not eligible for and claimed at the card rate.

[Insert new items c and d as follows:]

c. The flat rate applies to flat-size pieces that meet the standards in 101.2.1 and letter-size pieces with one or more of the nonmachinable characteristics in 101.1.2.

d. The parcel rate applies to parcel-size pieces under 101.3.0 and to flat-size pieces that do not meet the standards in 101.2.0.

* * * * *

[Delete current 1.9, Nonmachinable Surcharge, and 1.10, Applicability of Nonmachinable Surcharge. Renumber current 1.8 as new 1.9 and revise to remove references to nonmachinable surcharge in the first three sentences as follows:]

1.9 Keys and Identification Devices

Keys and identification devices (such as identification cards and uncovered identification tags) that weigh 13 ounces or less are returned at the applicable single-piece First-Class Mail parcel rate plus the fee. Keys and identification devices that weigh more than 13 ounces but not more than 1 pound are returned at the 1-pound Priority Mail rate plus the fee. Keys and identification devices weighing more than 1 pound but not more than 2 pounds are mailed at the 2-pound Priority Mail rate for zone 4 plus the fee. * * *

* * * * *

[Renumber current 1.7, Rates for Keys and Identification Devices, as new 1.10.]

* * * * *

[Restructure the rate tables in 1.4 through 1.6 into new 1.4 through 1.8 for separate letter, flat, and parcel rates.]

* * * * *

2.0 Basic Eligibility Standards for First-Class Mail

2.1 Description of Service

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2.1.2 Rate Options

[Revise 2.1.2 to add shape-based reference as follows:]

First-Class Mail offers shape-based single-piece rates in 1.0.

* * * * *

150 Retail Mail: Parcel Post

153 Rates and Eligibility

1.0 Parcel Post Rates and Fees

1.1 Rate Eligibility

There are two Parcel Post retail rate categories: Intra-BMC and Inter-BMC. Intra-BMC and Inter-BMC Parcel Post rates are calculated based on the zone to which the parcel is addressed and the weight of the parcel. Requirements for Parcel Post rates and discounts are as follows:

* * * * *

[Revise item d as follows:]

d. Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate).

* * * * *

1.7 Inter-BMC/ASF Machinable Parcel Post

[Revise 1.7 as follows:]

For barcode discount, deduct $0.03 per parcel (50-piece minimum). Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate).

1.8 Inter-BMC/ASF Nonmachinable Parcel Post

[Revise 1.8 as follows:]

Rates include the $3.62 nonmachinable surcharge. Regardless of weight, a parcel with any of the characteristics in 101.7.2, Nonmachinable Parcel Post Standards, must pay the rate listed in Exhibit 1.9. Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate). The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

* * * * *

1.10 Local and Intra-BMC/ASF Machinable Parcel Post

[Revise 1.10 as follows:]

Rates for parcels that originate and destinate in the same BMC service area are in Exhibit 1.12, Local and Intra-BMC/ASF Machinable and Nonmachinable Parcel Post Rates. For barcode discount, deduct $0.03 per parcel (50-piece minimum). Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate). Regardless of weight, a parcel with any of the characteristics in 101.7.2 must pay the rate for a nonmachinable parcel in 1.11.

1.11 Local and Intra-BMC/ASF Nonmachinable Parcel Post

[Revise 1.11 as follows:]

Rates include the $1.85 nonmachinable surcharge. Regardless of weight, a parcel with any of the characteristics in 101.7.2, Nonmachinable Parcel Post Standards, must pay the rates in Exhibit 1.12. Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate). The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

* * * * *

[Delete Chapter 160, Retail Mail: Bound Printed Matter, in its entirety. These standards are incorporated into chapters 360 and 460.]

* * * * *

200 Discount Mail: Letters and Cards

201 Physical Standards

1.0 Physical Standards for Machinable Letters and Cards

1.1 Physical Standards for Machinable Letters

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1.1.2 Weight Standards for Machinable Letters

[Revise 1.1.2 to change the maximum weight for First-Class Mail machinable letters to 3.5 ounces as follows:]

The maximum weight for Presorted First-Class Mail machinable letters is 3.5 ounces (0.2188 pound). The maximum weight for Standard Mail machinable letters is 3.3 ounces (0.2063 pound).

* * * * *

2.0 Physical Standards for Nonmachinable Letters

2.1 Criteria for Nonmachinable Letters

A letter-size piece is nonmachinable if it has one or more of the following characteristics (see 601.1.4 to determine the length, height, top, and bottom of a mailpiece):

[Renumber items a through i as items b through j. Insert new item a as follows:] a. Is over 3.5 ounces.

* * * * *

[Delete 2.2.2, Nonmachinable Surcharge—Letter-Size Pieces. Renumber 2.2.1 as new 2.2 and revise as follows:]

2.2 Additional Criteria for First-Class Mail Nonmachinable Letters

Letter-size pieces (except pieces eligible for and mailed at card rates) with one or more of the nonmachinable characteristics in 2.1 are subject to the rates for flat-size pieces (see 333.1.0).

[Delete 2.3.2, Nonmachinable Surcharge Not Applied. Renumber 2.3.1 as new 2.3 and revise as follows:]

2.3 Additional Criteria for Standard Mail Nonmachinable Letters

The nonmachinable rates in 243.1.5 apply to Standard Mail letter-size pieces that weigh 3.3 ounces or less and have one or more of the nonmachinable characteristics in 2.1.

3.0 Physical Standards for Automation Letters and Cards

* * * * *

3.3 Weight Standards for First-Class Mail Automation Letters and Cards

[Revise 3.3 to change the weight limit as follows:]

Maximum weight for First-Class Mail automation letters is 3.5 ounces (0.2188 pound). See 3.13.4 for pieces heavier than 3 ounces.

3.4 Weight Standards for Standard Mail Automation Letters

[Revise 3.4 to remove the reference to automation carrier route mail as follows:]

Maximum weight for Standard Mail mailed at automation and Enhanced Carrier Route high-density and saturation rates is 3.5 ounces (0.2188 pound). See 3.13.4 for pieces heavier than 3 ounces.

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202 Elements on the Face of a Mailpiece

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3.0 Placement and Content of Mail Markings

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3.3 Placement of Mail Markings

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[Revise item b, item b3, and item c to delete ''AUTOCR.''']

3.4 Exceptions to Markings

Exceptions are as follows:

[Revise item a to remove references to carrier route mail as follows:]

a. Automation Letters. First-Class Mail and Standard Mail letters do not require an ''AUTO'' marking if they bear a DPBC or a 4-State Customer Barcode with a delivery point routing code in the address block or on an insert visible through a window. First-Class Mail letters not marked ''AUTO'' must bear both the ''Presorted'' or ''PRSRT'' and ''First-Class'' markings. Standard Mail letters not marked ''AUTO'' must bear the appropriate basic marking in 3.3a.

[Revise item b as follows:]

b. Manifest Mailings. The basic marking must appear in the postage area on each piece as required in 3.3a. The two-letter rate category code required in the keyline on manifest mailing pieces prepared under 705.2.0, Manifest Mailing System, meets the requirement for other rate markings.

* * * * *

230 Discount Letters and Cards: First-Class Mail

233 Rates and Eligibility

1.0 Rates and Fees for First-Class Mail

1.1 Rate Application

[Revise 1.1 to add ''letter'' as follows:]

Postage is based on the letter rate that applies to the weight of each addressed piece.

1.2 Rate Computation for First-Class Mail Letters

[Revise the first sentence in 1.2 to add ''letter'' as follows:]

First-Class Mail letter rates are charged per ounce or fraction thereof; any fraction of an ounce is considered a whole ounce. For example, if a piece weighs 1.2 ounces, the weight (postage) increment is 2 ounces. The minimum postage per addressed piece is that for a piece weighing 1 ounce.

* * * * *

[Delete 1.13, Carrier Route Automation Cards; 1.14, Carrier Route Automation Letters; and 1.16, Nonmachinable Surcharge. Renumber 1.15, Summary Presorted, Automation, and Carrier Route Rates for Cards and Letters, as new 1.13. Renumber 1.17 through 1.19 as new 1.14 through 1.16.]

* * * * *

3.0 Basic Standards for First-Class Mail Letters

3.1 Description of Service

* * * * *

3.1.2 Rate Options

[Revise 3.1.2 as follows:]

First-Class Mail letters offer shape-based single-piece rates in 133.1.0 and discounted rates in 1.0 for presorted mailings of 500 or more pieces that weigh 3.5 ounces or less.

* * * * *

3.3 Additional Basic Standards for First-Class Mail

[Revise introductory text in 3.3 as follows:]

All pieces of presorted First-Class Mail letters must:

* * * * *

[Revise the weight in item b as follows:]

b. Weigh 3.5 ounces or less.

* * * * *

4.0 Additional Eligibility Standards for Nonautomation First-Class Mail Letters

* * * * *

[Revise heading of 4.3 as follows:]

4.3 Letters With Nonmachinable Characteristics

[Revise 4.3 to delete nonmachinable surcharge as follows:]

Letters with one or more of the nonmachinable characteristics in 201.2.1 must pay the flat-size rate. In addition to the standards in 3.0, Basic Standards for First-Class Mail Letters, all pieces in a First-Class Mail Presorted nonmachinable letter-size mailing must be marked, sorted, and documented according to 235.5.3, Nonmachinable Preparation.

[Revise heading of 5.0 to delete ''Carrier Route'' as follows:]

5.0 Additional Eligibility Standards for Automation Rate First-Class Mail Letters

[Revise heading of 5.1 as follows:]

5.1 Basic Standards for Automation First-Class Mail Letters

All pieces in a First-Class Mail automation rate mailing must:

* * * * *

[Delete item d2. Move text in item d1 into item d as follows.]

d. Bear a delivery address that includes the correct ZIP Code, ZIP+4 code, or numeric equivalent to the delivery point barcode (DPBC) and that meets the address matching and coding standards in 5.6, Address Standards for Barcoded Pieces, and 708.3.0, Coding Accuracy Support System (CASS).

* * * * *

[Delete 5.2, Carrier Route Accuracy, and renumber 5.3 and 5.4 as new 5.2 and 5.3.]

* * * * *

5.2 Maximum Weight for Automation Letters

[Revise renumbered 5.2 to change maximum weight from 3.3 to 3.5 ounces as follows:]

Maximum weight for First-Class Mail automation letters is 3.5 ounces (0.2188 pound) (see 201.3.13.4, Heavy Letter Mail, for pieces heavier than 3 ounces).

5.3 Rate Application—Automation Cards and Letters

Automation rates apply to each piece that is sorted under 235.6.0 into the corresponding qualifying groups:

[Delete item a. Renumber items b through e as new items a through d and revise as follows:]

a. Groups of 150 or more pieces in 5-digit/scheme trays qualify for the 5-digit rate. Preparation to qualify for the 5-digit rate is optional. Pieces placed in full 3-digit/scheme trays in lieu of 5-digit/scheme overflow trays under 235.6.6 are eligible for the 5-digit rates.

b. Groups of 150 or more pieces in 3-digit/scheme trays qualify for the 3-digit rate. Pieces placed in full AADC trays in lieu of 3-digit/scheme overflow trays under 235.6.6 are eligible for the 3-digit rates.

c. Groups of fewer than 150 pieces in origin 3-digit/scheme trays and all pieces in AADC trays qualify for the AADC rate. Pieces placed in mixed AADC trays in lieu of AADC overflow trays under 235.6.6 are eligible for the AADC rates.

d. Pieces in mixed AADC trays qualify for the mixed AADC rate, except for pieces prepared under 5.3c.

* * * * *

[Delete 5.5 and renumber 5.6 and 5.7 as new 5.4 and 5.5.]

* * * * *

[Delete renumbered 5.4.7, Rural and Highway Contract Routes. Renumber 5.4.8 as new 5.4.7.]

* * * * *

234 Postage Payment and Documentation

* * * * *

2.0 Postage Payment for Presorted Letters

* * * * *

2.2 Affixed Postage for Presorted First-Class Mail

Unless permitted by other standards or by Business Mailer Support, USPS Headquarters, when precanceled postage or meter stamps are used as the postage payment method, only one payment method may be used in a mailing and each piece must bear postage under one of these conditions:

* * * * *

[Revise item b to delete the reference to the nonmachinable surcharge as follows:]

b. A precanceled stamp or the full postage at the lowest First-Class Mail 1-ounce rate applicable to the mailing job, and full postage on metered pieces for any additional ounces or extra services.

* * * * *

235 Mail Preparation

1.0 General Definition of Terms

* * * * *

1.2 Definitions of Mailings

Mailings are defined as:

[Revise the second sentence in item a to remove ''automation carrier route'' as follows:]

a. * * * Generally, automation and nonautomation letters must be prepared as separate mailings.* * *

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

Delete item a and renumber items b through k as new items a through j.]

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise item b as follows:]

b. A full letter tray is one in which faced, upright pieces fill the length of the tray between 85% and 100% full.

* * * * *

[Revise item e to delete the last sentence.]

* * * * *

2.0 Bundles

* * * * *

2.3 Preparing Bundles

Cards and letter-size pieces are subject to these bundling standards:

[Revise item a as follows:]

a. The maximum thickness for bundles is 6 inches.

* * * * *

[Delete item d and renumber items e and f as new items d and e.]

* * * * *

2.8 Labeling Bundles

[Revise the first sentence in the introductory text to delete the reference to carrier route bundles as follows:]

Unless excepted by standard, the presort level of each bundle must be identified either with an optional endorsement line under 708.7.0 or with a barcoded pressure-sensitive bundle label. On letter-size mail (including card-size pieces), the bundle label must be placed in the lower left corner of the address side of the top piece in the bundle. Bundle labels must not be obscured by banding or shrinkwrap. The following colors and presort characters apply to bundle labels:

* * * * *

[Delete 2.9, Use of Carrier Route Information Lines, and 2.10, Facing Slips—All Carrier Route Mail.]

* * * * *

4.0 Tray Labels

* * * * *

4.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

* * * * *

b. Codes: The codes shown below must be used as appropriate on Line 2 of tray labels.

[Revise the table in item 4.4b to delete the entries for ''Carrier Route,'' ''Carrier Routes,'' ''General Delivery Unit,'' ''Highway Contract Route,'' ''Post Office Box Section,'' and ''Rural Route.'']

* * * * *

* * * * *

5.0 Preparing Nonautomation Letters

* * * * *

[Delete 5.2, Manual Only Option, and renumber 5.3 and 5.4 as new 5.2 and 5.3.]

5.2 Machinable Preparation

* * * * *

5.2.2 Traying and Labeling

[Delete item a about labeling the 5-digit tray. Renumber items b through d

as new items a through c. Revise renumbered item a to reflect the 3-digit origin tray as follows:]

* * * * *

a. Separate 3-digit origin trays required for each origin 3-digit ZIP Code; one less-than-full tray permitted for each origin ZIP Code; labeling:

1. Line 1: L002, Column A.
2. Line 2: ''FCM LTR 3D MACH.''

* * * * *

5.3 Nonmachinable Preparation

5.3.1 Nonmachinable Bundling

[Delete the second-to-last sentence in the introductory text to remove the ''manual only'' option as follows:]

Except as provided in 2.5, Exception to Bundle Preparation—Full Single-Sort-Level Trays, bundling is required before traying. A bundle must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces. Smaller volumes are not permitted except for mixed ADC bundles. Preparation sequence, bundle size, and labeling:

* * * * *

6.0 Preparing Automation Rate Letters

* * * * *

6.2 Mailings

The requirements for mailings are as follows:

* * * * *

[Revise item b as follows:]

b. First-Class Mail. A single automation rate First-Class Mail mailing may include pieces prepared at 5-digit, 3-digit, AADC, and mixed AADC rates.

* * * * *

6.3 Marking

[Revise 6.3 to delete the carrier route references as follows:]

All automation rate pieces must be marked under 202.3.0, Placement and Content of Mail Markings, and 202.4.0, Endorsement Placement. Pieces claimed at an automation rate must bear the appropriate class marking and, except as provided in 202.3.0, Placement and Content of Mail Markings, and 202.4.0, Endorsement Placement, ''AUTO.'' Pieces not claimed at an automation rate must not bear ''AUTO'' unless single-piece rate postage is affixed or the corrective single-piece rate marking (''SNGLP'' or ''Single-Piece'') is applied.

6.4 General Preparation

[Revise 6.4 as follows:]

Grouping, bundling, and labeling are not generally required or permitted, except bundling is required in any mailing consisting entirely of card-size pieces and for pieces in overflow and less-than-full trays, and grouping is required under 6.6.

* * * * *

[Delete 6.6 and 6.7. Renumber 6.8 through 6.10 as new 6.6 through 6.8.]

6.6 Tray Preparation

[Add introductory statement about overflow trays to 6.6 as follows:]

Instead of preparing overflow trays with fewer than 150 pieces, mailers may include these pieces in the next tray level when a tray of 150 or more pieces can be made. Mailers must note these trays on standardized documentation (see 708.1.2). Pieces that are placed in the next tray level must be grouped by destination and placed in the front of that tray. Mailers may use this option selectively for 3-digit and AADC ZIP Codes. This option does not apply to origin/entry 3-digit/scheme trays. Preparation sequence, tray size, and Line 1 labeling:

[Delete items a through c and renumber items d through g as new items a through d. Revise renumbered item a as follows:]

a. 5-digit/scheme (see 1.4e): optional, but required for 5-digit rate (150-piece minimum); overflow allowed.

1. For 5-digit scheme trays, use destination shown in the current USPS City State Product.

2. For 5-digit trays, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

* * * * *

6.7 Tray Line 2

Line 2: ''FCM LTR'' and:

[Delete items a through c and renumber items d through i as new items a through f as follows:]

a. 5-digit scheme: ''BC 5D SCHEME.''

b. 5-digit: ''5D BC.''

c. 3-digit scheme: ''BC 3D SCHEME'' and, if applicable, as shown in L002, Column B, followed by the letter ''A,'' ''B,'' or ''C.''

d. 3-digit: ''3D BC.''

e. AADC: ''AADC BC.''

f. Mixed AADC: ''BC WKG.''

* * * * *

240 Discount Letters and Cards: Standard Mail

243 Rates and Eligibility

1.0 Rates and Fees for Standard Mail

* * * * *

1.7 Computing Postage for Standard Mail

* * * * *

1.7.8 Discount for Heavy Automation Letters

[Revise 1.7.8 to delete the second-to-last sentence, about automation ECR.]

* * * * *

[Delete 1.7.10, Discount for Heavy ECR Basic Automation Letters.]

* * * * *

3.0 Basic Standards for Standard Mail Letters

* * * * *

3.2 Defining Characteristics

3.2.1 Mailpiece Weight

[Revise 3.2.1 as follows:]

All Standard Mail pieces must weigh less than 16 ounces. The following weight limits also apply to pieces mailed at Standard Mail letter rates:

a. Pieces mailed at machinable and nonmachinable letter rates may weigh up to 3.3 ounces. Letter-size pieces weighing more than 3.3 ounces and prepared as nonmachinable letters are mailable at Not Flat-Machinable rates (see 443) and must be marked ''Not Flat-Machinable'' or ''NFM'' according to 402.2.0, unless they are barcoded and eligible to be mailed as automation flats under 301.3.0.

b. Pieces mailed at automation letter rates or Enhanced Carrier Route high-density or saturation rates may weigh up to 3.5 ounces.

* * * * *

3.3 Additional Basic Standards for Standard Mail

Each Standard Mail mailing is subject to these general standards:

* * * * *

[Revise item e to add a reference to 3.8.1 as follows:]

e. Each piece must bear the addressee's name and delivery address, including the correct ZIP Code or ZIP+4 code (see 3.8.1), unless an alternative addressing format is used subject to 602.3.0. Detached address labels may be used subject to 602.4.0.

* * * * *

4.0 Rate Eligibility for Standard Mail

* * * * *

4.2 Minimum Per Piece Rates

The minimum per piece rates (the minimum postage that must be paid for each piece) apply as follows:

* * * * *

b. In applying the minimum per piece rates, a mailpiece is categorized as a letter based on whether the piece meets the letter-size standard in 201.1.1.1, without regard to placement of the address on the piece, except under these conditions:

[Revise item b1 to delete ''(nonletter)'' as follows:]

1. If the piece meets both the definition of a letter in 201.1.1.1 and the definition of an automation flat in 301.3.0, the piece may be prepared and entered at an automation flat rate.

* * * * *

[Revise item b3 by changing the base rate for Customized MarketMail as follows:]

3. Pieces mailed as Customized MarketMail under 705.1.0 must pay the Regular or Nonprofit Standard Mail 5-digit nonentry rates for Not Flat-Machinable pieces and must not exceed 3.3 ounces.

[Revise item c to delete the last sentence, about DDU rates.]

* * * * *

[Delete 4.4, Residual Shape Surcharge.]

[Replace ''presorted'' with ''nonautomation'' throughout 5.0.]

5.0 Additional Eligibility Standards for Nonautomation Standard Mail Letters

* * * * *

[Revise heading and text of 5.4 to refer to new AADC and mixed AADC rates, instead of basic rates, as follows:]

5.4 Machinable Rate Application

Machinable letters are subject only to AADC and mixed AADC rates.

5.4.1 AADC Rate

The AADC rate applies to qualifying letter-size machinable pieces (see 201.1.0, Physical Standards for Machinable Letters and Cards) placed in origin/entry 3-digit/scheme trays, to quantities of 150 or more pieces prepared in AADC trays for a single AADC, and to pieces placed in mixed AADC trays in lieu of overflow AADC trays.

5.4.2 Mixed AADC Rate

The mixed AADC rate applies to qualifying letter-size machinable pieces that the mailer prepares in mixed AADC trays, except for pieces placed in mixed AADC trays in lieu of overflow AADC trays (see 245.5.3.2).

[Delete 5.5 and 5.6. Insert new 5.5 as follows:]

5.5 Nonmachinable Rate Application

Nonmachinable rates in 1.0 apply only to Standard Mail letter-size pieces (including card-size pieces) weighing 3.3 ounces or less that have one or more of the nonmachinable characteristics in 201.2.1. Nonmachinable letter-size pieces weighing more than 3.3 ounces are subject to Not Flat-Machinable rates (see 443), unless they are barcoded and eligible to be mailed as automation flats under 301.3.0.

5.5.1 5-Digit Rate

The 5-digit rate applies to letter-size pieces subject to the nonmachinable rates (see 5.5) prepared in quantities of 150 or more pieces for a 5-digit ZIP Code and presented in 5-digit trays under 245.5.0.

5.5.2 3-Digit Rate

The 3-digit rate applies to letter-size pieces subject to the nonmachinable rates (see 5.5) prepared in quantities of 150 or more pieces for a 3-digit ZIP Code and presented in 3-digit trays under 245.5.0.

5.5.3 ADC Rate

The ADC rate applies to letter-size pieces subject to the nonmachinable rates (see 5.5) placed in 3-digit origin/entry trays and to pieces prepared in quantities of 150 or more for an ADC and presented in ADC trays under 245.5.0.

5.5.4 Mixed ADC Rate

The mixed ADC rate applies to letter-size pieces that are subject to the nonmachinable rates and prepared in mixed ADC trays.

[Revise heading of 6.0 as follows:]

6.0 Additional Eligibility Standards for Enhanced Carrier Route Standard Mail Letters

6.1 General Enhanced Carrier Route Standards

6.1.1 Optional Preparation

* * * * *

[Revise 6.1.1 to delete the last sentence, about automation basic carrier route.]

6.1.2 Basic Eligibility Standards

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route Standard Mail mailing must:

* * * * *

[Revise item b to delete the second sentence, about automation basic carrier route, as follows:]

b. Be part of a single mailing of at least 200 pieces or 50 pounds of pieces of Enhanced Carrier Route Standard Mail. Regular and Nonprofit mailings must meet separate minimum volumes.

* * * * *

6.1.3 Maximum Weight for Enhanced Carrier Route Letters

[Revise 6.1.3 to delete the reference to automation carrier route as follows:]

Maximum weight for Standard Mail Enhanced Carrier Route high-density and saturation pieces: 3.5 ounces (0.2188 pound) (see 201.3.13.4, Heavy Letter Mail, for pieces heavier than 3 ounces).

6.2 Carrier Route Accuracy

6.2.1 Basic Standards

The carrier route accuracy standard is a means of ensuring that the carrier route code correctly matches the delivery address information. For the purposes of this standard, address means a specific address associated with a specific carrier route code. Addresses used on pieces claiming certain rates under 6.2.2 that are subject to the carrier route accuracy standard must meet these requirements:

[Revise item a to delete the last sentence, about ECR automation rate Standard Mail, as follows:]

a. Each address and associated carrier route code used on the mailpieces in a mailing must be updated within 90 days before the mailing date with one of the USPS-approved methods in 3.8.2.

* * * * *

6.3 Basic Rate Enhanced Carrier Route Standards

* * * * *

6.3.2 Basic Rate Eligibility

[Revise 6.3.2 to add the option for groups of 10 or more pieces as follows:]

Basic rates apply to each piece sorted under 245.6.0 or 705.8.0 in a full carrier route tray, in a carrier route bundle of 10 or more pieces, or in groups of 10 or more pieces placed in a 5-digit carrier routes or a 3-digit carrier routes tray.

* * * * *

[Delete 6.6, Automation ECR Standards.]

* * * * *

7.0 Eligibility Standards for Automation Rate Standard Mail

* * * * *

7.3 Rate Application for Automation Letters

Automation rates apply to each piece that is sorted under 245.7.0, Preparing Automation Rate Letters, into the corresponding qualifying groups:

[Revise items a through d to accommodate an option to overflow trays as follows:]

a. Groups of 150 or more pieces in 5-digit/scheme trays qualify for the 5-digit rate. Preparation to qualify for that rate is optional. Pieces placed in full 3-digit/scheme trays under 245.7.5 in lieu of 5-digit/scheme overflow trays are eligible for 5-digit rates (see 245.7.5).

b. Groups of 150 or more pieces in 3-digit/scheme trays qualify for the 3-digit rate. Pieces placed in full AADC trays

under 245.7.5 in lieu of 3-digit/scheme overflow trays are eligible for 3-digit rates (see 245.7.5).

c. Groups of fewer than 150 pieces in origin/entry 3-digit/scheme trays and groups of 150 or more pieces in AADC trays qualify for the AADC rate. Pieces placed in mixed AADC trays under 245.7.5 in lieu of AADC overflow trays also are eligible for AADC rates (see 245.7.5).

d. Pieces in mixed AADC trays qualify for the mixed AADC rate, except for pieces prepared under 7.3c.

* * * * *

245 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.2 Definitions of Mailings

Mailings are defined as:

* * * * *

b. Standard Mail. Except as provided in 243.3.6, Residual Volume Requirement, the types of Standard Mail listed below may not be part of the same mailing.

[Delete item b1, about automation ECR. Renumber items b2 through b8 as new items b1 through b7.]

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise item b as follows:]

b. A full letter tray is one in which faced, upright pieces fill the length of the tray between 85% and 100% full.

* * * * *

[Revise the last sentence in item e as follows:]

e. A 5-digit scheme sort for automation letters yields 5-digit scheme trays for those 5-digit ZIP Codes identified in the USPS City State Product and 5-digit trays for other areas. Mail prepared using 5-digit scheme sort must be entered no later than 90 days after the release date of the City State Product used to obtain the scheme information (see 708.3.0, Coding Accuracy Support System (CASS)). The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 5-digit ZIP Code required. Trays prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme trays, then prepare all possible 5-digit trays.

[Revise item f to add a new last sentence as follows:]

f. A 3-digit scheme sort yields 3-digit scheme trays for those 3-digit ZIP Code prefixes listed in L003 and 3-digit trays for other areas. The 3-digit ZIP Code prefixes in each scheme are treated as a single presort destination subject to a single minimum tray volume, with no further separation by 3-digit prefix required. Trays prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit areas are still considered 3-digit scheme sorted and are labeled accordingly. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme trays, then prepare all possible 3-digit trays.

* * * * *

2.0 Bundles

* * * * *

2.3 Preparing Bundles

Cards and letter-size pieces are subject to these bundling standards:

* * * * *

[Revise item c to delete ''and for Standard Mail pieces where the mailer has requested 'manual only' processing'' as follows:]

c. Bundles must be prepared for mail in all less-than-full trays and for nonmachinable Presorted Standard Mail.

[Revise item d to delete the second sentence as follows:]

d. Except under 245.6.7, separator cards or tic marks may be used instead of bundling for letter-size pieces in full 5-digit carrier routes trays of Enhanced Carrier Route Standard Mail. The cards must be of paper or card stock, at least 0.25 inch higher than the highest pieces in the mailing, and in front of the corresponding groups of mail. The tic mark must be applied during the mailpiece production process and be printed on the top edge of the envelope, to the left of the center line of the envelope.

* * * * *

[Revise heading of 5.0 as follows:]

5.0 Preparing Nonautomation Letters

* * * * *

5.2 Marking

[Revise 5.2 to delete ''AUTOCR'' in the last sentence.]

* * * * *

[Delete 5.3, Manual Only Option. Renumber 5.4 and 5.5 as new 5.3 and 5.4.]

5.3 Machinable Preparation

5.3.1 Machinable Bundling

Machinable pieces are not bundled, except for the following (see 2.3):

* * * * *

[Delete item b. Renumber item c as new item b.]

5.3.2 Traying and Labeling

[Replace the first sentence in 5.3.2 with new text and delete items a and b. Renumber items c through e as new items a through c and revise as follows:]

Instead of preparing overflow AADC trays with fewer than 150 pieces, mailers may include these pieces in mixed AADC trays. Preparation sequence, tray size, and labeling:

a. Origin/entry 3-digit/scheme (optional, no minimum); labeling: * * *

* * * * *

b. AADC (required); 150-piece minimum (overflow allowed); labeling: * * *

* * * * *

c. Mixed AADC (required); no minimum; labeling: * * *

* * * * *

5.4 Nonmachinable Preparation

5.4.1 Nonmachinable Bundling

[Revise renumbered 5.4.1 to delete the fourth sentence, about manual processing, as follows:]

Except as provided in 2.5, Exception to Bundle Preparation—Full Single-Sort-Level Trays, bundling is required before traying. A bundle must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces. Smaller volumes are not permitted except for mixed ADC bundles. Preparation sequence, bundle size, and labeling:

* * * * *

5.4.2 Traying and Labeling

[Delete item c and renumber items d and e as new items c and d. Revise introductory text and renumbered items a through c as follows:]

Overflow trays are not allowed. Preparation sequence, tray size, and labeling:

a. 5-digit (required); 150-piece minimum; labeling: * * *

* * * * *

b. 3-digit (required); 150-piece minimum (mailers may prepare 3-digit origin/entry trays with as few as 10 pieces per tray); labeling: * * *

* * * * *

c. ADC (required); 150-piece minimum; labeling: * * *

* * * * *

6.0 Preparing Enhanced Carrier Route Letters

6.1 Basic Standards

[Revise 6.1 to delete ''(Enhanced Carrier Route automation rate mailings must be prepared under 7.0)'' in the introductory text as follows:]

All mailings and all pieces in each mailing at Enhanced Carrier Route Standard Mail and Nonprofit Enhanced Carrier Route Standard Mail nonautomation rates are subject to specific preparation standards in 6.0 and to these general standards:

* * * * *

[Revise 6.2 by adding a sentence at the end to require carrier route information lines on certain pieces mailed at ECR rates as follows:]

6.2 Marking

Subject to the marking standards in 202.3.0, Placement and Content of Mail Markings, and 202.4.0, Endorsement Placement, Enhanced Carrier Route Standard Mail pieces must be marked ''Presorted Standard'' (or ''PRSRT STD''), and Nonprofit Enhanced Carrier Route Standard Mail pieces must be marked ''Nonprofit Organization'' (or ''Nonprofit Org.'' or ''Nonprofit''). All pieces also must be marked ''ECRLOT'' for basic rate, ''ECRWSH'' for high density rate, or ''ECRWSS'' for saturation rate. Pieces in carrier route mailings under 6.7 must bear carrier route information lines under 708.8.0.

* * * * *

6.4 Carrier Route Bundle Preparation

Prepare carrier route bundles of letter-size mail as follows:

[Revise item a as follows:]

a. Mailers must prepare only carrier route bundles, except under 6.7. Carrier route bundles are not permitted in full carrier route trays, except for card-size pieces.

* * * * *

[Revise heading and introductory text of 6.6 as follows:]

6.6 General Traying and Labeling

For all ECR letters over 3 ounces and all ECR letters that are not automation-compatible and delivery-point barcoded, prepare trays according to 6.6. For ECR automation-compatible letters that are delivery-point barcoded and that weigh up to 3 ounces, prepare trays under 6.7. Preparation sequence, tray size, and labeling:

* * * * *

[Renumber 6.7 through 6.9 as new 6.8 through 6.10. Insert new 6.7 as follows:]

6.7 Traying and Labeling for Automation-Compatible ECR Letters

Mailers must make full carrier route and 5-digit carrier routes trays, when possible, for automation-compatible, delivery-point barcoded ECR letters that weigh up to 3 ounces. Except for card-size pieces, pieces must not be bundled. Group pieces together by carrier route in 5-digit and 3-digit carrier routes trays. If pieces for one carrier route do not result in a full tray, mailers must combine pieces from at least two routes to make full 5-digit carrier routes trays, grouping pieces together by carrier route. If pieces for multiple carrier routes do not result in a full 5-digit tray, mailers must combine pieces from at least two 5-digit ZIP Codes to make 3-digit carrier routes trays, grouping pieces together by carrier route. If pieces fill more than one tray but do not fill an additional tray, mailers must place excess pieces in a tray at the next sortation level. Preparation sequence, tray size, and labeling:

a. Carrier route: required; full trays only, no overflow.

1. Line 1: city, state, and 5-digit ZIP Code on mail (see 4.0 for overseas military mail).

2. Line 2: for saturation, ''STD LTR BC WSS,'' followed by route type and number; for high-density, ''STD LTR BC WSH,'' followed by route type and number; for basic, ''STD LTR BC LOT,'' followed by route type and number.

b. 5-digit carrier routes: required; full trays only, no overflow, no bundling.

1. Line 1: city, state, and 5-digit ZIP Code on mail (see 4.0 for overseas military mail).

2. Line 2: ''STD LTR 5D CR–RT BC.''

c. 3-digit carrier routes: required; bundling required in less-than-full trays.

1. Line 1: city, state, and 3-digit ZIP Code prefix shown in L002, Column A, that corresponds to 3-digit ZIP Code prefix on mail.

2. Line 2: ''STD LTR 3D CR–RT BC.''

* * * * *

7.0 Preparing Automation Rate Letters

* * * * *

7.2 Mailings

[Restructure 7.2 to delete the introductory text and item b. Make item a the new text as follows:]

All pieces in a mailing must meet the standards in 201.1.0, Physical Standards for Machinable Letters and Cards, and 201.3.0, Physical Standards for Automation Letters and Cards, and must be sorted together to the finest extent required for the rate claimed. The definitions of a mailing and permissible combinations are in 1.0, General Information for Mail Preparation.

7.3 Marking

[Revise 7.3 to delete references to ''AUTOCR'' as follows:]

All Standard Mail automation rate pieces must be marked under 202.3.0, Placement and Content of Mail Markings. Pieces claimed at an automation rate must bear the appropriate class marking and ''AUTO,'' except as provided in 202.3.0. Pieces not claimed at an automation rate must not bear ''AUTO'' unless First-Class single-piece rate postage is affixed or a corrective single-piece rate marking (''Single-Piece'' or ''SNGLP'') is applied.

7.4 General Preparation

[Revise 7.4 to delete carrier route references as follows:]

Grouping, bundling, and labeling are not generally required or permitted, except bundling is required in any mailing consisting entirely of card-size pieces and for pieces in overflow and less-than-full trays, and grouping is required under 7.5.

[Delete 7.5 and 7.6, about carrier route trays and pieces. Renumber 7.7 through 7.9 as new 7.5 through 7.7.]

7.5 Tray Preparation

[Revise renumbered 7.5 to add information about overflow trays as follows:]

Instead of preparing overflow trays with fewer than 150 pieces, mailers may include these pieces in the next tray level when a tray of 150 or more pieces can be made. Mailers must note these trays on standardized documentation (see 708.1.2). Pieces that are placed in the next tray level must be grouped by destination and placed in the front of that tray. Mailers may use this option selectively for 3-digit and AADC ZIP Codes. This option does not apply to origin/entry 3-digit/scheme trays. Preparation sequence, tray size, and Line 1 labeling:

[Delete items a through c, about carrier routes trays. Renumber items d through g as new items a through d. Revise renumbered item a to require 5-digit/scheme trays for rate as follows:]

a. 5-digit/scheme (see 1.4e): optional, but required for 5-digit rate (150-piece minimum); overflow allowed; for Line 1, label as follows:

1. For 5-digit scheme trays, use destination shown in the current USPS City State Product.

2. For 5-digit trays, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

[Revise renumbered item b to make origin 3-digit trays optional as follows:]

b. 3-digit/scheme; required (150-piece minimum except no minimum for

optional origin/entry 3-digit/scheme(s)); overflow allowed; for Line 1, use L002, Column B.

* * * * *

7.6 Tray Line 2

Line 2: ''STD LTR'' and:

[Delete items a through c, about carrier routes. Renumber items d through i as new items a through f and revise as follows:]

a. 5-digit scheme: ''BC 5D SCHEME.''

b. 5-digit: ''5D BC.''

c. 3-digit scheme: ''BC 3D SCHEME'' and, if applicable, as shown in L002, Column B, followed by the letter ''A,'' ''B,'' or ''C.''

d. 3-digit: ''3D BC.''

e. AADC: ''AADC BC.''

f. Mixed AADC: ''BC WKG.''

* * * * *

246 Enter and Deposit

* * * * *

4.0 Destination Sectional Center Facility (DSCF) Entry

* * * * *

4.2 Eligibility

[Revise 4.2 to allow pieces placed in AADC trays in lieu of in 3-digit trays under 245.7.5 to be eligible for DSCF rates as follows:]

Pieces in a mailing that meet the standards in 2.0 and 4.0 are eligible for DSCF rates under either of the following conditions:

a. When deposited at a DSCF (or USPS-designated facility), addressed for delivery within that SCF's service area, and:

1. Placed in a tray labeled to that DSCF.

2. Placed in a tray labeled to the DADC that includes that DSCF under the preparation option in 245.7.5.

3. Placed in a tray labeled to a postal facility within that DSCF's service area.

b. When the pieces are prepared with simplified addresses under 602.3.2 or mailers hold a mailing permit at the entry office and deposit only one mailing (of fewer than 2,500 pieces) per day. See 5.2 for additional DSCF rate eligibility for letters.

* * * * *

5.0 Destination Delivery Unit (DDU) Entry

* * * * *

5.2 Eligibility

[Revise 5.2 to reorganize text and eliminate the DDU entry discount as follows:]

Letter-size mailpieces are not eligible for a destination delivery unit (DDU) discount. Mailers may deposit letter-size pieces that meet the standards in 2.0 and 5.0 at a DDU when:

a. Those pieces are addressed for delivery within that facility's service area (enhanced carrier route only).

b. The pieces are placed in properly prepared and labeled carrier route trays or 5-digit carrier routes trays, or on pallets under 705.8.0.

c. The pieces are eligible for and claimed at a carrier route rate.

* * * * *

300 Discount Mail: Flats

301 Physical Standards

1.0 Physical Standards for Flats

1.1 General Definition of Flat-Size Mail

Flat-size mail other than that in 3.0, Physical Standards for Automation Flats, is:

* * * * *

[Add an exception for Periodicals mail in item b as follows:]

b. Not more than 15 inches long, or more than 12 inches high, or greater than 3/4 inch thick, except for Periodicals mail under 707.25.3.

[Replace items c and d with new items c and d as follows:]

c. Rectangular.

d. Other size or weight standards may apply to mail claimed at certain rates, mail addressed to certain APOs and FPOs, and mail sent by the Department of State to U.S. government personnel abroad.

[Revise 1.2 to change the determination of the length of flats as follows:]

1.2. Length and Height of Flats

The length of a flat-size mailpiece is the longest dimension. The height is the dimension perpendicular to the length.

[Insert new 1.3 through 1.6 as follows:]

1.3 Shape

Each flat-size piece must be rectangular. See 2.0 for additional standards by class of mail.

1.4 Minimum Flexibility Criteria for Rigid Pieces

Flat-size pieces must be flexible. Test flexibility as follows:

a. For pieces 10 inches or longer:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece 5 inches off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's width, exerting steady pressure.

3. Turn the piece around and repeat steps 1 and 2. The piece is flexible if both ends can bend at least 2 inches without being damaged.

b. For pieces less than 10 inches long:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece one-half of its length off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's width, exerting steady pressure.

3. Turn the piece around and repeat steps 1 and 2. The piece is flexible if both ends can bend at least 1 inch without being damaged.

1.5 Uniform Thickness

Flat-size mailpieces must be uniformly thick so that any bumps, protrusions, or other irregularities do not cause more than ¼-inch variance in thickness. (Do not consider the selvage when measuring variance in thickness.) If the contents are significantly smaller than the envelope, wrapper, or sleeve, mailers must secure those contents to prevent shifting of more than 2 inches within the mailpiece.

1.6 Flat-Size Pieces Not Eligible for Flat-Size Rates

Mailpieces that do not meet the standards in 1.3 through 1.5 are not eligible for flat-size rates and must pay applicable rates as follows:

a. First-Class Mail—parcel rates.

b. Standard Mail—Not Flat-Machinable or parcel rates.

c. Bound Printed Matter—parcel rates.

[Revise the heading of 2.0 to delete ''Presorted.'']

2.0 Physical Standards for Nonautomation Flats

2.1 First-Class Mail

[Revise 2.1 as follows:]

These additional standards apply to First-Class Mail flat-size pieces:

a. First-Class Mail cannot exceed 13 ounces. First-Class Mail weighing more than 13 ounces is Priority Mail.

b. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels and pay the applicable parcel rate.

2.2 Standard Mail

2.2.1 Basic Physical Standards

[Revise the introductory text as follows:]

These additional standards apply to Standard Mail flat-size pieces:

* * * * *

[Delete item b. Insert new item b as follows:]

b. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels or Not Flat-

Machinable pieces and pay the parcel or Not Flat-Machinable rates (see 401).

[Delete Exhibit 2.2.1b, Maximum Dimensions for Standard Mail Flats.]

* * * * *

2.3 Bound Printed Matter

2.3.1 General Standards

[Delete item c. Renumber items a and b as new items b and c. Revise the introductory text and insert new item a as follows:]

These additional standards apply to Bound Printed Matter:

a. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels and pay the applicable parcel rate.

* * * * *

2.4 Media Mail

2.4.1 General Standards

[Delete item c. Renumber items a and b as new items b and c. Revise the introductory text and insert new item a as follows:]

These additional standards apply to Media Mail:

a. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels.

* * * * *

2.5 Library Mail

2.5.1 General Standards

These additional standards apply to Library Mail:

[Delete item c. Renumber items a and b as new items b and c. Revise the introductory text and insert new item a as follows:]

a. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels.

* * * * *

3.0 Physical Standards for Automation Flats

3.1 Basic Standards for Automation Flats

[Revise 3.1 as follows:]

Flat-size pieces claimed at automation rates must meet the standards in 3.0 and the eligibility standards for the class of mail and rate claimed. Pieces prepared with polywrap film must meet the standards in 3.4.

[Delete 3.2]

[Renumber 3.3. through 3.8 as new 3.2 through 3.7]

[Revise heading of new 3.2 as follows:]

3.2 Additional Criteria for Automation Flats

[Revise the heading and text of 3.2.1 as follows:]

3.2.1 Address Placement on Folded Pieces

Mailers must design folded pieces so that the address is in view when the final folded edge is at the bottom of the piece and any intermediate bound or folded edge is to the right.

3.2.2 Shape and Size

[Revise 3.2.2 to specify the minimum and maximum dimensions as follows:]

Each flat-size piece must be rectangular. The following minimum and maximum dimensions apply to First-Class Mail, Standard Mail, Periodicals (except under 707.25.3), and Bound Printed Matter pieces:

1. Minimum height is 5 inches. Maximum height is 12 inches.

2. Minimum length is 6 inches. Maximum length is 15 inches.

3. Minimum thickness is 0.009 inch. Maximum thickness is 0.75 inch.

* * * * *

[Revise heading and text of 3.2.4, and delete Exhibit 3.2.4a, to add new standards for deflection as follows:]

3.2.4 Maximum Deflection (''Droop'') Criteria for Flimsy Pieces

An automation flat-size mailpiece must be flexible (see 1.4) and must meet maximum deflection standards. Test deflection as follows:

a. For pieces 10 inches or longer:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece 5 inches off the surface. Turn the piece around and repeat the process.

2. The piece is automation-compatible if it does not droop more than 4 inches.

b. For pieces less than 10 inches long:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece one-half of its length off the surface. Turn the piece around and repeat the process.

2. The piece is automation-compatible if it does not droop more than 1 inch less than the extended length. For example, a piece 8 inches long would extend 4 inches off a flat surface. It must not droop down more than 3 inches.

* * * * *

[Delete 3.4 to remove the standards for UFSM 1000 flats. Renumber 3.5 through 3.9 as new 3.4 through 3.8.]

3.4 Polywrap Coverings

[Revise heading and text of renumbered 3.4.1 as follows:]

3.4.1 Polywrap Films and Similar Coverings

When mailers use polywrap film or similar material to enclose flat-size mailpieces claimed at automation rates, the material must meet the standards in 3.4. Film approved for use under 3.4.5 must meet the specifications in Exhibit 3.4.1 as follows:

a. Films or similar coverings must meet all eight properties in Exhibit 3.4.1.

b. If the address label is affixed to the outside of the polywrap, the haze property (property 2) does not apply.

* * * * *

3.4.2 Wrap Direction and Seam Placement

Wrap direction, seam direction, and seam placement must follow these standards:

[Revise item a and the first sentence in item b as follows:]

a. The wrap direction must be around the longer axis of the mailpiece, with the seam parallel to that axis. The longer axis is always parallel to the length of the mailpiece.

b. The preferred seam placement is on the nonaddressed side of the mailpiece. If the seam is placed on the addressed side, the seam must not cover any part of the delivery address and barcode, postage area, or any required markings or endorsements. Regardless of seam placement, the polywrap over the address area must be a smooth surface to avoid interference with address and barcode readability.

3.4.3 Overhang

[Revise 3.4.3 to delete item b and restructure the text as follows:]

For purposes of the polywrap standards for overhang (selvage) only, the top edge of the mailpiece is one of the two physically longer edges of the piece, regardless of address orientation and whether bound or unbound. Any polywrap overhang (selvage) around the four edges of the mailpiece (top, bottom, and left and right sides) must meet these standards:

a. When the mailpiece contents are totally positioned at the bottom of the polywrap, the overhang must not be more than 0.5 inch at the top of the mailpiece.

b. When the mailpiece contents are totally positioned to the left or to the right side of the polywrap, the overhang must not be more than 1.5 inches on the opposite side.

c. The polywrap covering must not be so tight that it bends the mailpiece.

[Delete 3.4.4. Renumber 3.4.5 as 3.4.4.]

* * * * *

3.7 Uniformity and Exterior Format

3.7.1 General

[Revise renumbered 3.7.1 to add a reference to 1.5 in the first sentence as follows:]

A flat-size mailpiece prepared and claimed at automation rates must be uniformly thick (see 1.5). Each flat-size mailpiece must have a smooth and regular shape and be free of creases, folds, tears, or other irregularities not compatible with automation equipment. The exterior surface must not have protuberances caused by prohibited closures; attachments (except as provided below); irregularly shaped or distributed contents; or untrimmed excess material from the envelope, wrapper, or sleeve.

* * * * *

[Delete renumbered 3.7.3 (this information was relocated to 1.5). Renumber 3.7.4 as new 3.7.3.]

* * * * *

302 Elements on the Face of a Mailpiece

* * * * *

2.0 Placement and Content of Mail Markings

2.1 First-Class Mail and Standard Mail Markings

2.1.1 Placement

Mailpieces must be marked under the corresponding standards to show the class of service and/or rate paid:

* * * * *

[Revise items b and b3 as follows:]

b. Other Markings. Mailers may place rate-specific markings as follows:

* * * * *

3. If preceded by two asterisks (**), the ''AUTO,'' ''PRESORTED'' (or ''PRSRT''), ''CUSTOMIZED MARKETMAIL'' (or ''CUST MKTMAIL'' or ''CMM''), or ''Single-Piece'' (or ''SNGLP'') markings also may be placed on the line directly above or two lines above the address in a mailer keyline or a manifest keyline, or it may be placed above the address and below the postage in an MLOCR ink-jet printed date correction/meter drop shipment line.

* * * * *

2.1.2 Exceptions to Markings

Exceptions are as follows:

* * * * *

[Delete ''AUTOCR'' in item b as follows:]

b. Manifest Mailings. The basic marking must appear in the postage area on each piece. The two-letter rate category code required in the keyline on manifest mailing pieces prepared under 705.2.0 meets the requirement for other rate markings.

* * * * *

4.0 Barcode Placement

* * * * *

4.2 Applying One Barcode

[Revise 4.2 to delete the second sentence, about UFSM 1000 mailpieces, as follows:]

On any flat-size mailpiece claimed at an automation rate, the barcode may be anywhere on the address side as long as it is at least ⅛ inch from any edge of the piece. The portion of the surface of the piece on which the barcode is printed must meet the barcode dimensions and spacing requirements in 708.4.2.5, and the reflectance standards in 708.4.4. Address block barcodes are subject to the standards in 4.6a. through 4.6e.

* * * * *

330 Discount Flats: First-Class Mail

333 Rates and Eligibility

1.0 Rates and Fees for First-Class Mail

1.1 Rate Application

[Revise 1.1 as follows:]

Postage is based on the flat-size rate that applies to the weight of each addressed piece.

* * * * *

4.0 Additional Eligibility Standards for Nonautomation First-Class Mail Flats

* * * * *

[Revise the heading and text of 4.3 as follows:]

4.3 Nonmachinable Flat-Size Pieces

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels and pay the applicable parcel rate.

5.0 Additional Eligibility Standards for Automation Rate First-Class Mail Flats

* * * * *

[Delete 5.2 and renumber 5.3 through 5.6 as new 5.2 through 5.5.]

340 Discount Flats: Standard Mail

343 Rates and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Flats

* * * * *

3.2 Defining Characteristics

[Revise heading and text of 3.2.1 as follows:]

3.2.1 Weight, Shape, Flexibility, and Uniform Thickness

All Standard Mail pieces must weigh less than 16 ounces. Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels or Not Flat-Machinable pieces and pay parcel or Not Flat-Machinable rates (see 401).

* * * * *

4.0 Rate Eligibility for Standard Mail

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4.2 Minimum Per Piece Rates

The minimum per piece rates (the minimum postage that must be paid for each piece) apply as follows:

* * * * *

[Revise introductory text in item b and item b1 as follows:]

b. In applying the minimum per piece rates, a mailpiece is categorized as a letter based on whether the piece meets the letter-size standard in 201.1.0, without regard to placement of the address on the piece, except under these conditions:

1. If the piece meets both the definition of a letter in 201.1.1.1 and the definition of an automation flat in 301.3.0, the piece may be prepared and entered at an automation flat rate.

[Revise item b2 to change the rates for Customized MarketMail to the NFM rates as follows:]

2. Pieces mailed as Customized MarketMail under 705.1.0 must pay Regular or Nonprofit Standard Mail 5-digit nonentry rates for Not Flat-Machinable pieces and must not exceed 3.3 ounces.

* * * * *

[Revise heading and text of 4.4 as follows:]

4.4 Shape, Flexibility, and Uniform Thickness

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels or Not Flat-Machinable pieces and pay parcel or Not Flat-Machinable rates (see 401).

[Revise heading of 5.0 as follows:]

5.0 Additional Eligibility Standards for Nonautomation Standard Mail Flats

* * * * *

[Replace 5.3 and 5.4 with new 5.3 through 5.6 as follows:]

5.3 5-Digit Rates for Flats

The 5-digit rate applies to flat-size pieces:

a. In a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable; properly placed in a 5-digit/scheme sack containing at least 125 pieces or 15 pounds of pieces.

b. When palletized under 705.8.0 and 705.10.0 through 705.13.0, in a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable.

c. In a 5-digit bundle of 10 or more pieces, or 15 or more pieces, as applicable; properly placed in a merged 5-digit/scheme or 5-digit sack under 705.10.0.

5.4 3-Digit Rates for Flats

The 3-digit rate applies to flat-size pieces:

a. In a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable, or in a 3-digit/scheme bundle of 10 or more pieces; properly placed in a 3-digit sack of at least 125 pieces or 15 pounds of pieces.

b. When palletized under 705.8.0 and 705.10.0 through 705.13.0, in a 3-digit/scheme bundle of 10 or more pieces.

5.5 ADC Rates for Flats

ADC rates apply to flat-size pieces:

a. In a 5-digit/scheme, 3-digit/scheme, or ADC bundle of 10 or more pieces properly placed in an ADC sack of at least 125 pieces or 15 pounds of pieces.

b. In an optional 3-digit/scheme origin/entry sack.

c. When palletized under 705.8.0 and 705.10 through 705.13, in an ADC bundle of 10 or more pieces; properly placed on an ADC pallet.

5.6 Mixed ADC Rates for Flats

Mixed ADC rates apply to flat-size pieces in bundles that do not qualify for 5-digit, 3-digit, or ADC rates; placed in mixed ADC sacks or on ASF, BMC, or mixed BMC pallets under 705.8.0.

* * * * *

7.0 Additional Eligibility Standards for Automation Rate Standard Mail Flats

* * * * *

7.2 Rate Application

[Revise 7.2 as follows:]

Automation rates apply to each piece properly sorted into qualifying groups:

a. The 5-digit rate applies to flat-size pieces in a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable.

b. The 3-digit rate applies to flat-size pieces in a 3-digit/scheme bundle of 10 or more pieces.

c. The ADC rate applies to flat-size pieces in an ADC bundle of 10 or more pieces.

d. The mixed ADC rate applies to flat-size pieces in mixed ADC bundles (no minimum).

* * * * *

345 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Revise items c and k as follows:]

c. 5-digit scheme (bundles and sacks) for flats meeting the automation-compatibility standards in 301.3.0: the ZIP Code in the delivery address on all pieces is one of the 5-digit ZIP Code areas processed by the USPS as a single scheme, as shown in L007.

* * * * *

k. 3-digit scheme bundles for flats meeting the automation-compatibility standards in 301.3.0: the ZIP Code in the delivery address begins with one of the 3-digit prefixes processed by the USPS as a single scheme, as shown in L008.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise item f as follows:]

f. A 5-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and sacks of flats, then prepare all possible 5-digit bundles and sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Label mailpieces using an optional endorsement line (OEL) under 708.7.0. Place bundles in appropriate containers using the OEL ''label to'' 5-digit ZIP Code.

* * * * *

[Revise item h by replacing ''Presorted'' with ''nonautomation'' in the first sentence.]

* * * * *

[Revise item n as follows:]

n. A 3-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme bundles of flats, then prepare all possible 3-digit bundles. The 3-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 3-digit ZIP Code required. Bundles prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit ZIP Codes are still considered 3-digit scheme sorted and are labeled accordingly. Label mailpieces using an OEL under 708.7.0. Place 3-digit scheme bundles in 3-digit through mixed ADC containers, as applicable, using the OEL ''label to'' 3-digit ZIP Code.

* * * * *

[Revise 5.0 to change ''presorted'' flats to ''nonautomation'' flats throughout.]

5.0 Preparing Nonautomation Flats

5.1 Basic Standards

All mailings and all pieces in each mailing at Regular Standard Mail and Nonprofit Standard Mail nonautomation rates are subject to specific preparation standards in 5.2 through 5.9 and to these general standards (automation rate mailings must be prepared under 7.0):

[Revise item a as follows:]

a. All pieces must be in the flat-size processing category.

[Revise item b to delete ''AUTOCR.''']

* * * * *

5.3 Bundling and Labeling

[Add a new first sentence to 5.3 and revise items a and b as follows:]

Mailings consisting entirely of pieces meeting the automation-compatibility criteria in 301.3.0 must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Preparation sequence, bundle size, and labeling: a. 5-digit/scheme (required), see definition in 1.4f:

1. For mailings containing only pieces weighing 5 ounces (0.3125 pound) or less: 15-piece minimum; red Label 5 or OEL.

2. For mailings containing any pieces weighing more than 5 ounces (0.3125 pound): 10-piece minimum; red Label 5 or OEL.

b. 3-digit/scheme (required), see definition in 1.4n; 10-piece minimum; green Label 3 or OEL.

* * * * *

5.7 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (required); scheme sort required, only for pieces meeting

the automation-compatibility criteria in 301.3.0, see definition in 1.4f; 125-piece or 15-pound minimum; labeling:

1. Line 1: For 5-digit scheme sacks use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces. (See 4.2 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''STD FLT 5D SCH NON BC.'' For 5-digit sacks, ''STD FLTS 5D NON BC.''

* * * * *

[Revise item c as follows:]

c. Origin/entry 3-digits(s) (optional); one-bundle minimum; labeling:

1. Line 1: L002, Column A.

2. Line 2: ''STD FLTS 3D NON BC.''

* * * * *

7.0 Preparing Automation Rate Flats

* * * * *

[Delete 7.4. Renumber 7.5 through 7.9 as new 7.4 through 7.8.]

7.4 Standard Mail Bundle Preparation

7.4.1 Bundling and Labeling

Preparation sequence, bundle size, and labeling:

[Revise item a to require 5-digit/scheme preparation as follows:]

a. 5-digit/scheme (required); see definition in 1.4f:

1. For mailings containing only pieces weighing 5 ounces (0.3125 pound) or less: 15-piece minimum; OEL required.

2. For mailings containing any pieces weighing more than 5 ounces (0.3125 pound): 10-piece minimum; OEL required.

[Delete item b. Renumber item c as new item b and revise to require 3-digit/scheme preparation as follows:]

b. 3-digit/scheme (required); see definition in 1.4n; 10-piece minimum; OEL required.

[Delete item d. Renumber items e and f as new items c and d.]

* * * * *

[Delete renumbered 7.4.2. Renumber 7.4.3 and 7.4.4 as new 7.4.2 and 7.4.3.]

7.4.3 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (required); see definition in 1.4f; 125-piece or 15-pound minimum, labeling:

1. Line 1: For 5-digit scheme sacks use L007, Column B. For 5-digit sacks use city, state, and 5-digit ZIP Code on mail (see 4.2 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''STD FLTS 5D SCH BC.'' For 5-digit sacks, ''STD FLTS 5D BC.''

[Delete item b. Renumber items c though f as new items b through e.]

* * * * *

[Delete 7.6. Renumber 7.7 through 7.9 as new 7.6 through 7.8. Revise renumbered 7.6 through 7.8 by replacing ''presorted'' with ''nonautomation'' throughout.]

* * * * *

7.7 Exception—Automation and Nonautomation Pieces on Pallets

[Replace ''nonletter'' with ''flat-size'' throughout renumbered 7.7.]

* * * * *

360 Discount Flats: Bound Printed Matter

[Incorporate the standards for Bound Printed Matter in 160 into 360. Make revisions throughout to change single-piece Bound Printed Matter to ''nonpresorted'' Bound Printed Matter and make the following additional changes:]

363 Rates and Eligibility

1.0 Rates and Fees for Bound Printed Matter

* * * * *

[Renumber 1.3 through 1.5 as new 1.4 through 1.6. Insert new 1.3 as follows:]

1.3 Nonpresorted Bound Printed Matter Rates

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must pay the applicable parcel rate based on weight and zone.

[Revise the heading of renumbered 1.4 as follows:]

1.4 Discount Bound Printed Matter Rates

* * * * *

[Insert new 1.4.3 as follows:]

1.4.3 Shape, Flexibility, and Thickness

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels and pay the applicable parcel rate based on weight and zone.

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365 Mail Preparation

1.0 General Information for Mail Preparation

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1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Revise items c and h as follows:]

c. 5-digit scheme (bundles and sacks) for flats meeting the automation-compatibility standards in 301.3.0: the ZIP Code in the delivery address on all pieces is one of the 5-digit ZIP Code areas processed by the USPS as a single scheme, as shown in L007.

* * * * *

h. 3-digit scheme bundles for flats meeting the automation-compatibility standards in 301.3.0: the ZIP Code in the delivery address begins with one of the 3-digit prefixes processed by the USPS as a single scheme, as shown in L008.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

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[Revise item c for 5-digit scheme sort as follows:]

c. A 5-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and sacks of flats before preparing 5-digit bundles and sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Label mailpieces using an OEL under 708.7.0. Place bundles in appropriate containers using the OEL ''label to'' 5-digit ZIP Code.

* * * * *

[Revise item g for 3-digit scheme sort as follows:]

g. A 3-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme bundles of flats before preparing 3-digit bundles. The 3-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 3-digit ZIP Code required. Bundles prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit ZIP Codes are still considered 3-digit scheme sorted and are labeled accordingly. Mailpieces must be labeled using an OEL under 708.7.0. Three-digit scheme bundles are placed in 3-digit through mixed ADC containers, as applicable,

using the OEL ''label to'' 3-digit ZIP Code.

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5.0 Preparing Presorted Flats

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5.2 Bundling

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5.2.2 Bundling and Labeling

[Add a new first sentence to 5.2.2 as follows:]

For mailings consisting entirely of pieces meeting the automation-compatibility criteria in 301.3.0, pieces must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Preparation sequence and labeling:

[Revise item a to require 5-digit schemes as follows:]

a. 5-digit/scheme (required); red Label 5 or OEL. See definition in 1.4e.

[Revise item b to require 3-digit schemes as follows:]

b. 3-digit/scheme (required); green Label 3 or OEL. See definition in 1.4g.

5.3 Sacking

* * * * *

5.3.5 Sacking and Labeling

Preparation sequence and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (required); see 1.4e; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; minimum 20 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.5 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC FLT 5D SCH NBC.'' For 5-digit sacks, ''PSVC FLTS 5D NON BC.''

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7.0 Preparing Barcoded Flats

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7.3 Bundling

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7.3.2 Bundle Preparation

Bundles must be prepared and labeled in the following sequence:

[Delete items b and d. Renumber item c as item b and items e and f as items c and d. Revise item a and new item b to make 5-digit and 3-digit schemes required as follows:]

a. 5-digit/scheme: (required); see definition in 1.4e; minimum 10 pieces or 10 pounds, maximum weight 20 pounds; OEL required.

b. 3-digit/scheme (required); see definition in 1.4g; minimum 10 pieces or 10 pounds, maximum weight 20 pounds; OEL required.

* * * * *

7.3.3 Scheme Bundle Preparation

[Revise 7.3.3 as follows:]

See 1.4c and 1.4g for additional standards for pieces prepared in scheme bundles.

7.4 Sacking

7.4.1 Sack Preparation and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (see 1.4e) (required), minimum 20 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.2 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC FLTS 5D SCH BC.'' For 5-digit sacks, ''PSVC FLTS 5D BC.''

[Delete item b and renumber items c through f as new items b through e.]

* * * * *

366 Enter and Deposit

1.0 Presenting a Mailing

[Revise the heading of 1.1 as follows:]

1.1 Verification and Entry—Presorted, Carrier Route, Destination Entry, and Barcoded Mailings

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[Renumber 1.2 through 1.5 as new 1.3 through 1.6. Insert new 1.2 as follows:]

1.2 Verification and Entry—Nonpresorted Mailings

Nonpresorted rate Bound Printed Matter is not offered at post offices, branches, or stations or through Postal Service carriers, except under 1.2c and 1.2d. Mailers must deposit Nonpresorted Bound Printed Matter as follows:

a. At the time and place specified by the postmaster at the office of mailing.

b. For metered mail, at other than the licensing post office only as permitted under 705.18.0, Metered Mail Drop Shipment.

c. For permit imprint mail, only at the post office where the permit is held (see 604.5.0).

d. At any post office, branch, or station or with a Postal Service carrier, if the correct postage is applied, including postage for any extra service elected.

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370 Discount Flats: Media Mail

373 Rates and Eligibility

1.0 Rates and Fees for Media Mail

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[Renumber 1.3 through 1.5 as new 1.4 through 1.6. Insert new 1.3 as follows:]

1.3 Shape, Flexibility, and Thickness

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels.

* * * * *

375 Mail Preparation

1.0 General Information for Mail Preparation

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1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Renumber item b as new item c. Insert new item b for 5-digit scheme sort as follows:]

b. 5-digit scheme (bundles and sacks) for flats meeting the automation-compatibility standards in 301.3.0: the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code ranges processed by the USPS as a single scheme, as shown in L007.

* * * * *

[Renumber items d and f as new items e and g. Insert new item d for 3-digit scheme sort as follows:]

d. 3-digit scheme bundles for flats meeting the automation-compatibility standards in 301.3.0: the ZIP Code in the delivery address on all pieces begins with one of the 3-digit ZIP Code ranges processed by the USPS as a single scheme, as shown in L008.

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1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Renumber items c through f as new items e through h. Insert new items c and d for 5-digit and 3-digit scheme sorts as follows:]

c. A 5-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and sacks of flats before preparing 5-digit bundles and sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum

volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Label mailpieces using an OEL under 708.7.0. Place bundles in appropriate containers using the OEL ''label to'' 5-digit ZIP Code.

d. A 3-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme bundles of flats before preparing 3-digit bundles. The 3-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 3-digit ZIP Code required. Bundles prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit ZIP Codes are still considered 3-digit scheme sorted and are labeled accordingly. Mailpieces must be labeled using an OEL under 708.7.0. Place 3-digit scheme bundles in 3-digit through mixed ADC containers, as applicable, using the OEL ''label to'' 3-digit ZIP Code.

* * * * *

[Revise heading of 5.0 as follows:]

5.0 Preparing Presorted Flats

* * * * *

5.2 Bundling

* * * * *

5.2.2 Bundling and Labeling

[Add a new first sentence to 5.2.2 as follows:]

For mailings consisting entirely of pieces meeting the automation-compatibility criteria in 301.3.0, pieces must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Preparation sequence, bundle size, and labeling:

[Revise items a and b to make 5-digit and 3-digit schemes required as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate); red Label 5 or OEL. See definition in 1.4c.

b. 3-digit/scheme (required); green Label 3 or OEL. See definition in 1.4d.

* * * * *

5.3 Sacking

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5.3.2 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate); see 1.4c; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; minimum 10 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.5 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC FLT 5D SCH NBC.'' For 5-digit sacks, ''PSVC FLT 5D NBC.''

* * * * *

380 Discount Flats: Library Mail

383 Rates and Eligibility

1.0 Rates and Fees for Library Mail

* * * * *

[Renumber 1.3 through 1.5 as new 1.4 through 1.6. Insert new 1.3 as follows:]

1.3 Shape, Flexibility, and Thickness

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels.

* * * * *

385 Mail Preparation

1.0 General Information for Mail Preparation

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1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Renumber item b as new item c. Insert new item b for 5-digit scheme sort as follows:]

b. 5-digit scheme (bundles and sacks) for flats meeting the automation-compatibility standards in 301.3.0: the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code ranges processed by the USPS as a single scheme, as shown in L007.

* * * * *

[Renumber items d and f as new items e and g. Insert new item d for 3-digit scheme sort as follows:]

d. 3-digit scheme bundles for flats meeting the automation-compatibility standards in 301.3.0: the ZIP Code in the delivery address on all pieces begins with one of the 3-digit ZIP Code ranges processed by the USPS as a single scheme, as shown in L008.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Renumber items c through f as new items e through h. Insert new items c and d for 5-digit and 3-digit scheme sorts as follows:]

c. A 5-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and sacks of flats before preparing 5-digit bundles and sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Label mailpieces using an OEL under 708.7.0. Place bundles in appropriate containers using the OEL ''label to'' 5-digit ZIP Code.

d. A 3-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0 yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme bundles of flats before preparing 3-digit bundles. The 3-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 3-digit ZIP Code required. Bundles prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit ZIP Codes are still considered 3-digit scheme sorted and are labeled accordingly. Mailpieces must be labeled using an OEL under 708.7.0. Place 3-digit scheme bundles in 3-digit through mixed ADC containers, as applicable, using the OEL ''label to'' 3-digit ZIP Code.

* * * * *

[Revise heading of 5.0 as follows:]

5.0 Preparing Presorted Flats

* * * * *

5.2 Bundling

* * * * *

5.2.2 Bundling and Labeling

[Add a new first sentence to 5.2.2 as follows:]

For mailings consisting entirely of pieces meeting the automation-

compatibility criteria in 301.3.0, pieces must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Preparation sequence, bundle size, and labeling:

[Revise items a and b as follows to make 5-digit and 3-digit schemes required:]

a. 5-digit scheme (optional, but required for 5-digit rate); red Label 5 or OEL. See definition in 1.4c.

b. 3-digit scheme (required); green Label 3 or OEL. See definition in 1.4d.

5.3 Sacking

* * * * *

5.3.2 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate); see 1.4c; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; minimum 10 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.5 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC FLT 5D SCH NBC.'' For 5-digit sacks, ''PSVC FLT 5D NBC.''

* * * * *

400 Discount Mail: Parcels

401 Physical Standards

1.0 Physical Standards for Parcels

[Revise the heading of 1.1 as follows:]

1.1 Processing Categories

[Revise the first sentence of 1.1 as follows:]

USPS categorizes parcels into one of three mail processing categories: machinable, irregular, or outside parcel. These categories are based on the physical dimensions of the piece, regardless of the placement (orientation) of the delivery address on the piece.

* * * * *

1.5 Machinable Parcels

* * * * *

[Delete 1.5.4, Exclusions.]

* * * * *

2.0 Additional Physical Standards by Class of Mail

2.1 First-Class Mail Parcels

* * * * *

[Delete 2.1.2 and replace with new 2.1.2 as follows:]

2.1.2 Surcharge

Unless prepared in 5-digit/scheme containers or paid at a single-piece rate, presorted parcels are subject to a $0.05 surcharge if any of the following characteristics apply:

a. The parcels weigh less than 2 ounces.

b. The parcels do not bear a UCC/EAN 128 or POSTNET barcode.

c. The parcels are irregularly shaped, such as rolls, tubes, and triangles.

[Revise the heading of 2.2 as follows:]

2.2 Standard Mail Parcels and Not Flat-Machinable Pieces

[Revise heading and text of 2.2.1 as follows:]

2.2.1 Additional Physical Standards

Each piece must weigh less than 16 ounces.

[Revise heading and text of 2.2.2 as follows:]

2.2.2 Not Flat-Machinable Pieces

Categorize Standard Mail with the following characteristics as Not Flat-Machinable pieces:

a. Not Flat-Machinable pieces are rigid, with the following dimensions:

1. At least 4 inches high, but not more than 12 inches high.

2. At least 4 inches long, but not more than 15¾ inches long.

3. At least 0.009 thick, but not more than 1¼ inches thick. (Pieces less than 5 inches long must be over ¼ inch thick.)

b. Flexible pieces that are at least 4 inches high, but not more than 12 inches high, with either of the following dimensions:

1. Over 15 inches long, but not more than 15¾ inches long.

2. Over ¾ inches thick, but not more than 1¼ inches thick.

c. Nonmachinable letter-size pieces weighing more than 3.3 ounces, unless they qualify to be mailed at automation flat-size rates.

[Delete 2.2.3 and replace with new 2.2.3 as follows:]

2.2.3 Surcharge

Unless prepared in carrier route or 5-digit/scheme containers, Standard Mail parcels and Not Flat-Machinable pieces are subject to a $0.05 surcharge if:

a. The machinable or irregular parcels do not bear a UCC/EAN 128 barcode (see 708.5.0).

b. The Not Flat-Machinable pieces weigh 6 ounces or more and do not bear a UCC/EAN 128 barcode (see 708.5.0).

c. The Not Flat-Machinable pieces weigh less than 6 ounces and do not bear a UCC/EAN 128 barcode (see 708.5.0) or POSTNET barcode (see 708.4.0).

2.3 Parcel Post

2.3.1 General Standards

These standards apply to Parcel Post:

* * * * *

[Revise item b as follows:]

b. An item weighing less than 20 pounds but measuring more than 84 inches (but not more than 108 inches) in combined length and girth is charged the rate for a 20-pound parcel for the zone to which it is addressed (balloon rate).

* * * * *

402 Elements on the Face of a Mailpiece

* * * * *

2.0 Placement and Content of Markings

2.1 First-Class Mail and Standard Mail Markings

2.1.1 Placement

Markings must be placed as follows:

* * * * *

[Renumber item c as new item d. Insert new item c as follows:]

c. Mark each Not Flat-Machinable piece ''Not Flat-Machinable'' or ''NFM,'' either by including the marking in the optional endorsement line or by placing the marking immediately to the left of or below the postage area.

* * * * *

4.0 General Barcode Placement for Parcels

[Revise title of 4.1 as follows:]

4.1 UCC/EAN 128 Barcode Location

* * * * *

[Revise title of 4.2 as follows:]

4.2 Clear Zone for UCC/EAN 128 Barcode

* * * * *

[Add new 4.3 for POSTNET barcodes as follows:]

4.3 POSTNET Barcodes

First-Class Mail parcels and Not Flat-Machinable pieces less than 6 ounces may bear POSTNET barcodes instead of UCC/EAN 128 barcodes. Pieces bearing POSTNET barcodes are not eligible to be mailed using eVS. Place POSTNET barcodes on First-Class Mail parcels or Not Flat-Machinable pieces under 4.3.1 through 4.3.3.

4.3.1 General Placement of POSTNET Barcodes

On any First-Class Mail parcel or Standard Mail Not Flat-Machinable piece, the POSTNET barcode may be anywhere on the address side as long as it is at least ⅛ inch from any edge of

the piece. POSTNET barcodes must be printed according to 708.4.0. Address block barcodes are subject to the standards in 4.3.2.

4.3.2 POSTNET Barcode in Address Block

When the POSTNET barcode is included as part of the address block:

a. Place the barcode in one of these positions:

1. Above the address line containing the recipient's name.

2. Below the city, state, and ZIP Code line.

3. Above or below the keyline information.

4. Above or below the optional endorsement line.

b. Do not print the barcode anywhere between the address line containing the recipient's name and the city, state, and ZIP Code line.

c. Allow at least 1/25 inch clearance between the barcode and any information line above or below it. Do not separate the barcode more than 5/8 inch from the top or bottom line of the address block. Allow at least 1/8 inch clearance between the leftmost and rightmost bars and any adjacent printing.

d. If a window envelope is used, allow at least 1/8 inch clearance between the leftmost and rightmost bars and any printing or window edge, and at least 1/25 inch between the barcode and the top and bottom window edges. These clearances must be maintained during the insert's range of movement in the envelope. Covers for address block windows are subject to 4.3.3.

e. If an address label is used, allow a clear space of at least 1/8 inch between the barcode and the left and right edges of the address label, and at least 1/25 inch between the barcode and the top and bottom edges of the address label.

4.3.3 Window Cover

A window cover over the address block must be a nontinted clear or transparent material (*e.g.*, cellophane or polystyrene) that permits the barcode and its background, as viewed through the window material, to meet the reflectance standards in 708.4.4. The edges of the window cover must be securely glued to the envelope.

430 Discount Parcels: First-Class Mail

433 Rates and Eligibility

1.0 Rates and Fees for First-Class Mail

* * * * *

[Revise 1.4 to change heading and text describing the surcharge as follows:]

1.4 Surcharge

Unless prepared in 5-digit/scheme sacks or paid at the single-piece rates, presorted parcels are subject to a $0.05 surcharge if any of the following characteristics apply:

a. The parcels weigh less than 2 ounces.

b. The parcels do not bear a UCC/EAN 128 or POSTNET barcode, under 708.0, for the ZIP Code of the delivery address.

c. The parcels are irregularly shaped, such as rolls, tubes, and triangles.

* * * * *

[Delete 3.4, Nonmachinable Surcharge for Parcel-Size Pieces. Renumber 3.5 through 3.7 as new 3.4 through 3.6.]

* * * * *

[Insert new 4.0 to describe Presorted parcel rates as follows:]

4.0 Rate Eligibility for Presorted First-Class Mail Parcels

4.1 5-Digit Rate

The 5-digit rate applies to presorted parcels in a 5-digit/scheme sack containing at least 10 pounds of parcels.

4.2 3-Digit Rate

The 3-digit rate applies to presorted parcels in a 3-digit sack containing at least 10 pounds of parcels.

4.3 ADC Rate

The ADC rate applies to presorted parcels in a 3-digit origin sack (no minimum), and to parcels in an ADC sack containing at least 10 pounds of parcels.

4.4 Single-Piece Rate

The single-piece rate applies to presorted parcels in a mixed ADC sack, with no minimum volume requirement.

434 Postage Payment and Documentation

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2.0 Postage Payment for Presorted Parcels

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2.2 Affixed Postage for Presorted First-Class Mail

Unless permitted by other standards or by Business Mailer Support, USPS Headquarters, when precanceled postage or meter stamps are used as the postage payment method, only one payment method may be used in a mailing and each piece must bear postage under one of these conditions:

* * * * *

[Revise item b to remove ''nonmachinable surcharge'' as follows:]

b. A precanceled stamp or the full postage at the lowest First-Class Mail 1-ounce rate applicable to the mailing job, and full postage on metered pieces for additional ounce(s) or extra services.

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435 Mail Preparation

1.0 General Information for Mail Preparation

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1.2 Definition of Mailings

[Delete item b. Combine item a and introductory text as follows:]

A ''mailing'' is defined as a group of pieces within the same class of mail and the same processing category that may be sorted together and/or presented under a single minimum volume mailing requirement under the applicable standards. Generally, types of mail that follow different flows through the postal processing system must be prepared as a separate mailing.

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

[Renumber items a through e as new items b through f. Insert new item a as follows:]

a. 5-digit scheme for First-Class Mail parcels: the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code ranges processed by the USPS as a single scheme, as shown in L606.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

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[Revise item d as follows:]

d. The required quantity (for example, ''required at 10 pieces'') means that the unit must be prepared for the corresponding presort level whenever the specified quantity of mail is reached or exceeded. Smaller quantities may be prepared only if permitted by the standards for each rate.

* * * * *

[Delete item g. Renumber item h as new item g and revise as follows:]

g. A ''logical'' presort destination represents the total number of pieces in a mailing that are eligible for a specific presort level based on the required sortation, but which might not be contained in a single container (sack or pallet) due to applicable preparation requirements or the size of the individual pieces.

[Delete 2.0, Bundles, and renumber 3.0 through 5.0 as new 2.0 through 4.0.]

* * * * *

3.0 Sack Labels

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3.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

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b. Codes: The codes shown below must be used as appropriate on Line 2 of sack labels.

[Revise the table in renumbered 3.4 to delete the entries for ''General Delivery Unit,'' ''Highway Contract Route,'' ''Post Office Box Section,'' and ''Rural Route.'']

* * * * *

[Revise the heading of renumbered 4.0 as follows:]

4.0 Preparing Presorted Parcels

* * * * *

[Revise heading and text of 4.3 to remove bundling requirement as follows:]

4.3 Bundling

Bundling is not permitted.

4.4 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme optional, but required for 5-digit rate (see definition in 1.3a); 10-pound minimum, labeling:

1. Line 1: For 5-digit scheme sacks use L606, Column B. For 5-digit sacks use city, state, and 5-digit ZIP Code on mail (see 4.3c for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''FCM PARCELS 5D SCH.'' For 5-digit sacks, ''FCM PARCELS 5D.''

* * * * *

440 Discount Parcels: Standard Mail

443 Rates and Eligibility

* * * * *

4.0 Rate Eligibility for Standard Mail

4.1 General Information

[Revise 4.1 to delete reference to barcode discount and reorganize text as follows:]

All Standard Mail rates are discounted rates. These rates apply to mailings meeting the basic standards in 2.0 through 4.0 and the corresponding standards for Presorted rates under 5.0 or Enhanced Carrier Route rates under 6.0. Destination entry discount rates are available under 446.2.0 through 446.5.0 in Enter and Deposit. Pieces are subject to either a single minimum per piece rate or a combined piece/pound rate, depending on the weight of the individual pieces in the mailing under 4.2 or 4.3. Only organizations authorized by the USPS under 703.1.0 may mail at Nonprofit rates.

4.2 Minimum Per Piece Rates

The minimum per piece rates (the minimum postage that must be paid for each piece) apply as follows:

* * * * *

[Revise item b to delete the text that does not apply to parcels as follows:]

b. In applying the minimum per piece rates, a mailpiece is categorized as a parcel based on the standards in 401, Physical Standards.

[Revise item c to delete the text that does not apply to parcels and to add 5-digit rate mail as eligible for DDU rates as follows:]

c. Individual Rates. There are separate minimum per piece rates for each subclass (Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route) and within each subclass for the level of presort within each mailing. Mailers may claim discounted rates for destination entry mailings under 446.2.0 through 446.5.0 in Enter and Deposit. DDU rates are available for parcels and Not Flat-Machinable pieces entered only at 5-digit, Enhanced Carrier Route, or Nonprofit Enhanced Carrier Route rates. See 1.0, Rates and Fees for Standard Mail, for individual per piece rates.

* * * * *

[Revise the heading and text of 4.4 as follows:]

4.4 Surcharge

Unless prepared in carrier route (irregular parcels only) or 5-digit/scheme containers, Standard Mail parcels and Not Flat-Machinable pieces are subject to a $0.05 surcharge if:

a. The machinable or irregular parcels do not bear a UCC/EAN 128 barcode, under 708.5.0, for the ZIP Code of the delivery address.

b. The Not Flat-Machinable pieces weigh 6 ounces or more and do not bear a UCC/EAN 128 barcode, under 708.5.0, for the ZIP Code of the delivery address.

c. The Not Flat-Machinable pieces weigh less than 6 ounces and do not bear a UCC/EAN 128 or POSTNET barcode, under 708.0, for the ZIP Code of the delivery address.

[Delete 4.5 and renumber 4.6 as new 4.5.]

4.5 Extra Services for Standard Mail

* * * * *

4.5.2 Eligible Matter

[Revise renumbered 4.5.2 as follows:]

Extra services may be used only with pieces mailed at machinable or irregular parcel rates.

4.5.3 Ineligible Matter

Extra services (other than certificate of mailing service) may not be used for any of the following types of Standard Mail:

[Revise item a as follows:]

a. Pieces entered as letters, flats, or NFMs.

* * * * *

[Revise the heading of 5.0 as follows:]

5.0 Additional Eligibility Standards for Presorted Standard Mail Pieces

* * * * *

5.2 Rate Application

[Revise 5.2 to add Not Flat-Machinable pieces and to note separate rates as follows:]

Rates for Regular and Nonprofit Standard Mail apply separately to machinable parcels, irregular parcels, and Not Flat-Machinable pieces that meet the eligibility standards in 2.0 through 4.0 and the preparation standards in 445.5.0 or 705.8.0, Preparing Pallets. When parcels and Not Flat-Machinable pieces are combined under 445.5.0, all pieces are eligible for the applicable rates when the combined total meets the eligibility standards. For example, when there are 10 pounds of combined machinable parcels, irregular parcels, and Not Flat-Machinable pieces in a 5-digit sack, all pieces are eligible for the 5-digit rates.

[Delete 5.3 through 5.5. Insert new 5.3 for machinable parcel rates as follows:]

5.3 Rates for Machinable Parcels

5.3.1 5-Digit Rate

The 5-digit rate applies to qualifying machinable parcels presented:

a. In a 5-digit/scheme (L606) sack containing at least 10 pounds of pieces.

b. On a 5-digit pallet, according to standards in 705.8.10.

c. As one or more parcels that mailers drop ship to a DDU under 446.5.2.

5.3.2 BMC Rate

The BMC rate applies to qualifying machinable parcels presented:

a. In an ASF or BMC sack containing at least 10 pounds of parcels.

b. On an ASF or BMC pallet, according to standards in 705.8.10.

5.3.3 Mixed BMC Rate

The mixed BMC rate applies to machinable parcels that are not eligible for 5-digit or BMC rates. Place machinable parcels at mixed BMC rates in mixed BMC sacks under 445.5.3.2 or on mixed BMC pallets under 705.8.10.

[Insert new 5.4 for irregular parcel rates as follows:]

5.4 Rates for Irregular Parcels

5.4.1 5-Digit Rate

The 5-digit rate applies to irregular parcels (see 401.1.6) presented:

a. In a 5-digit/scheme (L606) sack containing at least 10 pounds of pieces.

b. On a 5-digit/scheme (L606) pallet, according to 705.8.10.

c. As one or more parcels that mailers drop ship to a DDU under 446.5.2.

5.4.2 3-Digit Rate

The 3-digit rate applies to irregular parcels (see 401.1.6) presented:

a. In a 3-digit sack containing at least 10 pounds of parcels.

b. On a 3-digit pallet, according to 705.8.10.

5.4.3 ADC Rate

The ADC rate applies to irregular parcels (see 401.1.6) presented:

a. In an ADC sack containing at least 10 pounds of parcels, or in an optional 3-digit origin/entry sack.

b. On an ADC pallet, according to 705.8.10.4.

5.4.4 Mixed ADC Rate

The mixed ADC rate applies to irregular parcels (see 401.1.6) in mixed ADC containers.

[Insert new 5.5 for Not Flat-Machinable rates as follows:]

5.5 Rates for Not Flat-Machinable (NFM) Pieces

5.5.1 5-Digit Rate

The 5-digit rate applies to NFM pieces presented:

a. In a 5-digit/scheme sack containing at least 10 pounds of pieces.

b. In 5-digit bundles of five or more pieces on pallets or in pallet boxes under 705.8.0.

c. As one or more pieces that mailers drop ship to a DDU under 446.5.0.

5.5.2 3-Digit Rates

The 3-digit rate applies to NFM pieces presented:

a. In a 3-digit sack containing at least 10 pounds of pieces.

b. On a 3-digit pallet under 705.8.10.

5.5.3 ADC Rate

The ADC rate applies to NFM pieces presented:

a. In an ADC or BMC/ASF sack containing at least 10 pounds of pieces or in an optional 3-digit origin/entry sack.

b. On an ADC or BMC/ASF pallet under 705.8.10.

5.5.4 Mixed ADC Rate

The mixed ADC rate applies to NFM pieces in mixed ADC or mixed BMC containers.

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445 Mail Preparation

1.0 General Information for Mail Preparation

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1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise item c to require 5-digit/scheme sort for rate eligibility as follows:]

c. A 5-digit/scheme sort for Standard Mail parcels yields 5-digit scheme sacks or pallets for those 5-digit ZIP Codes listed in L606 and 5-digit sacks or pallets for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme sacks, then prepare all possible 5-digit sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume (if required), with no further separation by 5-digit ZIP Code required. Sacks or pallets prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly.

* * * * *

2.0 Bundles

2.1 Definition of a Bundle

[Revise 2.1 to restrict bundling as follows:]

Mailers assemble pieces available for different presort destinations into groups. A ''bundle'' is a group of addressed pieces secured together as a unit. The term ''bundle'' does not apply to unsecured groups of pieces. Bundling under 445 is allowed only for carrier route bundles of irregular parcels and 5-digit bundles of Not Flat-Machinable pieces placed on pallets or in pallet boxes (see 6.0).

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5.0 Preparing Presorted Parcels

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5.3 Preparing Machinable Parcels

5.3.1 5-Digit Sacks

[Revise 5.3.1 to change the preparation of 5-digit/scheme sacks containing both machinable and irregular parcels (or also containing Not Flat-Machinable pieces) to be that for machinable parcels, and to require 5-digit scheme sorting when claiming 5-digit rates, as follows:]

Mailers must prepare all possible 5-digit/scheme sacks in a mailing that includes pieces claimed at the 5-digit rate. If mailers do not prepare all 5-digit/scheme sacks when there are 10 pounds or more of mail for a destination, they may not claim the 5-digit rate for any part of the mailing. Mailers choosing to combine the preparation of either irregular parcels or Not Flat-Machinable pieces (see 401.2.2.3) weighing 6 ounces or more with machinable parcels placed in 5-digit/scheme sacks must prepare those sacks under 5.3.2. Mailers choosing to combine the preparation of Not Flat-Machinable pieces weighing 6 ounces or more with machinable parcels placed in ASF, BMC, or mixed BMC sacks must prepare the sacks under 5.3.2. There is no minimum for parcels prepared in 5-digit/scheme sacks entered at a DDU.

5.3.2 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a to add the requirement of 5-digit/scheme sorting for pieces claiming the 5-digit rate as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate), see definition in 1.4c; 10-pound minimum except under 5.3.1; labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''STD MACH 5D SCH.'' For 5-digit sacks, ''STD MACH 5D.''

[Delete item b. Renumber items c through e as new items b through d.]

* * * * *

5.4 Preparing Irregular Parcels

[Delete 5.4.1 and 5.4.2. Renumber 5.4.3 through 5.4.8 as new 5.4.1 through 5.4.6. Revise heading and text of renumbered 5.4.1 to restrict bundling of irregular parcels as follows:]

5.4.1 Bundling

Bundling is not permitted, except for bundles of carrier route irregular parcels under 6.0.

* * * * *

[Delete renumbered 5.4.2 through 5.4.5 and renumber 5.4.6 through 5.4.8 as new 5.4.2 through 5.4.4.]

5.4.2 Required Sacking

[Revise renumbered 5.4.2 to change the minimum quantity per sack from 15 pounds to 10 pounds and to add NFMs as follows:]

Mailers must prepare a sack when the quantity of mail for a required presort destination reaches 10 pounds of pieces. There is no minimum for parcels prepared in 5-digit/scheme sacks entered at a DDU. Mailers choosing to combine irregular parcels with machinable parcels and NFMs in 5-digit/scheme sacks must prepare those sacks under 5.3.2. Mailers may not prepare sacks containing irregular and machinable parcels to other presort levels. Mailers may combine irregular parcels with Not Flat-Machinable pieces weighing less than 6 ounces in sacks under 5.4.4.

* * * * *

5.4.4 Sacking and Labeling

[Revise renumbered 5.4.4 as follows:]

Preparation sequence, sack size, and labeling:

a. 5-digit/scheme (optional, but required for 5-digit rate), 10-pound minimum, except when entered at a DDU; labeling:

1. For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''STD IRREG 5D SCH.'' For 5-digit sacks, ''STD IRREG 5D.''

b. 3-digit (required); 10-pound minimum; for irregular parcels only; labeling:

1. For Line 1, L002, Column A.

2. For Line 2, ''STD IRREG 3D.''

c. Origin/entry 3-digit(s) (optional); no minimum; labeling:

1. Line 1: Use L002, Column A.

2. Line 2: ''STD IRREG 3D.''

d. ADC (required); 10-pound minimum; labeling:

1. Line 1: L603, Column B. (Use L004 for parcels that weigh at least 2 ounces and are not rolls or tubes. Do not mix pieces labeled to L603 with pieces labeled to L004.)

2. Line 2: ''STD IRREG ADC.''

e. Mixed ADC (required); no minimum; labeling:

1. Line 1: L604, Column B. (Use L009 for parcels that weigh at least 2 ounces and are not rolls or tubes. Do not mix pieces labeled to L604 with pieces labeled to L009.)

2. Line 2: ''STD IRREG WKG.''

[Renumber 6.0 as new 7.0. Insert new 6.0 for preparation of NFM pieces as follows:]

6.0 Preparing Not Flat-Machinable Pieces

6.1 Basic Standards

All mailings at Regular Standard Mail and Nonprofit Standard Mail Presorted rates for NFM pieces are subject to the general preparation standards in 1.0 through 4.0. Prepare NFM pieces (see 301.2.2.3) according to the standards in 6.0 unless commingled with parcels under 445.5.0. Mark NFM pieces according to the standards in 402.2.1.1.

6.2 Bundling

Mailers may make 5-digit bundles of at least five pieces when placed on pallets or in pallet boxes under 705.8.0. No other NFM bundling is permitted.

6.3 Sacking and Labeling

6.3.1 General

Mailers may combine NFM pieces with parcels in 5-digit/scheme sacks under 445.5.3. See 6.3.2 for NFM pieces that weigh less than 6 ounces; see 6.3.3 for NFM pieces that weigh 6 ounces or more.

6.3.2 NFM Pieces Weighing Less Than 6 Ounces

Preparation sequence, sack size, and labeling for sacks of NFM pieces that weigh less than 6 ounces:

a. 5-digit/scheme (optional, but required for 5-digit rate); see definition in 445.1.4c; 10-pound minimum, except when drop shipped to a DDU (no minimum); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''STD NFM 5D SCH.'' For 5-digit sacks, ''STD NFM 5D.''

b. 3-digit (required); 10-pound minimum; labeling:

1. Line 1: Use L002, Column A.

2. Line 2: ''STD NFM 3D.''

c. Origin/entry 3-digit(s) (optional); no minimum; labeling:

1. Line 1: Use L002, Column A.

2. Line 2: ''STD NFM 3D.''

d. ADC (required); 10-pound minimum; labeling:

1. Line 1: Use L004, Column B.

2. Line 2: ''STD NFM ADC.''

e. Mixed ADC (required); no minimum; labeling:

1. Line 1: Use L009, Column B.

2. Line 2: ''STD NFM WKG.''

6.3.3 NFM Pieces Weighing 6 Ounces or More

Preparation sequence, sack size, and labeling for sacks of NFM pieces that weigh 6 ounces or more:

a. 5-digit/scheme (optional but required for 5-digit rate); see definition in 445.1.4c; 10-pound minimum, except when drop shipped to a DDU (no minimum); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, use ''STD NFM 5D SCH.'' For 5-digit sacks, use ''STD NFM 5D.''

b. ASF (optional), permitted only for mail deposited at an ASF to claim DBMC rate; 10-pound minimum; labeling:

1. Line 1: L602, Column B. DBMC rate eligibility determined by Exhibit 446.3.1, BMC/ASF–DMBC Rate Eligibility.

2. Line 2: ''STD NFM ASF.''

c. BMC (required); 10-pound minimum; labeling:

1. Line 1: L601, Column B. DBMC rate eligibility determined by Exhibit 446.3.1, BMC/ASF–DMBC Rate Eligibility.

2. Line 2: ''STD NFM BMC.''

d. Mixed BMC (required); no minimum; labeling:

1. Line 1: ''MXD'' followed by L601, Column B information for BMC serving 3-digit ZIP Code prefix of entry post office.

2. Line 2: ''STD NFM WKG.''

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446 Enter and Deposit

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4.0 Destination Sectional Center Facility (DSCF) Entry

* * * * *

4.2 Eligibility

Pieces in a mailing that meets the standards in 2.0 and 4.0 are eligible for the DSCF rate, as follows:

* * * * *

[Insert new item c as follows:]

c. When prepared and deposited under 705.6.3.

* * * * *

5.0 Destination Delivery Unit (DDU) Entry

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5.2 Eligibility

[Revise 5.2 to allow 5-digit sacks of parcels to be entered at DDUs and to add ''Not Flat-Machinable'' pieces as follows:]

Pieces in a mailing that meets the standards in 2.0 and 5.0 are eligible for the DDU rate when deposited at a DDU, addressed for delivery within that facility's service area, and prepared as follows:

a. Irregular parcels in carrier route bundles sorted to carrier route sacks, and otherwise eligible for and claimed at a carrier route rate.

b. One or more parcels or Not Flat-Machinable pieces in 5-digit containers.

450 Discount Parcels: Parcel Post

453 Rates and Eligibility

* * * * *

3.0 Rate Eligibility Standards for Parcel Post

3.1 Parcel Post and Parcel Select Rate Eligibility

There are five Parcel Post (including Parcel Select) rate categories: Intra-BMC, Inter-BMC, destination bulk mail center (DBMC), destination sectional center facility (DSCF), and destination delivery unit (DDU). Parcel Post mailed at any of the destination entry rates is called ''Parcel Select'' (see 456.2.0). Intra-BMC and Inter-BMC Parcel Post rates and DBMC Parcel Select rates are calculated based on the zone to which the parcel is addressed and the weight of the parcel. DSCF and DDU Parcel Select rates are calculated based on the weight of the parcel.

Requirements for Parcel Post rates and discounts are as follows:

* * * * *

[Revise item f as follows:]

f. The barcode discount applies to Inter-BMC/ASF and Intra-BMC/ASF Parcel Post machinable parcels (401.1.5) that bear a barcode under 708.5.0 for the ZIP Code of the delivery address and are part of a mailing of 50 or more Parcel Post rate pieces.

* * * * *

[Revise item h as follows:]

h. Items weighing less than 20 pounds but measuring more than 84 inches (but not more than 108 inches) in combined length and girth are charged the rate for a 20-pound parcel for the zone to which it is addressed (balloon rate).

* * * * *

455 Mail Preparation

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5.0 Standards for Barcode Discounts

5.1 Standards for Barcoded Mail

[Revise 5.1 as follows:]

The barcode discount applies to Inter-BMC/ASF and Intra-BMC/ASF Parcel Post machinable parcels (401.1.5) that bear a barcode under 708.5.0 for the ZIP Code of the delivery address and are part of a mailing of 50 or more Parcel Post rate pieces.

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456 Enter and Deposit

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2.0 Parcel Select

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2.2 Rate Eligibility for Parcel Select Rates

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2.2.2 DBMC Rates

For DBMC rates, pieces must meet the applicable standards in 2.1 through 2.6 and the following:

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[Renumber items b and c as new items c and d. Insert new item b as follows:]

b. Machinable parcels must bear a barcode under 708.5.0 for the ZIP Code of the delivery address. Nonbarcoded machinable parcels are eligible only for the Intra-BMC/ASF rates.

* * * * *

2.6 Acceptance at Designated SCF—Mailer Benefit

Mailers may deposit parcels otherwise eligible for the DBMC rates at an SCF designated by the USPS for destination ZIP Codes listed in labeling list L607.

The following standards apply:

* * * * *

[Revise item b as follows:]

b. Bound Printed Matter machinable parcels under 466.3.3 and Standard Mail parcels under 705.6.3 may be included.

* * * * *

460 Discount Parcels: Bound Printed Matter

[Incorporate the standards for Bound Printed Matter in 160 into 460. Make revisions throughout to change single-piece Bound Printed Matter to ''nonpresorted'' Bound Printed Matter and make the following additional changes:]

* * * * *

465 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Renumber items c through g as new items d through h. Insert new item c for 5-digit schemes as follows:]

c. 5-digit scheme (pallets and sacks) for Bound Printer Matter parcels: the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code ranges processed by the USPS as a single scheme, as shown in L606.

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5.0 Preparing Presorted Parcels

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5.2 Preparing Irregular Parcels Weighing Less Than 10 Pounds

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5.2.4 Required Sacking

[Revise the third sentence in the introductory text as follows:]

A sack must be prepared when the quantity of mail for a required presort destination reaches either 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted (except mixed ADC sacks). Optional SCF sacks may be prepared only when there are at least 10 addressed pieces or 20 pounds, whichever occurs first. Sacking is not required for 5-digit bundles when prepared for and entered at DDU rates. Such bundles may be bedloaded and may weigh up to 40 pounds. Sacking also is subject to these conditions:

* * * * *

5.2.5 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c through f as new items b through e.]

a. 5-digit/scheme (required); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC IRREG 5D SCH.'' For 5-digit sacks, ''PSVC IRREG 5D.''

* * * * *

5.3 Preparing Irregular Parcels Weighing 10 Pounds or More

* * * * *

5.3.3 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c through f as new items b through e.]

a. 5-digit/scheme (required); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC IRREG 5D SCH.'' For 5-digit sacks, ''PSVC IRREG 5D.''

* * * * *

5.4 Preparing Machinable Parcels Not Claiming the DBMC Rates

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5.4.2 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c and d as new items b and c.]

a. 5-digit/scheme (required); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC MACH 5D SCH.'' For 5-digit sacks, ''PSVC MACH 5D.''

* * * * *

5.5 Preparing Machinable Parcels Claiming the DBMC Rates

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5.5.2 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c through e as new items b through d.]

a. 5-digit/scheme (required); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: ''PSVC MACH 5D SCHEME'' or ''PSVC MACH 5D SCH.''

* * * * *

466 Enter and Deposit

1.0 Presenting a Mailing

[Revise the heading of 1.1 as follows:]

1.1 Verification and Entry—Presorted, Carrier Route, Destination Entry, and Barcoded Mailings

* * * * *

[Renumber 1.2 through 1.5 as new 1.3 through 1.6. Insert new 1.2 as follows:]

1.2 Verification and Entry—Nonpresorted Mailings

Nonpresorted rate Bound Printed Matter is not offered at post offices, branches, or stations or through Postal Service carriers, except under 1.2c and 1.2d. Mailers must deposit Nonpresorted Bound Printed Matter as follows:

a. At the time and place specified by the postmaster at the office of mailing.

b. For metered mail, at other than the licensing post office only as permitted under 705.18.0, Metered Mail Drop Shipment.

c. For permit imprint mail, only at the post office where the permit is held (see 604.5.0).

d. At any post office, branch, or station or with a Postal Service carrier, if the correct postage is applied, including postage for any extra service elected.

* * * * *

3.0 Destination Bulk Mail Center (DBMC) Entry

* * * * *

3.2 Acceptance at Designated SCF—Mailer Benefit

Mailers may deposit machinable parcels otherwise eligible for the DBMC rates at an SCF designated by the USPS for destination ZIP Codes listed in labeling list L607. The following standards apply:

* * * * *

[Revise item c as follows:]

c. Parcel Select machinable parcels under 456.2.6 and Standard Mail parcels under 705.6.3 may be included.

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470 Media Mail

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475 Mail Preparation

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5.0 Preparing Media Mail Parcels

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5.2 Preparing Machinable Parcels

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5.2.2 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c and d as new items b and c.]

a. 5-digit/scheme (optional, but required for 5-digit rate); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC MACH 5D SCH.'' For 5-digit sacks, ''PSVC MACH 5D.''

* * * * *

[Revise heading of 5.3 as follows:]

5.3 Preparing Irregular Parcels

* * * * *

5.3.4 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c through e as new items b through d.]

a. 5-digit/scheme (optional, but required for 5-digit rate); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC IRREG 5D SCH.'' For 5-digit sacks, ''PSVC IRREG 5D.''

* * * * *

480 Library Mail

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485 Mail Preparation

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5.0 Preparing Library Mail Parcels

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5.2 Preparing Machinable Parcels

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5.2.2 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c and d as new items b and c.]

a. 5-digit/scheme (optional, but required for 5-digit rate); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC MACH 5D SCH.'' For 5-digit sacks, ''PSVC MACH 5D.''

* * * * *

[Revise heading of 5.3 as follows:]

5.3 Preparing Irregular Parcels

* * * * *

5.3.4 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c through e as new items b through d.]

a. 5-digit/scheme (optional, but required for 5-digit rate); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC IRREG 5D SCH.'' For 5-digit sacks, ''PSVC IRREG 5D.''

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500 Additional Services

503 Extra Services

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4.0 Insured Mail

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4.2 Basic Information

4.2.1 Description

Insured mail provides the following features:

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[Revise item d as follows:]

d. Insured mail service provides the mailer with a mailing receipt. No record of insured mail is kept at the office of mailing. For mail insured for $200 or less, the USPS maintains delivery information (not including a signature). For mail insured for more than $200, the USPS maintains a delivery record (which includes the recipient's signature) for a specified period of time. Customers may obtain a delivery record by purchasing additional services; see 6.0 for details.

4.2.2 Eligible Matter

The following types of mail may be insured:

* * * * *

[Revise item b as follows:]

b. Standard Mail pieces prepared as machinable or irregular parcels (bulk insurance only).

* * * * *

4.2.4 Additional Services

[Revise the first sentence in 4.2.4 as follows:]

Insuring an item for more than $200 allows customers to purchase restricted delivery service or return receipt service. The following additional services may be purchased at a retail post office and combined with insurance if the applicable standards for the services are met and the additional service fees are paid:

* * * * *

[Revise item c as follows:]

c. Return receipt for merchandise (for items insured for $200 or less).

* * * * *

4.3 Mailing

* * * * *

4.3.3 Markings and Forms

The treatment of pieces is determined by the insurance amount:

[Revise items a and b as follows:]

a. Retail pieces insured for $200 or less: The mailer must affix a barcoded Form 3813 (see Exhibit 4.3.3) to each piece above the delivery address and to the right of the return address. No signature is obtained.

b. Retail pieces insured for more than $200: The mailer must affix a barcoded Form 3813–P (see Exhibit 4.3.3) to each piece above the delivery address and to the right of the return address.

* * * * *

4.3.5 Integrated Barcodes

The following options are available for mailers who print their own labels:

* * * * *

c. Mailers must use an integrated barcode (see Exhibit 4.3.5c) when insurance is purchased online for Priority Mail and for parcels mailed at First-Class Mail, Media Mail, and Parcel Post rates. This barcode combines insurance with electronic option Delivery Confirmation or Signature Confirmation into a single barcode on the shipping label. Additional information on the integrated barcode can be found in Publication 91, Confirmation Services Technical Guide.

[Revise items c1 and c2 as follows:]

1. Mailers may purchase insurance online for indemnity coverage of $200 or less with electronic option Delivery Confirmation service. The human-readable text above the integrated barcode must state, ''e/USPS DELIVERY CONFIRMATION'' or, for parcels prepared using eVS under 705.2.9, ''USPS DELIVERY CONFIRMATION.''

2. Mailers may purchase insurance online for indemnity coverage of more than $200, up to $500, with electronic option Delivery Confirmation service. The human-readable text above the integrated barcode must state, ''e/USPS INSURED'' or, for parcels prepared using eVS under 705.2.9, ''USPS INSURED.''

* * * * *

4.3.7 Receipt

Receipts are provided as follows:

a. For each retail insured mail article, the mailer receives a USPS sales receipt and the appropriate postmarked (round-dated) insured mail form as follows:

[Revise items a1 and a2 as follows:]

1. Form 3813 when the insurance coverage is $200 or less.

2. Form 3813–P when the insurance coverage is more than $200.

* * * * *

4.5 Delivery

[Revise 4.5 as follows:]

An item insured for $200 or less is delivered as ordinary mail and receives a delivery scan. An item insured for more than $200 receives a delivery scan and the recipient's signature. Delivery of insured mail is subject to 508.1.0, Recipient Options, and 508.2.0, Conditions of Delivery.

* * * * *

6.0 Return Receipt

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6.2 Basic Information

* * * * *

6.2.2 Eligible Matter

Return receipt service is available for:

* * * * *

[Revise items b, c, and d to replace old value of $50 with new value of $200. Further revise item c to remove reference to residual shape surcharge and insert text about preparation as machinable or irregular parcels as follows:]

b. First-Class Mail (including Priority Mail) when purchased at the time of mailing with Certified Mail, COD, insured mail (for more than $200), or Registered Mail service.

c. Standard Mail prepared as machinable or irregular parcels when bulk insurance (for more than $200) is purchased at the time of mailing.

d. Package Services when purchased at the time of mailing with COD or insured mail (for more than $200).

* * * * *

6.3 Obtaining Service

* * * * *

6.3.2 After Mailing

[Revise first sentence in the introductory text to replace old value of $50 with new value of $200 as follows:]

The mailer may request a delivery record after mailing for Express Mail, Certified Mail, Registered Mail, COD mail, and mail insured for more than $200. When a delivery record is available, the USPS provides the mailer information from that record, including to whom the mail was delivered and the date of delivery. The mailer requests a delivery record by completing Form 3811–A, paying the appropriate fee in 6.1.1, and submitting the request to the appropriate office as follows:

* * * * *

7.0 Restricted Delivery

* * * * *

7.2 Basic Information

* * * * *

7.2.2 Eligible Matter

Restricted Delivery service is available for:

[Revise items a, b, and c to replace old value of $50 with new value of $200. Further revise item b to remove reference to residual shape surcharge and insert text about preparation as machinable or irregular parcels as follows:]

a. First-Class Mail (including Priority Mail) when purchased at the time of mailing with Certified Mail, COD, insured mail (for more than $200), or Registered Mail service.

b. Standard Mail prepared as machinable or irregular parcels when bulk insurance (for more than $200) is purchased at the time of mailing.

c. Package Services when purchased at the time of mailing with COD or insured mail (for more than $200).

* * * * *

8.0 Return Receipt for Merchandise

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8.2 Basic Information

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8.2.2 Eligible Matter

[Revise 8.2.2 as follows:]

Return receipt for merchandise is available for merchandise sent as

Priority Mail, Standard Mail parcels, and Package Services.

* * * * *

8.2.4 Additional Services

The following services may be combined with return receipt for merchandise if the applicable standards for the services are met and the additional service fees are paid:

* * * * *

[Revise item b to replace old value of $50 with new value of $200 as follows:]

b. Insurance (for up to $200).

* * * * *

9.0 Delivery Confirmation

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9.2 Basic Information

* * * * *

9.2.2 Eligible Matter

[Revise 9.2.2 to remove reference to Standard Mail residual shape surcharge and insert text about Standard Mail preparation as machinable or irregular parcels as follows:]

Delivery Confirmation is available for First-Class Mail parcels, for all Priority Mail pieces, for Standard Mail pieces prepared as machinable or irregular parcels (electronic option only), and for Package Services parcels under 401.1.0. For the purposes of using Delivery Confirmation with a Package Services parcel, the parcel must meet these additional requirements:

* * * * *

9.2.6 Additional Services

Delivery Confirmation may be combined with:

* * * * *

[Revise items d and e as follows:]

d. Restricted delivery, if purchased with insurance for more than $200, COD, or Registered Mail service.

e. Return receipt, if purchased with insurance for more than $200, COD, or Registered Mail service.

* * * * *

10.0 Signature Confirmation

* * * * *

10.2 Basic Information

* * * * *

10.2.2 Eligible Matter

[Revise the introductory text of 10.2.2 as follows:]

Signature Confirmation is available for First-Class Mail parcels and Package Services parcels defined in 401.1.0, and for all Priority Mail pieces. For the purposes of using Signature Confirmation with a First-Class Mail or Package Services parcel, the parcel must meet these additional requirements:

* * * * *

10.2.6 Additional Services

Signature Confirmation may be combined with:

* * * * *

[Revise item d as follows:]

d. Restricted delivery, if purchased with insurance for more than $200, COD, or Registered Mail service.

* * * * *

13.0 Confirm Service

* * * * *

13.2 Basic Information

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[Revise the heading and text of 13.2.7 as follows:]

13.2.7 Subscription

Confirm is available in blocks of 1 million units. By paying the user fee, subscribers receive 1 million units. The user fee and the 1 million units are valid for 1 year from the date purchased. Additional units may be purchased during the subscription period in blocks of 1 million with a declining price threshold as described in 13.1.1. Units expire when the annual fee expires. Units are redeemed for Confirm scans at the rate of one unit per First-Class Mail scan or five units per scan of other classes of mail.

* * * * *

507 Mailer Services

[Revise 507 to change the term ''accounting fee'' to ''account maintenance fee'' throughout the chapter.]

1.0 Treatment of Mail

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1.5 Treatment for Ancillary Services by Class of Mail

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1.5.2 Periodicals

Undeliverable-as-addressed (UAA) Periodicals publications (including publications pending Periodicals authorization) are treated as described in Exhibit 1.5.2, with these additional conditions:

* * * * *

[Revise item f to remove the nonmachinable surcharge in the second-to-last sentence as follows:]

f. The publisher may request the return of copies of undelivered Periodicals by printing the endorsement ''Address Service Requested'' on the envelopes or wrappers, or on one of the outside covers of unwrapped copies, immediately preceded by the sender's name, address, and ZIP+4 or 5-digit ZIP Code. This endorsement obligates the publisher to pay return postage. Each returned piece is charged the single-piece First-Class Mail rate for the weight and shape of the piece or the Priority Mail rate for the weight and destination of the piece. When the address correction is provided incidental to the return of the piece, there is no charge for the correction.

* * * * *

1.5.3 Standard Mail

Undeliverable-as-addressed (UAA) Standard Mail is treated as described in Exhibit 1.5.3a and Exhibit 1.5.3k, with these additional conditions:

* * * * *

[Revise item i as follows:]

i. A weighted fee is charged when an unforwardable or undeliverable piece is returned to the sender and the piece is endorsed ''Address Service Requested'' or ''Forwarding Service Requested.'' The weighted fee is the single-piece First-Class Mail rate for the weight and shape of the piece or the Priority Mail rate for the weight and destination of the piece multiplied by 2.472 and rounded up to the next whole cent (if the computation yields a fraction of a cent). The weighted fee is computed (and rounded if necessary) for each piece individually. Using ''Address Service Requested'' or ''Forwarding Service Requested'' obligates the sender to pay the weighted fee on all returned pieces. The appropriate First-Class Mail rate for a Not Flat-Machinable piece is the First-Class Mail parcel rate.

[Revise item j as follows:]

j. Returned pieces endorsed ''Return Service Requested'' are charged the single-piece First-Class Mail rate for the weight and shape of the piece or the Priority Mail rate for the weight and destination of the piece. The appropriate First-Class Mail rate for a Not Flat-Machinable piece is the First-Class Mail parcel rate.

* * * * *

1.6 Attachments and Enclosures

1.6.1 Periodicals

[Revise the first sentence in 1.6.1 as follows:]

Undeliverable Periodicals (including publications pending Periodicals authorization) with a nonincidental First-Class Mail attachment or enclosure are returned at the single-piece First-Class Mail rate for the weight and shape of the piece or Priority Mail rate for the weight and destination of the piece. The weight of the attachment or enclosure is

not included when computing the charges for return of the mailpiece. Undeliverable Periodicals (including publications pending Periodicals authorization) with an incidental First-Class Mail attachment or enclosure are treated as dead mail unless endorsed ''Address Service Requested.''

1.6.2 Standard Mail

[Revise the first sentence in 1.6.2 as follows:]

Undeliverable, unendorsed Standard Mail with a nonincidental First-Class Mail attachment or enclosure is returned at the single-piece First-Class Mail rate for the weight and shape of the piece or Priority Mail rate for the weight and destination of the piece. The weight of the First-Class Mail attachment or enclosure is not included when computing the charges for return of the mailpiece. Undeliverable, unendorsed Standard Mail with an incidental First-Class Mail attachment or enclosure is treated as dead mail.

* * * * *

3.0 Address Correction Services

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3.2 Address Change Service (ACS)

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[Revise heading and text in 3.2.2 as follows:]

3.2.2 Service Options

ACS offers three levels of service:

a. An automated option for letter-size mail with electronic notices processed using OneCode technology (see 3.2.6, Additional Standards—4-State Customer Barcodes).

b. An electronic option for all notices processed electronically, except automated notices under 3.2.2a.

c. A manual option for notices processed manually.

* * * * *

10.0 Merchandise Return Service

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10.5 Additional Features

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10.5.3 Insured Markings

[Revise 10.5.3 as follows:]

The permit holder must either leave a clear space on the merchandise return label to the right of the return address for the numbered insured label or instruct the customer to affix the merchandise return label to the article so that the USPS acceptance employee can place the insured label on the article directly above the merchandise return label.

* * * * *

508 Recipient Services

1.0 Recipient Options

1.1 Basic Recipient Concerns

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1.1.7 Express Mail and Accountable Mail

[Revise the introductory text of 1.1.7 to change the insurance threshold from $50 to $200 as follows:]

The following conditions also apply to the delivery of Express Mail and accountable mail (registered, certified, insured for more than $200, or COD, as well as mail for which a return receipt or a return receipt for merchandise is requested or for which the sender has specified restricted delivery):

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

1.0 General Standards

* * * * *

1.4 Length and Height

The location and orientation of the delivery address on a letter-size mailpiece establish which dimensions of the piece are the length and the height. The length is the dimension parallel to the address as read; the height is the dimension perpendicular to the length. For flat-size pieces, parcels, and Not Flat-Machinable pieces, the length is the longest dimension. See 705.1.0 to determine the length of Customized MarketMail pieces.

* * * * *

604 Postage Payment Methods

1.0 Stamps

1.1 Postage Stamp Denominations

[Add the forever stamp to the table of types and formats of stamps.]

* * * * *

[Renumber 1.10 through 1.12 as new 1.11 through 1.13 and remove reference to nonmachinable surcharge. Insert new 1.10 as follows:]

1.10 Additional Standards for Forever Stamps

Forever stamps are sold for the price of the current First-Class Mail single-piece 1-ounce letter rate in 133.1.5. The postage value of each forever stamp is the current First-Class Mail single-piece 1-ounce letter rate. Forever stamps may be used only on single-piece rate mail.

[Revise the heading of renumbered 1.11 as follows:]

1.11 Additional Standards for Semipostal Stamps

Semipostal stamps are subject to the following special conditions:

* * * * *

[Revise item c to remove the reference to nonmachinable surcharge.]

* * * * *

609 Filing Indemnity Claims for Loss or Damage

1.0 General Filing Instructions

* * * * *

1.5 Where To File for Loss or Damage

A claim may be filed:

[Revise item a as follows:]

a. Online at *www.usps.com* or in person at any post office, station, or branch, except for Registered Mail articles with merchandise return service (see 1.5b).

* * * * *

[Revise the heading of 2.0 as follows:]

2.0 Providing Proof of Missing Contents or Damage

[Revise 2.1 and 2.2 to change the requirements for proving missing contents or damage as follows:]

2.1 Missing Contents

If a claim is filed because some or all of the contents are missing, the addressee must make available the mailing container, including any wrapping, packaging, and any contents that were received, to the USPS with the claim.

2.2 Proof of Damage

If the addressee files the claim, the addressee must make available the damaged article and mailing container, including any wrapping, packaging, and any other contents that were received, to the USPS for inspection. If the mailer files the claim, the USPS will notify the addressee by letter to make available the damaged article and mailing container, including any wrapping, packaging, and any other contents that were received, to the USPS for inspection. Failure to do so will result in denial of the claim.

[Delete 2.3, Proof of Loss.]

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700 Special Standards

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705 Advanced Preparation and Special Postage Payment Systems

1.0 Customized MarketMail

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1.2 Rates

[Revise 1.2 as follows:]

Pieces mailed as Customized MarketMail under 705.1.0 must pay the Regular or Nonprofit Standard Mail 5-digit nonentry rate for Not Flat-Machinable pieces and must not exceed 3.3 ounces.

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2.3 Keyline

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2.3.3 Rate Category Abbreviations

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Exhibit 2.3.3a Rate Category Abbreviations-First-Class Mail

* * * * *

[Delete the entry for Automation Carrier Route.]

Exhibit 2.3.3b Rate Category Abbreviations-Standard Mail

* * * * *

[Delete the entry for Automation Carrier Route. Add an entry for Not Flat-Machinable pieces as follows:]

Code	Rate category
NF	Not Flat-Machinable.

* * * * *

6.0 Combining Mailings of Standard Mail and Package Services Parcels

6.1 Combining Machinable Parcels—DBMC Entry

* * * * *

6.1.2 Basic Standards

Standard Mail and Package Services machinable parcels must meet the following conditions:

* * * * *

[Renumber items c through h as new items d through i. Insert new item c as follows:]

c. Parcel Select machinable parcels must bear a barcode under 708.5.0 for the ZIP Code of the delivery address.

* * * * *

[Insert new 6.3 as follows:]

6.3 Combining Package Services and Standard Mail—Optional 3-Digit SCF Entry

6.3.1 Acceptance at Designated SCF—Qualification and Preparation

Mailers may deposit parcels otherwise eligible for the Package Services and Standard Mail DBMC rates (for machinable parcels) and the Standard Mail SCF rate (for irregular parcels and Not Flat-Machinable pieces) at an SCF designated by the USPS for destination ZIP Codes listed in labeling list L607. The following standards apply:

a. Standard Mail parcels, Not Flat-Machinable pieces, Bound Printed Matter machinable parcels, and Parcel Select machinable parcels may be included. Standard Mail parcels and Not Flat-Machinable pieces that weigh less than 2 ounces and Standard Mail parcels that are tubes, rolls, triangles, and similar pieces may not be included.

b. Mailers must prepare pieces on 3-digit pallets or in 3-digit pallet boxes, or unload and physically separate the pieces into containers as specified by the destination facility.

c. Parcel Select and Bound Printed Matter parcels are eligible for the applicable DBMC entry rate.

d. Standard Mail machinable parcels are eligible for the BMC presort level, DBMC rate; Not Flat-Machinable pieces and irregular parcels are eligible for the 3-digit presort level, DSCF rate.

e. All pieces must be for delivery within the service area of the SCF where they are deposited by the mailer.

f. Postage on all zone-rated parcels deposited at the SCF is computed using the zone chart for that postal facility.

6.3.2 Documentation

Presort documentation is required for each rate claimed if the manifest does not list pieces in presort order. Separate postage statements must be prepared for the Standard Mail and Package Services pieces. Within each group, combined forms may be prepared where the standards and the forms permit. All postage statements must be provided at the time of mailing.

6.3.3 Authorization

Mailers must be authorized under 6.1.5 to prepare mailings that combine Standard Mail pieces and Package Services parcels.

6.3.4 Postage Payment

Postage for all pieces must be paid with permit imprint at the post office serving the mailer's plant under an approved manifest mailing system under 2.0.

7.0 Combining Package Services Parcels for Destination Entry

* * * * *

7.2 Combining Package Services Machinable Parcels for DBMC Entry

* * * * *

7.2.2 Basic Standards

Package Services parcels must meet the following conditions:

* * * * *

[Renumber items c through h as new items d through i. Insert new item c as follows:]

c. Parcel Select machinable parcels must bear a barcode under 708.5.0 for the ZIP Code of the delivery address.

* * * * *

8.0 Preparing Pallets

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8.5 General Preparation

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8.5.6 Mail on Pallets

These standards apply to mail on pallets:

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[Revise item c to delete ''automation carrier route'' and to replace ''presorted'' with ''nonautomation'' as follows:]

c. For letter-size Standard Mail and Periodicals prepared in trays on pallets, mailers must prepare carrier route rate mail on separate 5-digit pallets (5-digit carrier routes pallets) from automation rate or nonautomation rate mail (5-digit pallets).

* * * * *

8.6 Pallet Labels

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8.6.5 Line 2 (Content Line)

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[Delete the entry for ''manual only'' processing in the table in item b.]

8.10 Pallet Presort and Labeling

8.10.1 Periodicals—Bundles, Sacks, or Trays

[Replace ''AFSM–100 compatible'' with ''automation-compatible under 301.3.0'' in 8.10.1.]

* * * * *

8.10.2 Standard Mail—Bundles, Sacks, or Trays

[Replace ''AFSM–100 compatible'' with ''automation-compatible under 301.3.0'' in 8.10.2. Reorganize introductory text as follows:]

Mailers must prepare pallets under 8.0 in the sequence listed below and complete at each required level before preparing the next optional or required level. Unless indicated as optional, all sort levels are required. For mailings of sacks or trays on pallets, pallet preparation begins with 8.10.1e. For irregular parcels, use this preparation only for pieces in carrier route bundles or in sacks. Palletize unbundled or unsacked irregular parcels under 705.8.10.6. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6. Mailers also may palletize bundles of Standard Mail flats under 10.0, 12.0, or 13.0.

[Delete items a and c to remove the merged 5-digit and merged 5-digit scheme pallet levels; renumber items b and c as new items a and b; renumber items e through l as new items c through j.]

* * * * *

8.10.3 Package Services Flats—Bundles and Sacks

[Replace ''AFSM–100 compatible'' with ''automation-compatible under 301.3.0'' in 8.10.3.]

* * * * *

[Revise the heading and text of 8.10.5 to add Not Flat-Machinable pieces as follows:]

8.10.5 Package Services and Standard Mail Machinable Parcels, and Not Flat-Machinable Pieces Weighing 6 Ounces or More

Pallets must be prepared under 8.0 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required under the conditions shown. At the mailer's option, Inter-BMC/ASF and Intra-BMC/ASF Parcel Post mailings may be prepared on pallets under this section. Destination entry rates eligibility applies only to Standard Mail (see 446 for parcels and NFMs that weigh 6 ounces or more), Parcel Select (see 456), and Bound Printed Matter (see 466). Combined mailings of Standard Mail and Package Services machinable parcels also must meet the standards in 6.0. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6.

a. 5-digit scheme, required. Pallet must contain parcels or NFMs for the same 5-digit scheme under L606. For 5-digit destinations not part of L606, or for which scheme sorts are not performed, 5-digit pallets are prepared under 8.10.5b. Labeling:

1. Line 1: Use L606.
2. Line 2: ''STD MACH 5D,'' ''STD NFM 5D,'' or ''PSVC MACH 5D,'' as applicable; followed by ''SCHEME'' (or ''SCH'').

b. 5-digit, required. Pallet must contain parcels only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).
2. Line 2: ''STD MACH 5D,'' ''STD NFM 5D,'' or ''PSVC MACH 5D,'' as applicable.

c. ASF, optional, but required for DBMC rates. Not available for the Buffalo NY ASF in L602. Pallets must contain only parcels or NFMs for the 3-digit ZIP Code groups in L602. Labeling:

1. Line 1: Use L602.
2. Line 2: ''STD MACH ASF,'' ''STD NFM ASF,'' or ''PSVC MACH ASF,'' as applicable.

d. BMC, required. Pallets must contain only parcels or NFMs for the 3-digit ZIP Code groups in L601. Labeling:

1. Line 1: Use L601.
2. Line 2: ''STD MACH BMC,'' ''STD NFM BMC,'' or ''PSVC MACH BMC,'' as applicable.

e. Mixed BMC, optional. Labeling:

1. Line 1: ''MXD'' followed by information in L601, Column B, for BMC serving 3-digit ZIP Code prefix of entry post office (or labeled to plant serving entry post office if authorized by processing and distribution manager).
2. Line 2: ''STD MACH WKG,'' ''STD NFM WKG,'' or ''PSVC MACH WKG,'' as applicable.

[Insert new 8.10.6 as follows:]

8.10.6 Standard Mail Irregular Parcels Weighing 2 Ounces or More

Mailers who palletize unbundled or unsacked irregular parcels must make pallets or pallet boxes when there are 250 pounds or more for the destination levels below. Pallets or pallet boxes of irregular parcels (except tubes, rolls, and similar pieces) weighing 2 ounces or more must be prepared under 8.0 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required. Label pallets or pallet boxes according to the Line 1 and Line 2 information listed below and under 8.6. Mailers may not prepare tubes, rolls, and similar pieces or pieces that weigh less than 2 ounces on pallets or in pallet boxes, except for pieces in carrier route bundles or in sacks under 8.10.2.

a. 5-digit scheme, required. Pallet or pallet box must contain parcels only for the same 5-digit scheme under L606. For 5-digit destinations not part of L606 prepare 5-digit pallets under 8.10.6b. Labeling:

1. Line 1: Use L606.
2. Line 2: ''STD IRREG 5D; followed by ''SCHEME'' (or ''SCH'').

b. 5-digit, required. Pallet or pallet box must contain parcels only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).
2. Line 2: ''STD IRREG 5D.''

c. 3-digit, optional, option not available for 3-digit ZIP Code prefixes marked ''N'' in L002. Pallet or pallet box must contain parcels only for the same 3-digit ZIP Code. Labeling:

1. Line 1: Use L002, Column A.
2. Line 2: ''STD IRREG 3D.''

d. ADC, required. Pallet or pallet box must contain parcels for the 3-digit ZIP Code groups in L004. Labeling:

1. Line 1: Use L004.
2. Line 2: ''STD IRREG ADC.''

e. Mixed ADC, optional. Labeling:

1. Line 1: ''MXD'' followed by city, state, and ZIP Code information for ADC serving 3-digit ZIP Code prefix of entry post office as shown in L009, Column A.
2. Line 2: ''STD IRREG WKG.''

[Insert new 8.10.7 as follows:]

8.10.7 Standard Mail Not Flat-Machinable Pieces Weighing Less Than 6 Ounces

Mailers must prepare pieces on pallets or in pallet boxes when there are 250 pounds or more of NFMs for the destination levels below. Prepare pallets or pallet boxes of NFM pieces weighing less than 6 ounces under 8.0 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required. Label pallets or pallet boxes according to the Line 1 and Line 2 information listed below and under 8.6.

a. 5-digit scheme, required. Pallet or pallet box must contain NFMs only for the same 5-digit scheme under L606. For 5-digit destinations not part of L606 prepare 5-digit pallets under 8.10.6b. Labeling:

1. Line 1: Use L606.
2. Line 2: ''STD NFM 5D''; followed by ''SCHEME'' (or ''SCH'').

b. 5-digit, required. Pallet or pallet box must contain NFMs only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).
2. Line 2: ''STD NFM 5D.''

c. 3-digit, optional, option not available for 3-digit ZIP Code prefixes marked ''N'' in L002. Pallet or pallet box must contain NFMs only for the same 3-digit ZIP Code. Labeling:

1. Line 1: Use L002, Column A.
2. Line 2: ''STD NFM 3D.''

d. ADC, required. Pallet or pallet box must contain NFMs for the 3-digit ZIP Code groups in L004. Labeling:

1. Line 1: Use L004.
2. Line 2: ''STD NFM ADC.''

e. Mixed ADC, optional. Labeling:

1. Line 1: ''MXD'' followed by city, state, and ZIP Code information for ADC serving 3-digit ZIP Code prefix of entry post office as shown in L009, Column A.
2. Line 2: ''STD NFM WKG.''

* * * * *

8.14 Pallets of Bundles, Sacks, and Trays

* * * * *

8.14.2 Standard Mail

Additional pallet preparation:

[Revise item a as follows:]

a. Combined mailings. Nonprofit Standard Mail may be included in the same mailing or palletized on the same pallet as regular Standard Mail only as permitted by standard. Mailers may include machinable parcels, irregular parcels, and Not Flat-Machinable pieces on 5-digit pallets.

* * * * *

9.0 Preparing Cotrayed and Cosacked Bundles of Automation and Presorted Flats

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9.2 Periodicals

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9.2.5 Sack Preparation and Labeling

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[Revise item a as follows:]

a. 5-digit/scheme, required; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; 24-piece minimum, fewer pieces not permitted; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces.

2. Line 2: ''PER'' or ''NEWS'' as applicable and, for 5-digit scheme sacks, ''FLT 5D SCH BC/NBC;'' for 5-digit sacks, ''FLT 5D BC/NBC.''

* * * * *

9.3 Standard Mail

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9.3.5 Sack Preparation and Labeling

* * * * *

[Revise item a as follows:]

a. 5-digit/scheme, required; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; 125-piece/15-pound minimum; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces.

2. Line 2: For 5-digit scheme sacks, ''STD FLT 5D SCH BC/NBC;'' for 5-digit sacks, ''STD FLT 5D BC/NBC.''

* * * * *

9.4 Bound Printed Matter

* * * * *

9.4.4 Sack Preparation and Labeling

* * * * *

[Revise item a as follows:]

a. 5-digit/scheme, required; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; minimum 20 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces.

2. Line 2: For 5-digit scheme sacks, ''PSVC FLT 5D SCH BC/NBC;'' for 5-digit sacks, ''PSVC FLT 5D BC/NBC.''

* * * * *

[Revise 11.0 to replace ''presorted'' with ''nonautomation'' throughout.]

11.0 Preparing Cobundled Automation Rate and Nonautomation Rate Flats

11.1 First-Class Mail

11.1.1 Basic Standards

Mailers may choose to cobundle (see 335.1.4m) automation rate and Presorted rate pieces as an option to the basic bundling requirements in 9.0, Preparing Cotrayed and Cosacked Bundles of Automation and Presorted Flats, subject to the following conditions:

* * * * *

[Delete item f. Renumber item g as item f.]

11.2 Periodicals

11.2.1 Basic Standards

[Revise the introductory text in 11.2.1 to require 5-digit scheme and 3-digit scheme sort and eliminate distinctions between AFSM 100 and UFSM 1000 flats as follows:]

Mailers may choose to cobundle (see 707.18.4ab) automation rate and nonautomation rate flat-size pieces as an option to the basic bundling requirements in 707.22.0 and 707.25.0. All flats in the same bundle must meet the standards in either 301.3.0 or 707.25.3. 5-digit scheme and 3-digit scheme bundles also must meet the additional standards in 707.18.4i and 707.18.4r. Mailing jobs (for flats meeting the criteria in 301.3.0) prepared using the 5-digit scheme and/or the 3-digit scheme bundle preparation must be sacked under 10.0 or palletized under 10.0, 12.0, or 13.0. All bundles are subject to the following conditions:

* * * * *

11.2.2 Bundle Preparation

[Revise the introductory text in 11.2.2 as follows:]

Pieces meeting the criteria in 301.3.0 must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Preparation sequence, bundle size, and labeling:

* * * * *

[Revise item b to require 5-digit scheme bundles as follows:]

b. 5-digit scheme, required; * * *

* * * * *

[Revise item d to require 3-digit scheme bundles as follows:]

d. 3-digit scheme, required; * * *

* * * * *

11.3 Standard Mail

11.3.1 Basic Standards

[Revise the introductory text in 11.3.1 to require 5-digit scheme and 3-digit scheme sort and eliminate distinctions between AFSM 100 and UFSM 1000 flats as follows:]

Mailers may choose to cobundle (see 345.1.4u) automation rate and nonautomation rate flat-size pieces as an option to the basic bundling requirements in 345.5.0 and 345.7.0. All flats in the same bundle must the standards in 301.3.0. 5-digit scheme and 3-digit scheme bundles must meet the additional standards in 345.1.4f and 345.1.4n. Mailing jobs prepared using the 5-digit scheme and/or 3-digit scheme bundle preparation (for flats meeting the criteria in 301.3.0) must be sacked under 10.0 or palletized under 10.0, 12.0, or 13.0. All bundles are subject to the following conditions:

* * * * *

[Delete item g. Renumber item h as new item g.]

11.3.2 Bundle Preparation

[Revise the introductory text in 11.3.2 as follows:]

Pieces meeting the criteria in 301.3.0 must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Preparation sequence, bundle size, and labeling:

[Revise item a to require 5-digit scheme bundles as follows:]

a. 5-digit scheme, required; * * *

* * * * *

[Revise item c to require 3-digit scheme bundles as follows:]

c. 3-digit scheme, required; * * *

* * * * *

15.0 Plant-Verified Drop Shipment

* * * * *

15.2 Program Participation

* * * * *

15.2.4 Periodicals

[Revise 15.2.4 to reflect the new rate structure for Periodicals mail as follows:]

Periodicals postage must be paid at the post office verifying the copies or as designated by the district. Postage is

calculated from the destination USPS facility where deposited and accepted as mail (or from the facility where the Express Mail or Priority Mail Open and Distribute destinates). The publisher must ensure that sufficient funds are on deposit to pay for all shipments before their release. A publisher authorized under an alternative postage payment system must pay postage under the corresponding standards.

* * * * *

707 Periodicals

1.0 Rates and Fees

1.1 Outside-County—Excluding Science-of-Agriculture

* * * * *

[Renumber 1.1.3 through 1.1.5 as new 1.1.4 through 1.1.6. Insert new 1.1.3 as follows:]

1.1.3 Outside-County Container Rate

Rate for each pallet, sack, or tray containing Outside-County Periodicals mail: $0.85. Apply the container rate as follows:

a. For mailings correctly prepared in trays or sacks, mailers pay the container rate for each tray or sack. (See 1.1.3b for mailings on pallets.)

b. For mailings correctly prepared on pallets under 705.8.0:

1. For bundles or trays on pallets, mailers pay the container rate for each pallet, and not for the bundles or trays.

2. For sacks on pallets, mailers pay the container rate for each sack, and not for the pallet.

c. For mailings not in containers under 707.23.4.2, Exception to Sacking, mailers pay the container rate for each 5-digit ZIP Code or 5-digit scheme in the mailing serviced by the DDU.

d. For containers of both In-County and Outside-County pieces, mailers do not pay the container rate for carrier route, 5-digit carrier routes, and 5-digit/scheme pallets, sacks, and trays.

* * * * *

1.2 Outside-County—Science-of-Agriculture

* * * * *

[Renumber 1.2.3 as new 1.2.4. Insert new 1.2.3 as follows:]

1.2.3 Outside-County Container Rate

Rate for each pallet, sack, or tray containing Outside-County Periodicals mail: $0.85. Apply the container rate as follows:

a. For mailings correctly prepared in trays or sacks, mailers pay the container rate for each tray or sack. (See 1.1.3b for mailings on pallets.)

b. For mailings correctly prepared on pallets under 705.8.0:

1. For bundles or trays on pallets, mailers pay the container rate for each pallet, and not for the bundles or trays.

2. For sacks on pallets, mailers pay the container rate for each sack, and not for the pallet.

c. For mailings not in containers under 707.23.4.2, Exception to Sacking, mailers pay the container rate for each 5-digit ZIP Code or 5-digit scheme in the mailing serviced by the DDU.

d. For containers of both In-County and Outside-County pieces, mailers do not pay the container rate for carrier route, 5-digit carrier routes, and 5-digit/scheme pallets, sacks, and trays.

* * * * *

2.0 Rate Application and Computation

2.1 Rate Application

2.1.1 Rate Elements

[Revise 2.1.1 to reflect the new Outside-County container rate and the new nonadvertising rate structure as follows:]

Postage for Periodicals mail includes a pound rate charge, a piece rate charge, an Outside-County container rate charge, and any discounts for which the mail qualifies under the corresponding standards.

2.1.2 Applying Pound Rate

[Revise 2.1.2 to reflect the new Outside-County container rate and the new nonadvertising rate structure as follows:]

Pound rates are applied to the weight of the pieces in the mailing as follows:

a. Outside-County pound rates are based on the weight of the advertising portion sent to each postal zone (as computed from the entry office) or destination entry zone, and the weight of the nonadvertising portion to a destination entry zone.

b. Science-of-Agriculture Outside-County pound rates are based on the weights of the advertising portion and the nonadvertising portion of the mail sent to each postal zone (as computed from the entry office) or destination entry zone.

c. In-County pound rates consist of a destination entry rate and an unzoned rate for all other eligible copies delivered within the county of publication.

[Revise the heading of 2.1.3 as follows:]

2.1.3 Computing Weight of Advertising and Nonadvertising Portions

[Revise 2.1.3 to reflect the new Outside-County container rate and the new nonadvertising rate structure as follows:]

The pound rate charge is the sum of the charges for the computed weight of the advertising portion of copies to each zone, plus the sum of the charges for the computed weight of the nonadvertising portion of copies to each zone. The following standards apply:

a. The minimum pound rate charge for any zone to which copies are mailed is the 1-pound rate. For example, three 2-ounce copies for a zone are subject to the minimum 1-pound charge.

b. Authorized Nonprofit and Classroom publications with an advertising percentage that is 10% or less are considered 100% nonadvertising. When computing the pound rates and the nonadvertising adjustment, use ''0'' as the advertising percentage. Authorized Nonprofit and Classroom publications claiming 0% advertising must pay the nonadvertising pound rate for the entire weight of all copies to all zones.

* * * * *

2.2 Computing Postage

* * * * *

[Renumber 2.2.7 as 2.2.8. Insert new 2.2.7 to compute the Outside-County container rate as follows:]

2.2.7 Outside-County Container Rate

The Outside-County container charge is the sum of Outside-County trays, sacks, or pallets in the mailing (see 1.1.3 and 1.2.3), multiplied by the container rate. Mailers who prepare Periodicals publications as a combined mailing by merging copies or bundles of copies under 26.0 may pay the Outside-County container charge on one mailer's Form 3541, on one consolidated Form 3541–C, or on each mailer's Form 3541 if they electronically submit their qualification report via Mail.dat. Prorate the charge for each mailer by determining how many containers that mailer is using. Next calculate the percentage of pieces in each of those containers and round to two decimal places. Add each percentage and multiply the total by the container rate. The total charges collected on all Form 3541s in a combined mailing must equal the total number of containers subject to the Outside-County container rate presented for mailing.

2.2.8 Total Postage

[Revise renumbered 2.2.8 to reflect the new Outside-County container rate as follows:]

Total Outside-County postage is the sum of the per pound and per piece charges, the container charge, and any Ride-Along charge; less all discounts;

rounded off to the nearest whole cent. Total In-County postage is the sum of the per pound and per piece charges, and any Ride-Along charge, less all discounts, rounded off to the nearest whole cent. For mailings that include foreign copies, total foreign postage is the sum of the per piece charges, less a discount, rounded off to the nearest whole cent.

3.0 Physical Characteristics and Content Eligibility

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3.5 Mailpiece Construction

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3.5.2 Size and Weight

[Insert new second sentence in 3.5.2 to include the maximum weight and thickness for Periodicals automation flat-size pieces as follows:]

Periodicals mail may not weigh more than 70 pounds or measure more than 108 inches in length and girth combined. Automation flat-size pieces may not weigh more than 6 pounds or measure more than 1-¼ inch thick. Additional size and weight limitations apply to individual Periodicals rate categories. Requester publications must contain at least 24 pages per issue.

* * * * *

11.0 Basic Rate Eligibility

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11.4 Discounts

The following discounts are available:

* * * * *

[Delete item c to eliminate the pallet discounts.]

* * * * *

15.0 Ride-Along Rate Eligibility

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15.3 Physical Characteristics

The host Periodicals piece and the Ride-Along piece must meet the following physical characteristics:

* * * * *

[Revise item c as follows:]

c. A Periodicals piece with a Ride-Along that claims automation rates must meet the automation requirements in 201.3.0, Physical Standards for Automation Letters and Cards, or 25.0, Preparing Flat-Size Automation Periodicals, and must maintain the same processing category as before the addition of the Ride-Along. For example, if, due to the inclusion of a Ride-Along piece, an automation letter-size host piece can no longer be processed as an automation letter, then that piece must pay the Periodicals nonautomation rate for the host piece plus the Ride-Along rate or the Standard Mail rate for the attachment or enclosure.

* * * * *

16.0 Postage Payment

* * * * *

16.4 Payment Method

Mailers must pay Periodicals postage by advance deposit account at the original or additional entry post office, except under procedures in 16.5 for Centralized Postage Payment or in 705.15.2.4. Mailers may not pay postage for Periodicals using permit imprint, meter stamp, postage stamp, or precanceled stamps. Mailers must pay postage for First-Class Mail and Standard Mail enclosures under 703.9.8 through 703.9.12 and 705.16.1. Mailers who prepare Periodicals publications as a combined mailing by merging copies or bundles of copies under 26.0 may pay the Outside-County container charge on one mailer's Form 3541, on one consolidated Form 3541–C, or on each mailer's Form 3541 if the qualification report is electronically submitted via Mail.dat. If paid on each Form 3541, calculate the charge according to 2.2.7. The total charges collected on all Form 3541s in a combined mailing must equal the total number of containers subject to the Outside-County container rate (under 1.1.3 and 1.2.3) presented for mailing.

* * * * *

17.0 Documentation

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17.7 Additional Standards

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[Insert new 17.7.4 as follows:]

17.7.4 Outside-County Container Rate Documentation

A complete, signed postage statement, using the correct USPS form or an approved facsimile, must accompany each mailing, supported by standardized documentation meeting the basic standards in 708.1.0. The documentation must show how many trays, sacks, or pallets are required for the rates and discounts claimed, even when the mailing is presented under 707.23.4.2, Exception to Sacking, or is otherwise presented by the mailer. Documentation of postage is not required if each piece in the mailing is of identical weight and the pieces are separated when presented for acceptance by rate, by zone, and by entry discount (such as DDU and DSCF).

18.0 General Information for Mail Preparation

* * * * *

18.3 Presort Terms

Terms used for presort levels are defined as follows:

* * * * *

[Revise items e and p as follows:]

e. 5-digit scheme (bundles and sacks) for flats prepared according to 301.3.0: the ZIP Code in the delivery address on all pieces is one of the 5-digit ZIP Codes processed by the USPS as a single scheme, as shown in L007.

* * * * *

p. 3-digit scheme bundles for flats prepared according to 301.3.0: the ZIP Code in the delivery address on all pieces is one of the 3-digit ZIP Codes processed by the USPS as a single scheme, as shown in L008.

* * * * *

18.4 Mail Preparation Terms

For purposes of preparing mail:

* * * * *

[Revise items b, i, and r as follows:]

b. A full letter tray is one in which faced, upright pieces fill the length of the tray between 85% and 100% full.

* * * * *

i. A 5-digit scheme sort for flats prepared according to 301.3.0 yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007. Presorting must be performed using L007. Pieces prepared in scheme bundles must meet the automation flat criteria in 301.3.0. Mailpieces must be labeled using an optional endorsement line under 708.7.0. Periodicals firm bundles must not be part of 5-digit scheme bundles.

* * * * *

r. A 3-digit scheme sort for flats prepared according to 301.3.0 yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. The 3-digit scheme sort is optional, except under 705.12.0 and 705.13.0. For 705.12.0 and 705.13.0, presorting must be performed using L008. Pieces prepared in scheme bundles must meet the automation flat criteria in 301.3.0. Mailpieces must be labeled using an OEL under 708.7.0. Periodicals firm bundles must not be physically combined within 3-digit scheme bundles, but can contribute toward the six-piece minimum for rate eligibility.

* * * * *

22.0 Preparing Presorted Periodicals

* * * * *

22.2 Bundle Preparation

[Revise the introductory text of 22.2 as follows:]

Mailings consisting entirely of pieces meeting the criteria in 301.3.0 may be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Bundling is required before traying or sacking. A bundle must be prepared when the quantity of addressed pieces for a required presort level reaches the minimum bundle size. Smaller volumes are not permitted except mixed ADC bundles and 5-digit/scheme and 3-digit/scheme bundles prepared under 22.4. Bundling is also subject to 19.0, Bundles. Preparation sequence, bundle size, and labeling:

* * * * *

[Renumber items b through f as new items c through g. Insert new item b as follows:]

b. 5-digit scheme (optional); six-piece minimum; red Label 5 or OEL.

* * * * *

[Renumber new items d through g as items e through h. Insert new item d as follows:]

d. 3-digit scheme (optional); six-piece minimum; green Label 3 or OEL.

* * * * *

22.6 Sack Preparation—Flat-Size Pieces and Irregular Parcels

For mailing jobs that also contain an automation rate mailing, see 22.1.2 and 705.9.0 or 705.10.0. For other mailing jobs, preparation sequence, sack size, and labeling:

[Renumber items a through g as new items b through h. Insert new item a as follows:]

a. 5-digit scheme; optional; for pieces meeting the standards in 301.3.0; 24-piece minimum, fewer pieces not permitted.

1. Line 1: L007, Column B.

2. Line 2: ''PER'' or NEWS'' as applicable, followed by ''FLTS 5D SCH NON BC.''

* * * * *

22.7 Optional Tray Preparation—Flat-Size Nonautomation Pieces

[Revise the introductory text in 22.7 as follows:]

As an option, mailers may place in flat-size trays the automation-compatible flat-size pieces prepared under 301.3.0 that would normally be placed in ADC, origin mixed ADC, or mixed ADC sacks. Pieces must not be secured in bundles. Mailers must group together pieces for each 5-digit scheme, 5-digit, 3-digit scheme, 3-digit, and ADC destination as follows:

* * * * *

25.0 Preparing Flat-Size Automation Periodicals

25.1 Basic Standards

25.1.1 General

[Revise 25.1.1 as follows:]

Each piece must meet the weight and size standards in 301.3.0 or in 25.3. Bundle, sack, and tray preparation are subject to 18.0 through 21.0. Trays and sacks must bear the appropriate barcoded container labels under 708.6.0.

* * * * *

25.1.5 Bundle Preparation

All pieces must be prepared in bundles and meet the following requirements:

[Revise items a, c, and d as follows:]

a. Pieces that meet the standards in 301.3.0 must be prepared in separate bundles from pieces that meet the standards in 25.3.

* * * * *

c. Each bundle of pieces prepared under 301.3.0 and each bundle of pieces prepared under 25.3 must separately meet the bundle minimums in 25.4.

d. Presort destination bundles may contain fewer than six pieces when the mailpieces are too thick or too heavy to create a six-piece bundle. Rate eligibility is not affected if the total number of pieces bundled for a presort destination meets or exceeds the minimum for rate eligibility under 14.0.

25.1.6 Scheme Bundle Preparation

[Revise 25.1.6 as follows:]

Pieces meeting the criteria in 301.3.0 must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. These bundles must meet the additional standards in 18.4i or 18.4r. Pieces meeting the alternate criteria in 25.3 must not be prepared in scheme bundles.

25.1.7 Sack Preparation

[Revise 25.1.7 as follows:]

Mailers may combine bundles of pieces prepared under 301.3.0 and bundles of pieces prepared under 25.3 in the same sack.

25.1.8 Exception—Automation and Nonautomation Pieces on Pallets

[Revise the first sentence of 25.1.8 as follows:]

When the physical dimensions of the mailpieces in a Periodicals mailing meet the definition of both a letter-size piece and an automation flat-size piece, the entire job may be prepared, merged, and palletized under 705.9.0 through 705.13.0. The nonautomation portion is paid at the nonautomation rates. Mailing jobs prepared entirely in sacks and claiming this exception must be cobundled under 705.11.0. As an alternative to 705.9.0 through 705.13.0, if a portion of the job is prepared as palletized automation flats, the nonautomation portion may be prepared as palletized flats and paid at nonautomation and carrier route rates. The nonautomation rate pieces that cannot be placed on ADC or finer pallets may be prepared as flats in sacks and paid at the nonautomation rates.

* * * * *

[Renumber 25.2 through 25.4 as new 25.4 through 25.6. Insert new 25.2 and 25.3 as follows:]

25.2 Physical Standards

Each flat-size piece must be rectangular and must meet the standards in 301.3.0 or the alternative criteria in 25.3.

25.3 Alternative Criteria

25.3.1 General

As an exception to the standards in 301.3.3, mailers may prepare automation flat-size pieces according to 25.3.2 and 25.3.3 below. Pieces prepared under 25.3 and pieces prepared under 301.3.0 may not be combined in the same bundle. Determine length and height according to 301.3.2.

25.3.2 Weight and Size

The maximum weight for each piece is 6 pounds. The following minimum and maximum dimensions apply:

a. Minimum height is 5 inches. Maximum height is 12 inches.

b. Minimum length is 6 inches. Maximum length is 15 inches.

c. Minimum thickness is 0.009 inch. Maximum thickness is 1.25 inches.

25.3.3 Address Placement on Folded Pieces

Mailers must design folded pieces so that the address is in view when the final folded edge is to the right and any intermediate bound or folded edge is at the bottom of the piece. Unbound flat-size pieces must be at least double-folded.

25.4 Bundling and Labeling

Preparation sequence, bundle size, and labeling:

[Revise items a and c in renumbered 25.4 to require scheme bundling as follows:]

a. 5-digit scheme (required for pieces meeting the standards in 301.3.0); six-piece minimum (fewer pieces permitted under 25.1.9); OEL required.

* * * * *

c. 3-digit scheme (required for pieces meeting the standards in 301.3); six-piece minimum (fewer pieces permitted under 25.1.9); OEL required.

* * * * *

25.5 Sacking and Labeling

For mailing jobs that also contain a Presorted rate mailing, see 25.1.10 and 705.9.0. Other mailing jobs are prepared, sacked, and labeled as follows:

[Revise item a in renumbered 25.5 as follows:]

a. 5-digit scheme (for pieces meeting the standards in 301.3.0 only), required at 24 pieces, fewer pieces not permitted; may contain 5-digit scheme bundles only; labeling:

* * * * *

25.6 Optional Tray Preparation—Flat-Size Barcoded Pieces

[Revise the introductory text in renumbered 25.6 as follows:]

As an option, mailers may place in trays the automation-compatible flat-size pieces prepared under 301.3.0 that would normally be placed in ADC, origin mixed ADC, or mixed ADC sacks. Pieces must not be secured in bundles. Mailers must group together pieces for each 5-digit scheme, 5-digit, 3-digit scheme, 3-digit, and ADC destination as follows:

* * * * *

26.0 Combining Multiple Editions or Publications

[Reorganize and revise 26.0 to add the definition and standards for copalletized mailings. The experimental copalletization drop-ship classifications in 709.3.0 and 709.4.0 expire, and all mailers may copalletize under 26.0 as follows:]

26.1 Description

Mailers may prepare Periodicals publications as a combined mailing by merging copies or bundles of copies to achieve the finest presort level possible or to reduce the per piece or the Outside-County container rate charge. Mailers may use the following methods:

a. Mailers may merge and sort together (''comail'') individually addressed copies of different editions of a Periodicals publication (one title) or individually addressed copies of different Periodicals publications (more than one title) to obtain a finer presort level.

b. Mailers may place two or more copies of different Periodicals publications (two or more titles), and/or multiple editions of the same publication in the same mailing wrapper or firm bundle and present it as one addressed piece to a single recipient to reduce the per piece charge.

c. Mailers may copalletize separately presorted bundles of different Periodicals titles and editions to achieve minimum pallet weights. Mailers do not have to achieve the finest pallet presort level possible.

26.2 Authorization

26.2.1 Basic Standards

Each publication in a combined mailing must be authorized (or pending authorization) to mail at Periodicals rates. Each mailer must be authorized to comail or copalletize mailings under 26.1a and 26.1c by Business Mailer Support (see 608.8.1 for address). Requests for authorization must show:

a. The mailer's name and address.

b. The mailing office.

c. Procedures and quality control measures for the combined mailing.

d. The expected date of the first mailing.

e. A sample of the standardized documentation.

26.2.2 Denial

If the application is denied, the mailer or consolidator may file at a later date, or submit additional information needed to support the request.

26.2.3 Termination

An authorization may not exceed 2 years. Business Mailer Support may take action to terminate an authorization at any time, by written notice, if the mailer does not meet the standards.

26.3 Minimum Volume

The following minimum volume standards apply:

a. For combined mailings prepared under 26.1a, more than one Periodicals publication, or edition of a publication, are combined to meet the required minimum volume per bundle, sack, or tray for the rate claimed.

b. For combined mailings prepared under 26.1b, the minimum volume requirements in 22.0, 23.0, 201.3.0, or 25.0 apply for the rate claimed.

c. For copalletized mailings prepared under 26.1c, the minimum volume requirements for pallets in 705.8.5.3 apply for the rate claimed.

26.4 Labeling

Mailers must label all containers in a combined mailing as either ''NEWS'' (see 21.1.3) or ''PER'' as follows:

a. If at least 51% of the total number of copies in the combined mailing can qualify for ''NEWS'' treatment then all containers in the mailing are labeled ''NEWS,'' unless the mailer chooses to use ''PER.''

b. If less than 51% of the total number of copies in a combined mailing can qualify for ''NEWS'' treatment then all containers in the mailing are labeled ''PER.''

26.5 Documentation

Each mailing must be accompanied by documentation meeting the standards in 17.0, as well as any additional mailing information requested by the USPS to support the postage claimed (such as advertising percentage and weight per copy). The following additional standards apply:

a. Presort documentation required under 708.1.0 must show the total number of addressed pieces and total number of copies for each publication and each edition in the combined mailing claimed at the carrier route, 5-digit, 3-digit, and basic rates. The mailer also must provide a list, by 3-digit ZIP Code prefix, of the number of addressed pieces for each publication and each edition claimed at any destination entry discount.

b. Copalletized mailing documentation must consolidate and identify each title and version (or edition) in the mailing. Mailers may use codes in the summary heading to represent each title and version (or edition) presorted together on pallets. The documentation must include presort and pallet reports showing by title and version (or edition) how the bundles are presorted and where they will be entered.

26.6 Postage Statements

Mailers must prepare postage statements for a combined mailing as follows:

a. Copy weight and advertising percentage determine whether separate postage statements are required for editions of the same publication:

1. If the copy weight and advertising percentage for all editions of a publication are the same, mailers may report all the editions on the same postage statement or each edition on a separate postage statement.

2. If the copy weight or the advertising percentage is different for each edition of a publication, mailers must report each edition on a separate postage statement.

b. For a combined mailing prepared under 26.1a, mailers must prepare a separate postage statement that claims all applicable per piece and per pound charges for each publication or edition except as provided in 26.2.5a. The mailer must annotate on, or attach to, each postage statement, the title and

issue date of each publication or edition and indicate that the pieces were prepared as part of a combined mailing under 26.1a.

c. For mailings under 26.1b, mailers must prepare a separate postage statement claiming the applicable per pound charges for each publication or edition in the combined mailing except as provided in 26.2.5a. The mailer must annotate on, or attach to, each postage statement, the title and issue date of each publication or edition and indicate that the copies were prepared as part of a combined mailing under 26.1b. The per piece charges must be claimed as follows:

1. If all copies in the combined mailing are eligible for the Classroom or Nonprofit discount, or if all copies are not eligible for the Classroom or Nonprofit discount, mailers may claim the per piece charges only on the postage statement for the publication that contains the highest amount of advertising.

2. If a portion of the copies in the combined mailing are eligible for the Classroom or Nonprofit discount and a portion are not eligible, mailers may claim the per piece charges only on the postage statement for the publication that contains the highest amount of advertising and is not eligible for the Classroom or Nonprofit discount. The Classroom or Nonprofit per piece discount must not be claimed.

d. For copalletized mailings under 26.1c, mailers must prepare a separate postage statement for each publication in the mailing. Mailings consisting of different editions or versions of the same publication must be accompanied by one consolidated postage statement and a register of mailings for each publication.

26.7 Postage Payment

Each mailing must meet the postage payment standards in 16.0. For copalletized mailings under 26.1c, mailers must pay postage at the post office serving the facility where consolidation takes place, except that postage for publications authorized under the Centralized Postage Payment (CPP) system may be paid to the Pricing and Classification Service Center (see 608.8.4.1 for address).

26.8 Deposit of Mail

Each publication in a combined mailing must be authorized for original entry or additional entry at the post office where the mailing is entered. For copalletized mailings under 26.1c, mailers must enter each mailing at the post office serving the facility where consolidation takes place.

* * * * *

28.0 Destination Entry Rate Eligibility

28.1 Basic Standards

28.1.1 Rate Application

[Revise 28.1.1 to eliminate the pallet discounts and add the new container rate as follows:]

Outside-County addressed pieces may qualify for destination area distribution center (DADC) or destination sectional center facility (DSCF) rates under 28.2 or 28.3. Carrier route rate addressed pieces may qualify for destination delivery unit (DDU) rates under 28.4. Outside-County pieces are subject to the Outside-County container rate in 1.1.3 or 1.2.3. For all destination entry rate pieces:

a. Only one destination entry discount may be claimed for each addressed piece.

b. An individual bundle, tray, sack, or pallet may contain pieces claimed at different destination entry rates.

c. In-County carrier route rate addressed pieces may qualify for the DDU discount under 28.4.

d. The advertising and nonadvertising portions may be eligible for DADC, DSCF, or DDU pound rates based on the entry facility and the address on the piece.

* * * * *

28.2 Destination Area Distribution Center

* * * * *

28.2.3 Rates

[Revise 28.2.3 to reflect the new nonadvertising rate structure as follows:]

DADC rates include a per piece discount off the addressed piece rate, a nonadvertising pound rate, and, if applicable, an advertising pound rate.

28.3 Destination Sectional Center Facility

* * * * *

28.3.3 Rates

[Revise 28.3.3 to reflect the new nonadvertising rate structure as follows:]

DSCF rates include a per piece discount off the addressed piece rate, a nonadvertising pound rate, and, if applicable, an advertising pound rate.

28.4 Destination Delivery Unit

* * * * *

28.4.3 Rates

[Revise 28.4.3 to reflect the new nonadvertising rate structure as follows:]

DDU rates for Outside-County include a per piece discount off the addressed piece rate, a nonadvertising pound rate, and, if applicable, an advertising pound rate. DDU rates for In-County consist of a per piece discount off the addressed piece rate and a pound charge.

* * * * *

708 Technical Specifications

1.0 Standardized Documentation for First-Class Mail, Periodicals, Standard Mail, and Flat-Size Bound Printed Matter

* * * * *

1.2 Format and Content

For First-Class Mail, Periodicals, Standard Mail, and flat-size Bound Printed Matter, standardized documentation includes:

* * * * *

c. For mail in trays or sacks, the body of the listing reporting these required elements:

[Revise item c1 as follows:]

1. Tray/sack sortation level. Mailers must note with an asterisk (''*'') all trays containing overflow mail moved into that tray under 235.6.6 and 245.7.5.

* * * * *

[Revise item c3 as follows:]

3. The number of pieces for each 5-digit ZIP Code in 5-digit/scheme bundles or trays; for each 3-digit ZIP Code in 3-digit/scheme bundles or trays; for each 3-digit/scheme in (A)ADC bundles or trays; for each (A)ADC in mixed (A)ADC bundles or trays (or, for Periodicals, origin mixed ADC trays). For automation-rate mailings prepared under the no overflow option, the number of pieces in the next higher level tray in lieu of overflow trays. For ECR letters prepared under 245.6.0, the number of pieces in carrier routes within full trays. For automation and nonautomation mail, and ECR Standard Mail, the number of pieces in each bundle level and presort destination.

* * * * *

[Add new item c10 as follows:]

10. For Periodicals mailings that contain both In-County and Outside-County pieces, include a separate ''Container Charge'' column. The body of the listing must indicate which containers are subject to the container charge and a running total.

[Revise item e as follows:]

e. At the end of the documentation, a summary report of the total number of pieces mailed at each postage rate for

each mailing reported on the listing by postage payment method (and by entry point for drop shipment mailings) and the total number of pieces in each mailing. This information must correspond to the information reported on the postage statement(s) for the pieces reported. For Periodicals mailings, documentation also must provide:

1. A summary of the total number of each type of container in the mailing and the total container charge paid. Report only trays, sacks, and pallets subject to the Outside-County container rate under 1.1.3 and 1.2.3.

2. For combined mailings, a summary by individual mailer of the number of each type of container in the mailing and the container rate paid. Report only trays, sacks, and pallets subject to the Outside-County container rate under 1.1.3 and 1.2.3.

3. A summary of the total number of copies for each zone, including In-County, delivery unit, SCF, and ADC rates. A separate summary report is not required if a PAVE-certified postage statement facsimile generated by the presort software used to prepare the standardized documentation is presented for each mailing.

4. Additional data if necessary to calculate the amount of postage for the mailing (or additional postage due, or postage to be refunded) if nonidentical-weight pieces that do not bear the correct postage at the rate for which they qualify are included in the mailing, or if different rates of postage are affixed to pieces in the mailing.

1.3 Rate Level Column Headings

[Delete the ''Carrier Route'' entry in item a. Revise the ''3/5'' and ''Basic'' entries as follows:]

Rate	Abbreviation
* * * * *	
5-Digit [Standard Mail flats] ..	5B
3-Digit [Standard Mail flats] ..	3B
ADC [Standard Mail flats]	AB
Mixed ADC [Standard Mail flats]	MB

* * * * *

[Delete the ''3/5'' entry in item b. Revise the ''5-Digit,'' ''3-Digit,'' and ''Basic'' entries in item b as follows:]

Rate	Abbreviation
* * * * *	
5-Digit [Standard Mail letters; Periodicals letters, flats, and parcels]	5D
3-Digit [Standard Mail letters; Periodicals letters, flats, and parcels]	3D
ADC [letters/cards and flats]	AD
Mixed ADC [letters/cards and flats]	MD

* * * * *

[Delete the ''Basic Automation'' entry in item c.]

1.4 Sortation Level

[Revise the ''5-Digit Scheme'' entry as follows:]

Sortation level	Abbreviation
* * * * *	
5-Digit Scheme [barcoded and machinable letters]	5DGS

* * * * *

[Revise the heading of 4.0 as follows:]

4.0 Standards for POSTNET and 4-State Customer Barcodes

* * * * *

4.4 Reflectance

4.4.1 Background Reflectance

A background reflectance of at least 50% in the red portion and 45% in the green portion of the optical spectrum must be produced in the following locations when measured with a USPS or USPS-licensed envelope reflectance meter:

* * * * *

[Revise item b as follows:]

b. The area surrounding the barcode (within ⅛ inch of the leftmost and rightmost bars and 1/25 inch above and below the barcode) of a card-size, letter-size, or flat-size piece barcoded in the address block and of a flat-size, First-Class Mail parcel, or Not-Flat Machinable piece barcoded elsewhere.

* * * * *

4.4.4 Dark Fibers and Background Patterns

Dark fibers or background patterns (for example, checks) that produce a print contrast ratio of more than 15% when measured in the red and green portions of the optical spectrum are prohibited in these locations:

* * * * *

[Revise item b as follows:]

b. The area of the address block or the area of the mailpiece where the barcode appears on a flat-size piece in an automation rate mailing or on a First-Class Mail parcel or a Not Flat-Machinable piece.

4.5 Skew and Baseline Shift

* * * * *

[Revise heading and text of 4.5.2 as follows:]

4.5.2 Flat-Size Pieces, First-Class Mail Parcels, and Not Flat-Machinable Pieces

For a barcode on a flat-size piece, a First-Class Mail parcel, or a Not Flat-Machinable piece weighing less than 6 ounces, the maximum rotational skew (slant or tilt of the individual barcode bars) is ±10 degrees from a perpendicular to the baseline of the barcode; there is no positional skew requirement. The individual bars of a barcode must not shift (be vertically offset) more than 0.015 inch from the average baseline of the barcode. For information on barcode placement for flat-size pieces, see 302.4.0. For barcode placement on First-Class Mail parcels and on Standard Mail Not Flat-Machinable pieces weighing less than 6 ounces, see 402.4.0.

[Revise the heading of 5.0 as follows:]

5.0 Standards for Postal Routing Barcodes

5.1 Basic Requirements

[Revise 5.1 as follows:]

Mailers may use a postal routing barcode on parcels and Not Flat-Machinable pieces that meet the eligibility requirements in 433.1.1 for First-Class Mail, 443.4.4 and 443.5.5 for Standard Mail, 453.3.1 for Parcel Post, 463.4.1 for Bound Printed Matter, 473.3.4 for Media Mail, or 483.3.4 for Library Mail. Each parcel must bear a properly prepared UCC/EAN Code 128 barcode symbology as described in 5.3 that accurately represents the correct ZIP Code or ZIP+4 code of the delivery address. For information on barcode placement for parcels, see 402.4.0.

* * * * *

6.0 Barcoding Standards for Container Labels

6.1 Basic Standards—Tray and Sack Labels

6.1.1 Use

* * * * *

Exhibit 6.1.4 3-Digit Content Identifier Numbers

[Revise the content identifier numbers as follows for First-Class Mail letters and parcels, Standard Mail letters, and Periodicals and Bound Printed Matter flats. Add content identifier numbers for Not Flat-Machinable pieces.]

Class and mailing	CIN	Human-readable content line
First-Class Mail		
FCM Letters—Automation		
[Delete codes 263, 264, and 265 for carrier route trays.] * * *		
FCM Letters—Nonautomation Machinable		
[Delete code 252 for 5-digit trays.] * * *		
* * * * *	*	*
FCM Parcels—Presorted		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	289	FCM PARCELS 5D SCH.
* * * * *	*	*
Periodicals (PER)		
* * * * *	*	*
PER Flats—Nonautomation		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	378	PER FLT 5D SCH NON BC.
* * * * *	*	*
PER Flats—Cosacked Automation and Nonautomation		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	321	PER FLT 5D SCH BC/NBC.
* * * * *	*	*
NEWS Flats—Nonautomation		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	478	NEWS FLT 5D SCH NON BC.
* * * * *	*	*
NEWS Flats—Cosacked Automation and Nonautomation		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	421	NEWS FLT 5D SCH BC/NBC.
* * * * *	*	*
Standard Mail		
[Delete codes 563 through 565 for automation carrier route trays.]		
* * * * *	*	*
STD Letters—Nonautomation Machinable		
[Delete code 552 for 5-digit trays.]		
* * * * *	*	*
STD Flats—Cosacked Automation and Nonautomation		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	521	STD FLT 5D SCH BC/NBC.
* * * * *	*	*
STD Flats—Nonautomation		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	578	STD FLTS 5D SCH NON BC.
* * * * *	*	*
[Add Not Flat-Machinable pieces as follows:]		
STD Not Flat-Machinable Pieces—Nonautomation		
5-digit sacks	500	STD NFM 5D.
5-digit scheme sacks	500	STD NFM 5D SCH.
3-digit sacks	501	STD NFM 3D.
ADC sacks	502	STD NFM ADC
ASF sacks	503	STD NFM ASF
BMC sacks	505	STD NFM BMC.
Mixed ADC/Mixed BMC sacks	506	STD NFM WKG.
* * * * *	*	*
Package Services		

Class and mailing	CIN	Human-readable content line
* * * * *	*	*
Presorted BPM—Flats		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	649	PSV FLT 5D SCH NON BC.
* * * * *	*	*
BPM Flats—Cosacked Barcoded and Presorted		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	648	PSV FLT 5D SCH BC/NBC.
* * * * *	*	*

7.0 Optional Endorsement Lines (OELs)

7.1 OEL Use

7.1.1 Basic Standards

* * * * *

Exhibit 7.1.1 OEL Formats

[Delete the example for ''Carrier Route—Automation (First-Class Mail and Standard Mail).'']

* * * * *

7.2 OEL Format

* * * * *

7.2.5 ZIP Code Information

[Revise 7.2.5 to change the reference from 6.0 to 8.2 as follows:]

Except for carrier route bundles, the OEL must include the ZIP Code information (5-digit ZIP Code or 3-digit ZIP Code prefix) determined by the sortation level and, when applicable, by the labeling list designated in Exhibit 7.2.5 for ADC, mixed ADC, AADC, or mixed AADC sortation levels. Carrier route OELs must show carrier route information as specified in 8.2.

* * * * *

8.0 Carrier Route Information Lines

8.1 Basic Information

[Revise 8.1 as follows:]

Mailers must prepare bundles of all mailpieces mailed at carrier route rates with optional endorsement lines under 7.0, carrier route information lines under 8.2, or facing slips (see 245.2.11 for Standard Mail letters, 345.2.14 for Standard Mail flats, 365.2.13 for Bound Printed Matter flats, 445.2.12 for Standard Mail parcels, 465.2.12 for Bound Printed Matter parcels, and 707.19.16 for Periodicals). Carrier route information lines may be on all pieces in a mailing, regardless of presort level. Mailers must use optional endorsement lines or carrier route information lines on all pieces in mailings of Standard Mail letters prepared under 245.6.7, except for pieces in full carrier routes trays.

* * * * *

709 Experimental Classifications and Rates

* * * * *

[Delete 3.0, Outside-County Periodicals Copalletization Drop-Ship Classification; 4.0, Outside-County Periodicals Copalletization Drop-Ship Discounts for High-Editorial, Heavy-Weight, Small-Circulation Publications; and 5.0, Priority Mail Flat-Rate Box. Renumber remaining sections 6.0 and 7.0 as new 3.0 and 4.0. The experimental copalletization discounts expire and are replaced by the new rate structure for Periodicals mail in 707. The Priority Mail Flat-Rate Box becomes a permanent offering in 123.]

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E7–245 Filed 1–16–07; 8:45 am]

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Federal Register

Wednesday,
January 17, 2007

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 786, and 829
Abandoned Coal Refuse Sites; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 786 and 829

RIN 1029–AB70

Abandoned Coal Refuse Sites

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

ACTION: Proposed rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM) propose to amend our regulations to comply with the Energy Policy Act of 1992 (EPAct). The EPAct requires the Secretary of the Interior (Secretary) to develop regulations establishing environmental performance and reclamation standards for abandoned coal refuse remining operations. These standards must distinguish between refuse removal operations and on-site refuse reprocessing operations and must be premised on the distinct differences between removal operations, on-site reprocessing operations, and other types of surface coal mining operations. The Secretary may devise different performance standards than any of those set forth in sections 515 and 516 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and separate permit systems if the Secretary determines, on a standard-by-standard basis, that a different standard may facilitate refuse removal and on-site refuse reprocessing operations in a manner that would provide the same level of environmental protection as under sections 515 and 516. We are proposing changes to our rules that respond to the EPAct's requirements.

DATES: *Written comments:* Comments on the proposed rule must be received on or before 4:30 p.m. Eastern Time on March 28, 2007, to ensure our consideration.

Public hearings: Upon request, we will hold a public hearing on the proposed rule at a date, time, and location to be announced in the **Federal Register** before the hearing. We will accept requests for a public hearing until 4 p.m., Eastern Time, on February 7, 2007. If you wish to attend a hearing, but not speak, you should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that the hearing will be held. If you wish to attend and speak at a hearing, you should follow the procedures under ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments, identified by docket number 1029–AB70, by any of the following methods:

- *E-Mail: osmregs@osmre.gov.* Include docket number 1029–AB70 in the subject line of the message.
- *Mail:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.
- *Hand-Delivery/Courier to the OSM Administrative Record Room:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

For detailed instructions on submitting comments and additional information on the rulemaking process, see ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

If you wish to comment on the information collection aspects of this proposed rule, submit your comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via electronic mail, to *OIRA_DOCKET@omb.eop.gov* or via telefacsimile at (202) 395–6566.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, MS–252–SIB, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–208–2701. E-mail: *adevito@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
- A. *The Energy Policy Act*
- B. *Outreach Summary*
- C. *Identification of Distinct Differences Between Abandoned Coal Refuse Remining Operations and Other Surface Coal Mining Operations*
- D. *Coal Refuse*
- E. *Coal Refuse Distribution*
- F. *Coal Refuse Utilization*
- G. *Existing Regulation of Coal Refuse*
- H. *Abandoned Mine Land Reclamation Projects*
- I. *National Pollutant Discharge Elimination System (NPDES) Program*

II. Discussion of the Proposed Regulations
- A. *Standard-by-Standard Review of SMCRA Performance Standards*
- B. *Special Permit System for Abandoned Coal Refuse Remining Operations*
- C. *Proposed Regulations*

III. Public Comment Procedures

IV. Procedural Matters

I. Background

A. The Energy Policy Act

Section 2503 of the Energy Policy Act of 1992 (EPAct), Public Law 102–486, Title XXV, addresses coal remining and directs promulgation of the abandoned coal refuse regulations proposed by this rulemaking. Sections 2503(a) through (d), respectively, amend the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (SMCRA), to address permit blocking under section 510(c) of SMCRA (30 U.S.C. 1260(c)), modify revegetation responsibility periods at section 515(b)(20) (30 U.S.C. 1265(b)(20)), add definitions at section 701 (30 U.S.C. 1291) for ''lands eligible for remining'' and ''unanticipated event or condition,'' and revise Abandoned Mine Land (AML) eligibility at sections 402(g)(4) and 404. Regulations implementing these amended SMCRA provisions were proposed and later codified in a final rule. 60 FR 58480 (November 27, 1995).

Section 2503(e) of the EPAct, which was codified at 30 U.S.C. 1251a, amends SMCRA by adding a new section for Abandoned Coal Refuse Sites that focuses solely on the remining of abandoned coal refuse sites. This proposed rulemaking is intended to implement the general directive of section 2503(e)(1) requiring the Secretary to issue regulations establishing environmental protection performance and reclamation standards, and separate permit systems, applicable to operations for the on-site reprocessing of abandoned coal refuse and operations for the removal of abandoned coal refuse. Coal refuse, discussed in greater detail below, is the waste resulting from the cleaning of mined coal. Abandoned coal refuse sites are lands on which refuse was placed prior to the passage of SMCRA, and that were not adequately reclaimed when mining was completed. Abandoned coal refuse sites are eligible for reclamation under Title IV of SMCRA using money from the Abandoned Mine Land Fund when available.

Section 2503(e)(2) further directs that the standards and permit systems referred to above distinguish between those operations that reprocess abandoned coal refuse on-site, and those operations that completely remove abandoned coal refuse for direct use or for reprocessing at another location. The term ''reprocessing operations,'' as used throughout this rulemaking, is limited to on-site reprocessing since any reprocessing at a site other than an abandoned coal refuse site would be regulated under existing 30 CFR part 827 and would not be a part of this

rulemaking. The standards and permit systems authorized by section 2503(e) are to be premised on the distinct differences between operations for the on-site reprocessing, and operations for the removal, of abandoned coal refuse and other types of surface coal mining operations. Section 2503(e)(3) authorizes the Secretary to devise different standards from those in sections 515 and 516 of SMCRA (515/516), and devise a separate permit system, if the Secretary determines on a standard-by-standard basis, that a different standard may facilitate the on-site reprocessing, or the removal, of abandoned coal refuse in a manner that would provide the same level of environmental protection as under sections 515/516.

Finally, section 2503(e)(4) requires the Secretary to submit a report to the Committee on Interior and Insular Affairs (subsequently renamed the Committee on Natural Resources) of the United States House of Representatives, and to the Committee on Energy and Natural Resources of the United States Senate. The report must be submitted not later than 30 days prior to the publication of proposed regulations and must contain a detailed description of any environmental protection performance and reclamation standards, and separate permit systems, devised pursuant to that section. The report has been submitted and is available for review as part of our administrative record for this rulemaking.

In response to these provisions of the EPAct, we are proposing a separate set of performance standards for operations that reprocess abandoned coal refuse on-site and/or remove the refuse from the site. These proposed performance standards are intended to provide the same level of environmental protection as under sections 515/516 of SMCRA, while facilitating the on-site reprocessing and/or removal of abandoned refuse. In the course of developing our regulations, we also considered the appropriateness of developing separate permit systems for both on-site reprocessing and removal operations. However, our consideration of this issue did not identify sufficient differences between the requirements applicable to on-site reprocessing and removal operations to warrant separate permit systems for each of these two types of refuse operations. Therefore the proposed regulations provide for a single permit system to address both on-site reprocessing and removal operations.

The requirements that we are proposing for the permit information in Part 786 and for the performance standards in Part 829 are in some instances different from existing permit information requirements or performance standards. However, the proposed rule is not intended to result in a weakening of the environmental standards but rather to reflect the difference between coal refuse remining operations and other coal mining operations. For example, we do not universally include the monitoring requirements for surface and ground water found in Part 780. However, our part 786 proposal related to water monitoring data for coal refuse removal operations reflects that some data requirements are not appropriate for reasons we discuss, or because similar kinds of data are expected to be readily available as part of the National Pollutant Discharge Elimination System program authorized under the Clean Water Act, 33 U.S.C. 1251, *et seq.* As you review the rule, we specifically request comments on whether the environmental standards are appropriately modified to reflect the unique nature of remining operations.

The following discussion provides additional background on abandoned coal refuse and the information used in developing the proposed regulations.

B. Outreach Summary

We conducted an extensive outreach program to solicit comments, concerns and ideas for regulatory changes with regard to implementing the provisions of section 2503(e) of the EPAct. The initial outreach, completed in the early months of 1993, consisted of two components. The first component consisted of telephone contact and written follow up with representatives of industry, the States, and with environmental, citizen, and conservation organizations and groups. The second component of the outreach consisted of visiting three active coal refuse operations in West Virginia, Pennsylvania, and Illinois with representatives of the States, industry, and citizen/environmental groups and again soliciting comments, concerns, and suggestions. We identified and analyzed the issues that were raised during the 1993 outreach.

In 1997 and 1998, we conducted outreach with selected members of a remining task force of State and Federal coal mining and Clean Water Act regulators whose charge was to identify ways to increase AML reclamation through remining activities. A number of the same comments and concerns as were recorded during the 1993 outreach were raised and discussed during this latter outreach. Further, we attempted to develop preliminary regulatory language with this group based on their collective experiences with coal refuse.

The outreach efforts were comprehensive. All information pertaining to the outreach activities, with particular emphasis on the 1993 analysis of issues, was reviewed and carefully considered in preparing the current proposal. Because there have been no statutory changes to SMCRA and no regulatory developments that could impact the regulation of coal refuse operations since passage of the EPAct in 1992, we believe that additional outreach prior to the publication of the proposed regulations was not called for. Once the proposed regulations are published in the **Federal Register**, members of the public will have the opportunity to submit written comments and make oral presentations at a public hearing if they so desire.

C. Identification of Distinct Differences Between Abandoned Coal Refuse Remining Operations and Other Surface Coal Mining Operations

Before discussing the differences between abandoned coal refuse remining operations and all other surface coal mining operations, we need first to briefly discuss the relationship between remining operations and other surface coal mining operations. For this purpose, there are two major types of surface coal mining operations:

1. Operations that mine coal from sites on land that has not been disturbed by previous coal mining operations, popularly called ''virgin operations;'' and

2. Operations that mine coal from sites on land that has been disturbed by previous coal mining operations, popularly called ''remining operations.'' Sites that were mined before the passage of SMCRA in 1977 may, or may not, have been adequately reclaimed. Unreclaimed sites and sites that were not reclaimed to the standards later set forth in SMCRA are popularly called ''abandoned sites'' and are eligible for reclamation under the AML program, codified at 30 CFR Subchapter R-Abandoned Mine Land Reclamation.

In turn, remining operations fall into two major categories:

1. Operations that mine coal in its original geologic location (the mining of prior underground workings after the overburden has been stripped away and the taking of additional mining cuts from an existing highwall are both examples of remining operations that mine coal in its original geologic location). Remining operations that mine coal in its original geologic location have the potential to remove or

otherwise disturb rock strata that serve as aquifers.

2. Operations that mine coal not in its original geologic location (coal refuse removal and coal refuse on-site reprocessing operations are examples of remining operations that mine coal not in its original geologic location. This coal refuse was considered waste material at the time that the initial mining occurred). Because abandoned coal refuse operations do not mine coal in its original geologic location, they do not have the potential to remove or otherwise disturb rock strata that serve as aquifers.

As noted before, section 2503(e) of the EPAct directs the Secretary to propose separate performance standards and permitting systems premised on the distinct differences between operations for on-site reprocessing and operations for removal of abandoned coal refuse, and other types of surface coal mining operations. The most fundamental difference between abandoned coal refuse remining operations, including both removal and on-site reprocessing operations, and other surface coal mining operations, relates to the nature and occurrence of the affected coal deposit. Both types of abandoned coal refuse remining operations mine unconsolidated piles of broken coal that have been previously mined at other locations by surface or underground methods. These unconsolidated piles are the residual waste product generated by cleaning previously-mined coal at processing plants. All other surface coal mining operations, including other types of remining operations, remove coal from its natural undisturbed geologic location.

Another difference between abandoned coal refuse remining operations and other mining operations is that the abandoned coal refuse remining operations are conducted on sites that are different from those of other surface coal mining operations in that they generally have (1) No overburden, (2) no topsoil, (3) limited or no revegetation, (4) a coal/rock mix of varying heating value, (5) limited or no current beneficial land use, and (6) existing water quality problems and other environmental degradation. Unlike other surface coal mining operations, abandoned coal refuse remining operations will generally disturb little, if any, previously undisturbed land outside the abandoned coal refuse site. Also, because topsoil commonly no longer exists, or is buried under the refuse at these sites, abandoned coal refuse remining operations have to utilize alternative vegetation-support material.

Because abandoned coal refuse remining operations do not have to remove overburden in order to uncover the mineable refuse, they neither create highwalls and overburden spoil nor remove the host rock of the ground-water aquifers. Furthermore, because the refuse at abandoned coal refuse sites was most often placed without regard to stability, erosion and surface- and ground-water impacts have commonly resulted. Therefore, almost all abandoned coal refuse remining operations have excellent potential for improving the adverse conditions that, in most cases, already exist at these abandoned sites. This improvement is typically accomplished by reducing the volume of refuse and its associated potential for acid mine drainage, stabilizing surface conditions, and reducing the potential for refuse fires.

There are several differences between abandoned coal refuse removal operations and on-site reprocessing operations that warrant the distinct performance standards and permitting requirements that we are proposing for each. Most significantly, refuse removal operations generate little, if any, residual waste and no wet refuse waste, as compared to that generated by on-site reprocessing operations. Further, refuse removal operations do not require on-site reprocessing or preparation plants with their associated process water circuits, discharges, and ponds. Finally, most refuse removal operations will be of shorter duration than on-site refuse reprocessing operations.

Abandoned coal refuse removal operations are comparable to coal refuse reclamation projects done under the AML program that rework, regrade, and revegetate abandoned coal refuse sites in order to eliminate fires and other safety hazards, to stabilize the affected areas, or to reduce off-site environmental degradation. However, unlike abandoned coal refuse AML projects, which are selected for reclamation based on the seriousness of the site hazards or environmental degradation, coal refuse removal operations always reduce the volume of refuse and are selected for mining based on the heating value of the refuse. On the other hand, refuse on-site reprocessing operations are more comparable to off-site preparation plants, which are regulated under the performance standards of 30 CFR part 827 (Coal Preparation Plants Not Located Within The Permit Area), than to other surface coal mining operations. However, on-site reprocessing operations, unlike off-site preparation plants, typically reduce the volume of refuse at the site, and typically affect very little, if any, previously undisturbed land.

D. Coal Refuse

As used here, ''coal refuse'' refers to the solid material resulting from the deposition in piles of coal mine waste or refuse previously generated during coal processing that separates coal from unwanted physical or chemical impurities. The primary objectives of coal processing are to (1) Clean the coal by separating out rock, earthen materials, and other noncoal material; (2) reduce the ash and sulfur content; (3) increase the heating value, expressed in British thermal units (Btu); and (4) provide a product sized to the consumer's specifications. While coal processing historically used only mechanical means to separate out the unwanted materials, because of technological improvements, coal processing now can use liquids with different specific gravities to separate lighter coal from the heavier non-coal rock or earthen materials. In a typical modern coal processing plant, raw coal is fed through a mechanical breaker or crusher, which reduces the coal to a more uniform size and makes an initial separation of rock from the coal by exerting enough force to crush the coal but not the harder rock. The resultant product is then passed through screens, shakers, vibrating tables, cyclones, and/or other heavy-medium separators where turbulence is created to float the coal and to sink the rock. Such heavy-medium separators utilize a great deal of water, and commonly need considerable land area for associated ponds and slurry cells.

Over the years, the percentage of the annual United States coal production that has been processed in this fashion has fluctuated significantly. This percentage increased steadily from 1920, when less than five percent of the coal mined was mechanically cleaned, to 1948, at which time about 30 percent of the total coal production was processed. From 1948 to 1961, coal production declined drastically, but the percentage of processed coal increased to nearly 66 percent. From 1961 to 1977, the year SMCRA was enacted, annual coal production increased from 403 to 691 million tons. This increase was entirely attributed to an increase in surface mining production. At the same time, the percentage of coal being processed by mechanical and liquid means declined to 34 percent. This decrease in the percentage of coal being processed occurred because (1) Coal mined by surface mining methods normally contains less non-coal material, therefore requiring less

processing than underground-mined coal; and, (2) only a relatively small amount of coal used for power generation was being processed in order to limit sulfur emissions.

The residue from coal processing is called ''coal processing waste,'' or ''coal refuse,'' and varies physically and chemically, depending upon the coal source and the process method used. Depending on the degree of size reduction achieved at the processing plant, coal refuse may vary between coarse (+28 mesh) and fine (−28 mesh). Usually, the coarse refuse was disposed of in an embankment or landfill, while the fine refuse was impounded in slurry ponds or run through vacuum filters and the resultant filter cake mixed with coarse refuse for disposal. Because many of the older processing plants did not include systems to recover fine coal, a large number of refuse slurry ponds and coal refuse piles contain materials with a relatively high Btu content. These refuse materials also contain pyritic rock and other impurities that are primarily associated with the formation of acid mine drainage (AMD) and are often referred to as ''acid-forming materials.'' Under this proposed rule, removal operations would physically remove acid forming materials from the site thus reducing or eliminating the potential for AMD. In contrast, on-site reprocessing operations would retain the acid forming materials on site but place them in an environmentally stable configuration that would minimize surface water infiltration and exposure to air. This required placement would further reduce the potential for AMD.

E. Coal Refuse Distribution

Over three billion tons of coal refuse were deposited on surface lands prior to the enactment of SMCRA. Virtually all of this coal refuse has some heating value. However, depending on the sophistication of the original coal cleaning process that produced the refuse, the heating value of the refuse varies widely.

In the late 1990s, we sought to obtain factual information on coal refuse piles such as their size and number, coal resources available, and potential environmental enhancements that might be achieved from the remining of the piles and subsequent reclamation of the site. The agency anticipated that the results from such a study could be utilized in a coal refuse rulemaking in lieu of mostly anecdotal information that then existed. Accordingly, we funded a coal refuse characterization study conducted by the National Mine Land Reclamation Center at West Virginia University. The study included collecting site-specific field data on the chemical and physical properties of coal refuse piles that were less than 25 acres in size, assembling information from State inventories of refuse piles, and using these data to prepare estimates of coal resources and potential environmental gains that might be realized from the remining of those sites. We chose the 25-acre size limitation for the study because of the enormous number of piles of that size or less, scattered throughout mining communities and the fact that their removal would provide a relatively quick and dramatic improvement to nearby communities. The study also explored the uses of coal refuse and the differences between refuse pile removal operations and coal mining operations on previously undisturbed lands. The study contained projections of coal resources and potential environmental enhancements for all abandoned coal refuse sites as well as those sites that were classified as small sites (less than 25 acres). Although the findings of the study did not reflect the entire universe of abandoned refuse piles, we believe the findings also shed light on the benefits that might be realized by remining larger piles.

The final report on this study was provided to us on August 11, 1999, and was titled ''Physical and Chemical Characteristics of Small Coal Refuse Piles.'' The report provides data and projections that indicate more than 2000 refuse sites exist (in Alabama, Illinois, Kentucky, Ohio, Pennsylvania, Virginia and West Virginia), covering approximately 37,000 acres. More than 50% of the area covered by this coal refuse has economically mineable coal amounting to approximately 518 million tons. If all of this mineable coal were removed, acid-producing material capable of generating 30 million tons of acid would also be removed, thus preventing it from leaching into and further degrading local ground and surface water. Some of the other recommendations and conclusions in the report include:

1. The refuse piles constitute an economic resource—many piles can yield coal for fluidized bed combustion, off-site processing, or other uses.

2. Significant environment improvement is possible through removal of the refuse piles and thus elimination of the problem attributed to the refuse pile.

3. There are a number of significant differences between coal refuse removal operations and other surface mining operations on previously undisturbed sites that would support different regulations for these two types of operations.

4. It appears that the environment can be further protected and improved through an expedited permit under SMCRA that would serve as an incentive for coal refuse pile removal.

F. Coal Refuse Utilization

The Btu value of coal refuse varies widely depending upon the percentage of coal in the refuse pile. The 1999 final report surveyed seven States with coal refuse piles and indicated that the percentage of coal that could be recovered from the piles ranged from a low of 27.5 percent to a high of 98.9 percent. The 1999 final report also discussed a number of possible uses for coal refuse. The study found that coal refuse can be burned directly or reprocessed to separate the waste rock from the burnable coal, by utilizing modern coal cleaning technology. Because the early means of processing coal were inefficient and did not separate all the coal from the waste material, early refuse piles commonly contain material with a heating value of 5,000 Btu or more per pound. Refuse burning power plants and co-generation plants utilizing fluidized bed combustion technology are currently in use and provide a ready market for coal refuse from many sites.

Because fluidized bed combustion processes accept a wider range (size and quality) of material than pulverized coal boilers, fluidized bed combustors can burn refuse without prior efforts to separate coal from the rock so long as the material is properly sized and contains a minimum Btu. This minimum Btu factor is commonly obtained by blending (mixing together fuels with higher and lower Btu values) in order to maintain a fairly consistent feed stock for the combustion chamber. Refuse sites generally have a range of coarse and fine material that can either be directly used in a fluidized bed or reprocessed and sized prior to such use. However, refuse sites consisting primarily of slurry may not be as easily utilized because of restrictive size and moisture specifications of the end user, even though the slurry may have a high Btu value.

Waste-burning facilities that use fluidized bed combustors with a sorbent limestone bed can burn coal refuse with a 5,000 Btu content, limit sulfur and nitrogen oxide (NO_X) emissions, and maintain higher heat transfer rates within the combustor better than is possible using conventional combustion processes. Because of the high ash content of the coal refuse feed stock (as much as 50%) and limestone bed, the

resultant ash from the plant may be not only as much as 70% of the original volume of the refuse burned but also high in alkalinity. When this ash is returned to the refuse area for disposal, it can be very effective in counteracting residual acid problems.

Large power production facilities commonly require that coal refuse first be reprocessed to increase its Btu value by separating the impurities from the coal. Coal refuse reprocessing operations, particularly those that utilize specific gravity to separate coal from the waste rock, may require considerable land space. Reprocessing of coal refuse by portable washers, however, typically requires minimal additional space. The location selected for coal refuse reprocessing operations, whether on or off the refuse site, depends on numerous factors including, but not limited to, the hauling distance to the end-user, the volume of material to be cleaned, and the type of reprocessing to be used.

Abandoned coal refuse has also been utilized for purposes unrelated to Btu value. Refuse has been used commonly as backfill material in large subsidence abatement projects. Also, ''red dog,'' a hard, reddish residual material resulting from refuse fires, has long been used for road base. The proposed regulations are not intended to apply to or regulate removal of abandoned coal refuse for these types of non-energy uses.

G. Existing Regulation of Coal Refuse

Even though SMCRA, as originally enacted, did not directly address the regulation of abandoned coal refuse, the Act's implementing regulations at 30 CFR 700.5 expressly include the extraction of coal from coal refuse piles within the definition of ''surface coal mining operations.'' The definition of ''reclaimed coal'' at 30 CFR 870.5 (47 FR 28593, June 30, 1982), upon which AML fees are owed, includes coal recovered ''from a deposit that is not in its original geologic location'' as does the definition of ''surface mining activities'' at 30 CFR 701.5. On this basis, we have historically interpreted the permitting requirements and the performance standards promulgated under the permanent regulatory program for all surface coal mining operations to apply to operations that either remove refuse or reprocess it on-site. This means that, despite the fundamental differences between abandoned coal refuse remining operations and other surface coal mining operations, both types of operations are currently subject to the same regulations.

H. Abandoned Mine Land Reclamation Projects

Prior to the enactment of SMCRA and its implementing regulations, significant amounts of coal refuse were often discarded and placed with little, if any, engineering design. While some abandoned refuse sites are quite stable and have naturally revegetated, most sites contribute to environmental degradation, constitute safety hazards, or both. Problems stemming from these coal refuse sites include fires with associated smoke hazards, wind and water erosion from barren surfaces, and the leaching of acidic and other toxic materials into the surface and ground water. Abandoned coal refuse sites have caused, and continue to cause, public health and safety problems and environmental impacts that are currently being addressed through our Title IV AML Program.

At the same time that we were working on the development of a proposed rule to implement the EPAct, we published a proposed rule in 1998 and a final rule in 1999 to enhance reclamation of abandoned coal sites under the AML program (64 FR 7470, 7483; February 12, 1999). The purpose of that rule, popularly referred to as the ''AML Enhancement Rule,'' was to encourage additional AML reclamation with the same amount of AML funding by allowing the cost of certain approved AML projects to be offset by the extraction and sale of coal, when the removal of that coal was physically necessary to accomplish AML reclamation of the project. See 30 CFR 707.5 and 874.17. The AML Enhancement Rule was designed for situations in which the mining of the coal refuse was incidental to a government-financed construction project. Among the kinds of AML projects allowed under that rule were those that included the removal of coal refuse piles that had little or no likelihood of being mined under a Title V permit and that posed continuing significant environmental problems such as acid mine drainage discharges. The proposed rule supplements but does not supersede the AML Enhancement Rule by providing a way to facilitate the mining and reclamation under Title V of abandoned refuse sites.

Since 1977, the AML program has successfully reclaimed about 25,307 acres of abandoned refuse at an expense of over $320 million. As of September 30, 2005, reclamation of an additional 2,515 acres at sites with abandoned coal refuse has been funded with $26.5 million, but not completed. There are an additional 22,128 acres of coal refuse that have been identified as high priority AML sites that would cost an estimated $327 million to reclaim but that have not yet been funded.

Historically, through September 30, 2004, approximately 23 percent of the project funds spent through our AML reclamation program have been used to remediate public health and safety problems and the environmental impacts associated with abandoned coal refuse sites. We recognize, however, that the current projections of future AML projects may change if conditions at individual abandoned coal refuse sites worsen. For example, a low-priority abandoned refuse site generally is given a higher priority if it catches fire. Nonetheless, unless the industry remedies the problems by first mining abandoned coal refuse and then reclaiming the sites, we expect the AML program will require many years to fully address all the listed problem refuse piles.

I. National Pollutant Discharge Elimination System Program

We believe that significant site-specific hydrologic data will be available to the SMCRA regulatory authority (RA) from data generated under the Clean Water Act and under the National Pollutant Discharge Elimination System (NPDES) program. This program is administered by either the U.S. Environmental Protection Agency (EPA) or by States that have been approved by EPA to implement the NPDES program. The program requires all point-source discharges, from both existing and new sources, to meet the effluent limitations for the coal mining point source category of industrial discharges set out at 40 CFR part 434. In certain cases, baseline water quality and flow data for existing discharges and receiving streams are required in the NPDES permit application. Following NPDES permit approval, regular monitoring of the water quality and flow of all discharges and receiving streams is required. For an abandoned coal refuse remining site, we envision that pre-mining baseline data and monitoring data generated under the NPDES program can be used, in whole or in part, to meet some SMCRA permanent program requirements for determination of probable hydrologic consequences (PHC), cumulative hydrologic impact analysis (CHIA), and water monitoring during mining.

II. Discussion of the Proposed Regulations

We propose to add two definitions and two new parts to our regulations in Title 30 of the Code of Federal

Regulations. One definition will be added to section 701.5 and the other definition will be added to section 786.3 of new part 786. The permitting requirements for abandoned coal refuse remining operations will be in new part 786 and the performance standards for abandoned coal refuse remining operations will be in new part 829.

In those cases where the performance standards in regulations implementing a specific provision in section 515 or 516 of SMCRA are appropriate to abandoned coal refuse remining operations, we are proposing regulations that incorporate or closely follow existing regulations.

In some cases, because of the differences between abandoned coal refuse remining operations and other types of surface coal mining operations, the performance standards in a specific provision in section 515 or 516 of SMCRA would not be appropriate to abandoned coal refuse remining operations. However, when these performance standards could be adapted to abandoned coal refuse remining operations, we are proposing adapted standards. For example, it would be inappropriate, if not impossible, to require that an abandoned coal refuse remining operation restore the land at the site to a condition capable of supporting the uses that it was capable of supporting prior to mining as required by section 515(b)(2) of SMCRA; or that an abandoned coal refuse remining operation return the land occupied by a refuse pile to the pre-mining approximate original contour, as required by section 515(b)(3). Accordingly, we are proposing land use and contour regulations that would provide protection similar to the protection provided by the land use and approximate original contour standards of SMCRA sections 515(b)(2) and 515(b)(3), but are adapted to the unique differences between abandoned coal refuse remining operations and other surface mining operations.

On the other hand, where the performance standards of a specific provision in section 515 or 516 of SMCRA would not be appropriate or could not be adapted to abandoned coal refuse remining operations, we will not be proposing any implementing regulations. For example, we are not proposing regulations to implement the prime farmlands standards of section 515(b)(7) because that statutory standard would not be appropriate for abandoned coal refuse sites.

Finally, regarding the EPAct provisions for a new permitting system for remining of coal refuse, we have reviewed the requirements and objectives of the permit application provisions of section 507 of SMCRA, and we are proposing some changes in permit information requirements for coal refuse remining, particularly with regard to hydrology.

The proposed regulations in large part incorporate existing permitting requirements and performance standards. We expect that the abandoned coal refuse piles that will be remined will be mostly small-sized and hydrologically-impacted. Therefore, we believe that the scope and complexity of permit application information needed for these remining operations should generally be less extensive than the information otherwise required for surface coal mining operations.

In support of this rulemaking, we have carefully considered the dramatic environmental results achieved by the Commonwealth of Pennsylvania in permitting remining operations. During the period from 1985 through 1997, Pennsylvania issued 260 remining permits. Notably, ninety-eight percent of those permits resulted in pollutional loads that were lower than baseline or only slightly exceeded baseline and none of these required long-term treatment. We believe that the Pennsylvania remining data constitutes powerful, on-the-ground support for the appropriateness of our proposed regulations. We anticipate that our proposed regulations would also preserve or even enhance the pre-remining site hydrologic balance. Further details about the Pennsylvania remining data can be found below in section II.

In the next three sections we will discuss our standard-by-standard review of the performance standards of sections 515 and 516 of SMCRA, our proposed permit system for abandoned coal refuse remining operations, and our proposed regulations (section 701.5 and parts 786 and 829).

A. Standard-by-Standard Review of SMCRA Performance Standards

The purpose of this standard-by-standard review is to ensure that our proposed regulations provide the level of environmental protection required under sections 515 and 516 of SMCRA. In making this analysis, we considered the distinct differences between abandoned coal refuse removal or on-site reprocessing operations and other surface coal mining operations. As noted earlier, the most important distinction between abandoned coal refuse remining operations and other surface coal mining operations is that other surface mining operations disturb the original ground surface in order to remove coal from its original geologic location over, under, or between rock strata. In contrast, abandoned coal refuse remining operations neither disturb the original ground surface or any rock strata nor remove coal from its original geologic location. Based on this fundamental distinction, we have sought to frame regulations that would meet the requirements of EPAct to not only provide the same level of environmental protection for refuse remining operations as under sections 515 and 516 of SMCRA, but also facilitate such operations.

Section 515 of SMCRA—Performance Standards for Surface Coal Mining Operations

(b)(1)—*Maximizing utilization and conservation of the fuel resource.* Abandoned coal refuse constitutes a solid fuel resource that often degrades the environment. The objective of this provision is to encourage maximum utilization of the coal resource so that the same site is not reaffected by successive operations as has sometimes occurred. Accordingly, the performance standards of section (b)(1) are appropriate to abandoned coal refuse remining operations. Our proposed regulation at section 829.3 would incorporate the requirements of section 816.59, which implements the standards of section 515(b)(1). See the preamble discussion of the proposed general requirements regulation at section 829.3. This would provide the same level of environmental protection as under section 515(b)(1) of SMCRA.

(b)(2)—*Restoring land to a condition capable of supporting the uses it was capable of supporting prior to mining.* The performance standards of section 515(b)(2) of SMCRA are not, in all cases, appropriate to abandoned coal refuse remining operations. For example, the land use that existed prior to mining is often not known or is not attainable because of limitations in materials either found at the site or remaining at the site after remining operations have been completed. Our proposed regulation at section 829.133 would require that the operator restore the land to a condition capable of supporting a use that is equivalent to or higher or better than the land use prior to commencement of the abandoned coal refuse remining operation. See the preamble discussion of the proposed postmining land use regulation at section 829.133. On this basis, our proposed regulation would provide the same level of environmental protection as under section 515(b)(2), as adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(3)—*Restoring approximate original contour.* Not all the performance standards of section (b)(3) are appropriate to abandoned coal refuse remining operations. For example, the approximate original contour standard would not be appropriate because the amount of material left after an abandoned coal refuse remining operation has been completed may be more or less than that needed to achieve approximate original contour. This is especially true in light of the high likelihood that prior mining activities have also been conducted at the site. In many cases, it may be impossible to determine the original contour of the site. Thus, we are not proposing regulations to implement the approximate original contour provision of section 515(b)(3). However, the backfilling and grading standards of section 515(b)(3) are adaptable to abandoned coal refuse remining operations. Our proposed regulation at section 829.102 would require that grading achieve stability, minimize erosion, and support the designated postmining land use. See the preamble discussion of the proposed grading regulation at section 829.102. Thus, this proposed regulation would provide the same level of environmental protection as under section 515(b)(3), as adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(4)—*Stabilizing and protecting surface.* The performance standards of section 515(b)(4) of SMCRA are clearly appropriate to abandoned coal refuse remining operations except for their topsoil requirements. Our proposed regulation at section 829.95 would incorporate the requirements of section 816.95, which implements section (b)(4), except that we would provide for the use of vegetative-support material instead of topsoil because of the common absence of topsoil at abandoned coal refuse remining sites. See the preamble discussion of the proposed surface stabilization regulation at section 829.95. On this basis, our proposed regulation would provide the same level of environmental protection as under section 515(b)(4), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(5) and (6)—*Removing, storing, and restoring topsoil or most suitable material for supporting vegetation.* The performance standards of sections (b)(5) and (b)(6) are clearly appropriate to abandoned coal refuse remining operations except for the topsoil requirements for the reason cited in the section discussion of (b)(4). Our proposed regulation at section 829.22 would incorporate language analogous to the provisions of section 816.22 which implement the statutory standards, except that section 829.22 refers to vegetation-support material rather than topsoil. See the preamble discussion of the proposed regulation on soils and other vegetation-support material at section 829.22. On this basis, our proposed regulation would provide the same level of environmental protection as under sections 515(b)(5) and (b)(6), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(7)—*Restoring prime farmland.* Refuse sites will not qualify as prime farm land nor will any overburden be removed. Accordingly, the performance standards of section (b)(7) are not appropriate to abandoned coal refuse remining operations. Thus, we are not proposing regulations to implement the prime farmland provisions of section 515(b)(7).

(b)(8)—*Retaining permanent impoundments.* Many abandoned coal refuse sites contain slurry impoundments. Some of those are high hazard structures or could become so if impounded fine refuse was removed and replaced with water. Other slurry impoundments, particularly in flat areas of the Midwest, are relatively shallow. In these latter cases, allowing ponds and wetlands to develop following refuse removal would be an environmental benefit and would facilitate refuse removal. The performance standards of section (b)(8) are, therefore, appropriate to abandoned coal refuse remining operations. Our proposed regulation at section 829.49 would incorporate the requirements of sections 816.49 and .56, which implement the statutory standards, and would specify two circumstances in which permanent impoundments may be retained. See the preamble discussion of the proposed impoundments regulation at section 829.49. On this basis, our proposed regulation would provide the same level of environmental protection as under section 515(b)(8), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(9)—*Conducting auger mining.* We will not allow auger mining in conjunction with abandoned coal refuse remining operations. Accordingly, the performance standards of section (b)(9) would not be appropriate to abandoned coal refuse remining operations. Thus, we are not proposing regulations analogous to the auger mining provisions of section 515(b)(9).

(b)(10)—*Minimizing disturbance to the prevailing hydrologic balance.* Most of the performance standards of section 515(b)(10) of SMCRA are clearly appropriate to abandoned coal refuse remining operations. However, the requirement to restore recharge capacity is not appropriate for refuse remining operations, because these operations neither remove or replace overburden nor remove or disturb strata that serve as aquifers. Our proposed regulation would incorporate the requirements of sections 816.13 and 816.41 through 816.57, which implement section (b)(10). See our preamble discussion of the hydrologic balance standards in proposed sections 829.3, 829.13, and 829.41, 829.45, 829.46, and 829.49. We are also proposing to add at section 786.3 a definition for ''Best Management Practices'' (BMPs), and in section 786.15(b) we are proposing that the regulatory authority may authorize an applicant for a refuse removal permit to use BMPs. These BMPs provisions would provide that the regulatory authority may allow a removal operation to use a range of actions that have proved effective in other remining settings to prevent or mitigate water quality problems and to control sediment. These BMPs might be in addition to or in lieu of actions that are otherwise called for under applicable performance and reclamation standards. On this basis, our proposed regulation would provide the same level of environmental protection as under section 515(b)(10), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(11), (13), (14), & (f)—*Disposing of coal waste.* In remining operations, these standards are appropriate only for the redeposition of coal refuse generated during on-site reprocessing operations or the sorting and sizing of refuse material handled during removal operations. Our proposed regulations at sections 829.3, 829.81, and 829.89 would incorporate the requirements of section 816.87 for burning and burned waste, most of the requirements of sections 816.81, 816.83, and 816.84 for coal mine waste, and the requirements of 816.89 for noncoal mine waste. These existing regulations implement sections 515(b)(11), (13), (14), & (f) of SMCRA. The proposed rule reflects the distinct differences between abandoned coal refuse remining operations and other surface coal mining operations. See the preamble discussion of the proposed coal waste regulations at sections 829.3, .81, and .89. On this basis, our proposed regulations would provide the same level of environmental protection as under sections 515(b)(11), (13), (14), & (f), adapted to the unique characteristics

of abandoned coal refuse remining operations.

(b)(12)—*Mining within five hundred feet from underground mines.* The performance standards of section (b)(12) are appropriate to abandoned coal refuse remining operations. Our proposed regulations at section 829.3 would incorporate by reference section 816.79, which implements these statutory standards. See the preamble discussion of the proposed general requirements regulation at section 829.3. On this basis, our proposed regulations would provide the same level of environmental protection as under section 515(b)(12).

(b)(15)—*Using explosives.* Abandoned coal refuse remining operations will rarely involve the use of explosives. Nonetheless, it is appropriate to require any use of explosives in abandoned coal refuse remining operations to comply with the performance standards of section 515(b)(15) of SMCRA. Our proposed regulations at section 829.3 would incorporate by reference sections 816.61 through 816.68, which implement the statutory standards. See the preamble discussion of the proposed general requirements regulation at section 829.3. On this basis, our proposed regulations would provide the same level of environmental protection as under section 515(b)(12).

(b)(16)—*Contemporaneous reclamation.* The performance standards of section 515(b)(16) of SMCRA are clearly appropriate to abandoned coal refuse remining operations, except for the variance for concurrent surface and underground mining activities. Coal refuse remining operations will not involve both surface and underground mining. Our proposed regulations would incorporate the language of section 816.100, which implements the statutory standards, without the variance cited above. Our proposed regulations would also contain the additional requirement of a reclamation schedule. See the preamble discussion of the proposed contemporaneous reclamation regulation at section 829.100. On this basis, our proposed regulations would provide the same level of environmental protection as under section 515(b)(16), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(17) and (18)—*Access roads.* The performance standards of sections (b)(17) and (b)(18) are appropriate to abandoned coal refuse remining operations. Our proposed regulations would incorporate the language of sections 816.150 and .151, which implement the statutory standards. See the preamble discussion at section 829.3. On this basis, our proposed regulations would provide the same level of environmental protection as under sections 515(b)(17) and (b)(18).

(b)(19) and (20)—*Revegetation.* The performance standards of sections (b)(19) and (b)(20) are generally appropriate to abandoned coal refuse remining operations except for the requirement for diverse vegetation, which will not be attainable at almost all abandoned coal refuse sites because of the lack of topsoil. Nonetheless, at some abandoned coal refuse piles, vegetation has naturally reestablished itself to completely cover the site. Other sites have sparse vegetation consisting of a few annual weeds, and still others have remained completely barren for decades. Our proposed regulation at section 829.111 would require a vegetative cover sufficient to stabilize the land surface to prevent erosion regardless of the cover, or lack thereof, that existed prior to the abandoned coal refuse remining operation. At sites where some vegetative cover exists, our proposed regulation would require a final cover no less extensive than that existing prior to the redisturbance. Our proposed regulation would also adopt the revegetation timing and mulching requirements of sections 816.111(b)–(d), 816.113 and 816.114, and the revegetation success requirements of section 816.116(c)(1) through (4), which implement the major requirements of the statutory standards. See the preamble discussion of the proposed revegetation regulation at section 829.111. On this basis, our proposed regulation would provide the same level of environmental protection as under sections 515(b)(19) and (b)(20), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(21)—*Protecting off-site areas.* The performance standards of section 515(b)(21) of SMCRA are appropriate to abandoned coal refuse remining operations. Our proposed regulations would apply, with some revision, the requirements of sections 816.81, 816.102, and 816.106, which implement the statutory standards. For the reasons set out in the preamble discussion of proposed section 829.102, the proposed rule would not apply the requirements of sections 816.104 and 816.105. In addition, our proposed regulations would assure the stability of the toe of the refuse pile, and thus provide protection equivalent to the relevant prohibitions of section 816.107, by not allowing remining operations on steep slopes to prematurely remove refuse from the toe of such piles. See the preamble discussion of the proposed grading regulation at section 829.102 for a more detailed comparison with the existing rules implementing section 515(b)(21) of SMCRA. On this basis, our proposed regulations would provide the same level of environmental protection as under section 515(b)(21), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(22)—*Spoil disposal.* Abandoned coal refuse remining operations will not create spoil. Therefore, the performance standards of section (b)(22) are not appropriate to abandoned coal refuse remining operations. Thus, we are not proposing regulations to implement the spoil disposal provisions of section 515(b)(22).

(b)(23)—*Other criteria necessary to achieve reclamation.* This general section is appropriate for abandoned coal refuse remining operations, and our proposed regulations contain other requirements, discussed above, that address conditions encountered at abandoned coal refuse sites. On this basis, our proposed regulations would provide the same level of environmental protection as under section 515(b)(23), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(24)—*Fish and wildlife protection.* The performance standards of section (b)(24) are appropriate to abandoned coal refuse remining operations. Our proposed regulations would incorporate by reference section 816.97, which implements the statutory standards. In addition, we are proposing a change that would add a definition of BMPs and allow their use in combating water quality and sediment problems at abandoned coal refuse sites. Protection of water quality is important in protecting fish and wildlife, because of the importance of water quality for fish and wildlife and their habitats. See the preamble discussion of the proposed general requirements regulation at section 829.3, which incorporates by reference existing regulations at section 816.97. See also preamble discussion of proposed definition of ''BMPs'' at new section 786.3. On this basis, our proposed regulations would provide the same level of environmental protection as under section 515(b)(24), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(25)—*Providing an undisturbed natural barrier.* These provisions, which address mining coal from its original geologic location, are not appropriate for abandoned coal refuse remining operations because abandoned coal refuse remining operations will not mine coal in its original geologic location. Further, an undisturbed

natural barrier typically does not exist around coal refuse piles. Thus, we are not proposing regulations to implement the natural barrier provisions of section 515(b)(25).

(c)—*Mountaintop removal mining.* These provisions, which address mining coal from its original geologic location, are not appropriate for abandoned coal refuse remining operations because abandoned coal refuse remining operations will not mine coal in its original geologic location. Thus, we are not proposing regulations to implement the mountaintop removal provisions of section 515(c).

(d)—*Steep slope mining.* These provisions, which address mining coal from its original geologic location, are not appropriate for abandoned coal refuse remining operations because abandoned coal refuse remining operations will not mine coal in its original geologic location. Our proposed regulations would, however, add specific requirements for abandoned coal refuse remining operations and regrading on steep slopes. See the preamble discussion of the proposed grading regulation at section 829.102. On this basis, our proposed regulations would provide for a higher level of environmental protection than that provided under section 515(d), adapted to the unique characteristics of abandoned coal refuse remining operations.

(e)—*Postmining land use variances.* As explained above in the discussion of section 515(b)(2), the land use that existed prior to mining is commonly not known, or is not attainable because of limitations in material at the abandoned refuse site either before or after remining operations are completed. Our proposed regulation at section 829.133 would require that the operator restore the land to a condition capable of supporting uses that are the same as or higher or better than the land use prior to commencement of the abandoned coal refuse remining operation. See the preamble discussion of the proposed postmining land use regulation at section 829.133. On this basis, our regulation would provide the same level of environmental protection as under section 515(e), adapted to the unique characteristics of abandoned coal refuse remining operations.

Section 516 of SMCRA—Performance Standards for Underground Mining Operations

(b)(1) and (c)—*Preventing subsidence damage.* This provision is not appropriate for abandoned coal refuse remining operations. These operations do not involve underground mining and do not cause subsidence.

(b)(2) and (3)—*Seal portals and other openings.* Because abandoned coal refuse remining operations may uncover or otherwise encounter mine openings or drill holes, this section has limited applicability to such operations. Our proposal would incorporate with limited modifications sections 817.13 through 817.15, which implement this statutory requirement. See the preamble discussion of the proposed casing and sealing regulation at section 829.13. On this basis, our regulation would provide the same level of environmental protection as under section 516(b)(2) and (3), adapted to the unique characteristics of abandoned coal refuse remining operations.

(b)(4) and (5)—*Mine waste.* See earlier discussion for sections 515(b)(11) and (13).

(b)(6)—*Revegetation.* See earlier discussion for section 515(b)(19).

(b)(7)—*Protecting off-site areas.* See earlier discussion for section 515(b)(21).

(b)(8)—*Fire hazards.* See earlier discussion for section 515(b)(14).

(b)(9)—*Hydrologic balance.* See earlier discussion for section 515(b)(10).

(b)(10)—*Access roads, etc.* See earlier discussion for section 515(b)(17).

(b)(11)—*Fish and wildlife.* See earlier discussion for section 515(b)(24).

(b)(12)—*Locating new drift mine portals to prevent gravity discharges.* This section is not appropriate for abandoned coal refuse remining operations. These operations do not construct drift mine portals, and thus do not cause gravity discharges from those portals.

B. Special Permit System for Abandoned Coal Refuse Remining Operations

The EPAct authorizes the development of separate permit systems for abandoned coal refuse remining operations based on the distinct differences between such operations and other surface coal mining operations. Within this framework, proposed part 786, Requirements for Permits for Abandoned Coal Refuse Remining Operations, would specify permit information requirements for coal refuse removal and coal refuse on-site reprocessing operations. The proposed part would include changes to some of the permit information requirements at part 779, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, and part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan. In the next section of this discussion, we discuss the reasons we are proposing a single permit system at part 786 for both refuse removal and on-site reprocessing operations; the provisions of proposed part 786; and our rationale for any differences between the provisions of proposed part 786 and those of parts 779 and 780.

C. Proposed Regulations

The regulatory provisions proposed in this rulemaking are intended to implement the requirements of section 2503(e) of the EPAct, codified at 30 U.S.C. 1251a. The proposed regulations include (1) A new definition in section 701.5 of ''abandoned coal refuse remining operations,'' distinguishing between those operations that reprocess the abandoned coal refuse on-site and those operations that remove the refuse; (2) a new definition in section 786.3 of ''BMPs'' as activities and practices that can be used with abandoned coal refuse remining operations to prevent or reduce chemical or sediment pollution to surface and ground water; (3) a new part 786 that would specify the permit information requirements for individual abandoned coal refuse remining operations; and (4) a new part 829 that would establish the performance standards appropriate to abandoned coal refuse remining operations permitted under part 786.

The proposed permit information requirements in part 786 parallel the existing surface coal mining permit information requirements in parts 779 and 780. The proposed permit information required in proposed part 786 will enable the regulatory authority to determine whether the applicant can comply with the performance standards proposed in part 829. The proposed performance standards in part 829 are, in turn, based on the surface coal mining performance standards in parts 816 and 817.

The proposed regulations in parts 786 and 829 apply to coal refuse remining operations conducted at an abandoned coal refuse site. They do not apply to the off-site reprocessing of abandoned coal refuse already regulated under section 785.21 and part 827, Coal Preparation Plants not Located Within the Permit Area of a Mine.

During the development of the proposed regulations, we considered the appropriateness of developing separate sets of permitting requirements for abandoned coal refuse removal and for on-site reprocessing operations. However, our consideration of this issue did not identify sufficient differences between the requirements applicable to removal and on-site reprocessing

operations to warrant separate sets of requirements for these two types of refuse operations. Therefore, the proposed regulations provide for the issuance of ''abandoned coal refuse remining operations'' permits that may include either refuse removal or on-site reprocessing operations, or both.

For the most part, the proposed permitting regulations in part 786 and the proposed performance standards in part 829 apply equally to both refuse removal and on-site reprocessing operations. However, some of the requirements in each part have been designed specifically for either removal or on-site reprocessing operations. For example, the proposed part 786 ground-water baseline requirements for refuse removal operations are different from those for reprocessing operations. For permits that include both removal and on-site reprocessing operations, the baseline requirements for the removal portion of the operation must be satisfied for the removal area and the area adjacent to it. Similarly, the baseline requirement for the on-site reprocessing portion of the operation must be satisfied for both the area containing the on-site reprocessing support facilities, such as the processing equipment, ponds, and reprocessing waste structures, as well as the adjacent area. Where an area adjacent to an on-site reprocessing operation overlaps the removal portion of the permit, or its adjacent area, the reprocessing baseline requirements apply to the overlap area. In these cases, both the reprocessing areas and removal areas would be covered under one permit.

Section 701.5 Definitions

Abandoned Coal Refuse Remining Operations

We propose to add a definition of ''abandoned coal refuse remining operations'' that identifies the refuse sites that are eligible for mining under the regulations proposed in part 786 and part 829 as those lands that would otherwise be eligible for expenditure under sections 404 and 402(g)(4) of SMCRA. The proposed definition then describes the principal characteristics of abandoned coal refuse reprocessing operations and removal operations, which are the two types of remining operations identified in the EPAct. Finally, the definition states that the term ''abandoned coal refuse remining operations'' does not encompass the removal of refuse for non-fuel uses.

Section 2503(e) of the EPAct, 30 U.S.C. 1251a, directs the Secretary of the Interior by regulation to establish environmental protection performance and reclamation standards, and separate permit systems for two types of operations: (1) Those that reprocess abandoned coal refuse on-site (reprocessing operations) and (2) those that remove abandoned coal refuse from the site (removal operations). The statute further specifies that these regulations and separate permit systems will apply to such operations on ''lands that would otherwise be eligible for expenditure under section 404 and section 402(g)(4) of [SMCRA].'' The lands referred to are ones that are eligible for expenditure from the AML fund established under Title IV of SMCRA; *i.e.*, lands that were mined for coal or were affected by such mining and abandoned or left in an inadequate reclamation status prior to enactment of SMCRA and for which there is no continuing reclamation responsibility under State or other Federal laws.

Although the EPAct refers to the two types of operations, it does not explain how they differ. Accordingly, we have characterized ''reprocessing operations'' and ''removal operations'' in terms of the various activities typically associated with each type of operation.

For purposes of this rulemaking, the principal characteristic of ''reprocessing operations'' is the use of specific gravity or floatation methods to separate coal from waste material. These methods require the liberal use of water or other liquids to effect the separation of coal from waste material. The resultant discharge from a reprocessing operation will commonly be more acid (and possibly toxic) than the discharge expected from a removal operation. While the reprocessing of coal refuse leads to a significantly higher Btu in the refuse product, the residual coal content of refuse waste, although low, will vary depending on the separation mediums used. This waste, usually redeposited on site, will represent a large percentage of the original refuse that has just been processed. In addition, the redeposited waste will usually consist of an acidic mixture of fine-grained materials with high moisture content. As a result, the redeposited waste materials will often have altered particle cohesion and/or reduced shear strength that can tend towards slope instability.

Reprocessing operations also typically employ some form of on-site mechanical sorting or sizing prior to the liquid processing of refuse material. These sorting and sizing activities often involve the use of vibrating screens to eliminate larger non-coal objects such as tree limbs, rocks, machinery, etc., and then the use of crushers to reduce the refuse product to a size appropriate for the liquid processor. For purposes of this rulemaking, the proposed description of reprocessing includes any on-site sorting and sizing activities.

The principal characteristic of ''removal operations'' is the activity of removing coal refuse from the site. As with reprocessing operations, the proposed description of removal operations includes any on-site mechanical sorting and sizing of refuse material to eliminate larger non-coal objects.

There are indirect environmental benefits associated with the on-site sorting and sizing of refuse at both reprocessing and removal operations. The waste product of sorting and sizing, which is invariably left on site, is mostly noncoal. Our proposed regulations would require that this waste material be placed in a stable configuration that would almost always be more environmentally secure than the abandoned refuse site was before remining. We also believe that the environmental impacts of controlled redeposition and reclamation of refuse that has been sorted or sized out would be preferable to the impacts that would result if operators simply mined around portions of a refuse pile and left those portions unreclaimed.

In almost all cases, the liquid discharge and solid waste of on-site reprocessing operations have a higher potential for causing negative ground- and surface-water impacts and unstable slopes than would any of the activities associated with removal operations. This difference in potential for environmental harm is because removal operations, unlike reprocessing operations, neither introduce a new liquid discharge to the site nor redeposit on site a large volume of recently processed waste. Based on these important differences between the two types of operations, the proposed regulations would, for on-site refuse reprocessing operations, require additional permit information and more stringent performance standards concerning stability and hydrology than those required for removal operations.

Our proposed definition of ''abandoned coal refuse remining operations'' specifically excludes the removal of refuse for non-fuel uses. Activities such as the removal of refuse cinder (red dog) for road base or surfacing, the use of refuse for fill material, or for backstowing of underground mine works to prevent subsidence have never been regulated as surface coal mining operations nor would they be under the proposed regulations.

Part 786—Requirements for Permits for Abandoned Coal Refuse Remining Operations

Proposed part 786 specifies the minimum permit information that would be required for abandoned coal refuse remining operations, including information on (1) environmental resources that might be impacted or affected, and (2) mining operations and reclamation plans.

Section 786.1 Scope

In this section we explain that the purpose of part 786 is to set forth the requirements for obtaining a permit for abandoned coal refuse remining operations. We also explain the use of the pronouns ''we'', ''our'', and ''us'' that refer to the regulatory authority and the pronouns ''you'' and ''your'' that refer to the applicant and operator. We use these pronouns throughout this part in order to make the regulations more readable.

Section 786.2 Objectives

In this section we explain that our objective is to ensure that the permit applicant obtains a permit to conduct abandoned coal refuse remining operations in accordance with the requirements of SMCRA, as amended by the EPAct.

Section 786.3 Definitions

Best Management Practices (BMPs)

We are proposing to add a definition of BMPs at proposed section 786.3. The definition would be used solely for the purpose of abandoned coal refuse remining operations, and would include any number of activities, operating and maintenance procedures, practices, or prohibition of practices that have as their goal preventing or reducing chemical pollution to surface and ground water and controlling excessive sediment concentrations to surface water. EPA defines BMPs in a similar manner at 40 CFR 122.2, and in EPA's December, 2001, publication ''Coal Remining—Best Management Practices Guidance Manual.'' (EPA publication 821–B–01–010).

Our objective in allowing the use of BMPs with abandoned coal refuse remining operations is to broaden the tools, subject to regulatory authority approval, available for controlling sediment and AMD at these sites. The proposed use of BMPs with abandoned coal refuse remining operations has substantial basis: (1) The EPA publication cited above, which acknowledges the importance of using BMPs to address acid mine drainage problems associated with coal mining activities, presents information on hydrologic, geochemical and sediment control BMPs, efficiencies of the BMPs, and costs for installing specific BMPs; (2) BMPs is a term that now, within the mining industry, has a widespread history and acceptance, finding application in the reduction and/or prevention of chemical pollution to surface and ground water with particular emphasis on AMD, a phenomenon commonly associated with abandoned coal refuse operations; and (3) BMPs have been developed and used in many commercial and industrial applications to control runoff and reduce sedimentation as well as to minimize erosion and sedimentation during silviculture operations. These applications of BMPs have direct transferability to mining activities where erosion and sedimentation are also a concern. For these reasons, we believe our proposed reliance on BMPs will similarly prove to be both economical for operators and environmentally effective in dealing with existing or potential environmental problems, as thoroughly documented in the above referenced EPA publication.

Our proposed use of BMPs as approved sediment control measures is subject to an important condition. Our 1983 rulemaking at § 816.46(b)(2) required that all surface drainage from a disturbed area be passed through a ''siltation structure,'' which by definition at section 701.5 includes a sedimentation pond, a series of sedimentation ponds, or other treatment facilities. This requirement of § 816.46(b)(2) for siltation structures was adopted to implement the mandate of sections 515(b)(10)(B) and 516(b)(9)(B) of SMCRA to use the best technology currently available (BTCA) to prevent additional contributions of suspended solids outside of the permit area. However, in response to the successful challenge of § 816.46(b)(2), we suspended the siltation structure requirement (51 FR 41961; November 20, 1986). As a result of that suspension, RAs had to determine on a case-by-case basis whether siltation structures or other sediment control measures would constitute BTCA. Under our proposed regulations, for those BMPs that would constitute sediment control measures, RAs will similarly have to determine whether the specific proposed BMP or combination of BMPs would constitute BTCA.

Section 786.10 Information Collection

Proposed § 786.10 contains information on the Office of Management and Budget's approval of the information collection requirements of part 786. Part 786 sets forth the requirements for obtaining a permit for abandoned coal refuse remining operations. The requirements ensure that the permit applicant obtains a permit to conduct an abandoned coal refuse remining operation in accordance with the requirements of SMCRA, as amended by the EPAct. We estimate that there will be 16 new applicants per year and that each of the applicants will require approximately 469 hours and $4,848 in non-wage costs to complete the information required by part 786. In addition, the 15 regulatory authorities will require approximately 230 hours with no additional non-wage costs to complete the information required by part 786.

Section 786.11 General Requirements

Proposed § 786.11 provides that permits for abandoned coal refuse remining operations would be required to comply with the requirements of proposed part 786 and would be required to demonstrate that the operations will be conducted in compliance with the performance standards of proposed part 829. This section makes clear that the permit application requirements of parts 779, 780, 783, and 784 would not apply directly to abandoned coal refuse remining operations, but rather would apply only to the extent individual provisions are incorporated by reference or adapted by part 786.

Section 786.12 Information on Environmental Resources

Proposed § 786.12(a) addresses general and climatological information requirements. This paragraph would apply the requirements of §§ 779.11, 779.12, and 779.18.

Proposed § 786.12(b) addresses pre-remining vegetation information requirements. This paragraph specifies the requirements that would apply to coal refuse remining, instead of the requirements of § 779.19. The paragraph would require photographs and a narrative description of the typical vegetative cover at the refuse site. The photographs and narrative would have to be of sufficient detail to allow an estimate of vegetative ground cover and species diversity. Because most abandoned coal refuse sites have sparse vegetation and the vegetation found is usually volunteer and does not represent the original species diversity, we believe the proposed requirements are more suitable for abandoned coal refuse sites than the detailed vegetation mapping requirements of § 779.19. Furthermore, we believe that to prescribe precise measurements of

vegetative cover and species diversity would be inappropriate for abandoned coal refuse sites because of the poor surface conditions found at most sites. The proposed requirements for photographs and narrative would ensure that the application adequately describes the pre-remining surface cover and would serve as a reference point for required reclamation.

Proposed § 786.12(c) addresses requirements for information on soil resources and other vegetation-support material and specifies the requirements that would apply to coal refuse remining instead of the requirements of § 779.21. This paragraph would require that the permit contain sufficient information on the soil or other vegetation-support material to enable us to determine if revegetation of the site can be achieved as required by the revegetation performance standards at § 829.111. We believe that the proposed regulation is more appropriate for abandoned coal refuse remining operations than § 779.21 which requires a soil map and other detailed quantitative soil information. As noted previously, abandoned coal refuse sites, unlike areas covered by the great majority of surface mining permits, do not have topsoil and usually have minimal vegetative cover. The information on soil resources and vegetation support proposed in this paragraph and in § 786.12(b) should provide ample information to assess the site revegetation potential.

Proposed § 786.12(d) would require the application to include the mapping information in § 779.24, except as follows:

1. Instead of the requirement in § 779.24(d) that maps show structures within 1000 feet of the operation, the proposed paragraph would require that maps show structures within 300 feet of the operation if blasting is not planned. The proposed 300-foot requirement corresponds to the 300-foot prohibition against mining contained in section 522(e) of SMCRA and § 761.11. Proposed section 786.12(d) would apply the 1000-foot map requirement in § 779.24(d) for operations that are expected to conduct blasting. The coverage to 1000 feet is appropriate for the evaluation of the anticipated blast design required by proposed § 786.13(c). Proposed section 786.12(d) would allow the map showing the additional coverage, *i.e.*, the structures in the area between 300 and 1000 feet, to be submitted with the anticipated blast design after permit issuance but prior to blasting's being conducted at the site. This provision for design submission is included because of the possibility that the need for blasting may not have been anticipated at the time that the permit application was prepared.

2. Proposed § 786.12(d) does not include the requirement in § 779.24(f) that maps show proposed reference area boundaries for determining the success of revegetation. This requirement is not included in proposed § 786.12(d) because the proposed revegetation performance standards at § 829.111 would not require reference areas.

Proposed § 786.12(e) addresses cross sections, maps, and plans and would retain the requirements of § 779.25 except as follows:

1. Proposed § 786.12(e) would not apply the requirement of § 779.25(a)(3) that cross sections, maps, and plans show the coal and overburden strata. This requirement is not appropriate for abandoned coal refuse remining operations because such operations will not remove overburden strata or coal seams. Instead, the proposed regulation would require cross-sections illustrating the refuse site if the site is located on a steep slope (as defined at § 701.5). Requiring these cross sections only for steep slopes is consistent with the steep slope backfilling and grading requirements proposed at section 829.102 for abandoned coal refuse operations.

2. Proposed § 786.12(e) would not apply the requirement in § 779.25(a)(4) that maps show all coal crop lines and the ''strike and dip,'' *i.e.*, the direction and slant, of the coal to be mined. Because abandoned coal refuse remining operations will not mine coal seams, this requirement is not appropriate. Instead, the proposed regulation would require maps to show all coal outcrops within the permit area together with their strike and dip. This latter information is needed because coal seams may outcrop within the refuse area and affect ground-water movement.

3. Proposed § 786.12(e) would not apply the requirements in § 779.25(a)(6) for information on the location and extent of subsurface water, if encountered. Since abandoned coal refuse remining operations will only remove or reprocess refuse that has been relocated from other areas and will neither remove nor disturb strata that serve as aquifers for subsurface water, we do not believe that information as to the location and extent of subsurface water is necessary. However, the proposed regulation does apply the requirement in § 779.25(a)(7) that maps show surface water bodies including springs (seeps). We believe that the information on springs will provide appropriate information related to potential ground-water flow systems, if such information is needed.

Section 786.13 Information on Operation Plans

Proposed § 786.13 specifies the information that would be required in the operations plan. The following paragraphs discuss these requirements in detail.

Proposed § 786.13(a) concerning general requirements would apply the requirements of § 780.11 that are appropriate to abandoned coal refuse operations. The proposed paragraphs would require a description of the removal and on-site reprocessing activities to be conducted under the abandoned coal refuse remining permit as well as a description of associated equipment and facilities. Because the proposed requirements of § 786.13(a) would apply solely to ''abandoned coal refuse remining operations,'' as that term would be defined in section 701.5, the extraction of coal by auger, surface, and underground methods would not be authorized under permits for abandoned coal refuse remining operations.

Proposed § 786.13(b) concerning existing structures would apply the requirements of § 780.12. We believe that the requirements at § 780.12 should generally apply to permit applications for abandoned coal refuse remining operations. The proposed paragraph would require that the narrative identify whether structures are associated with removal or reprocessing operations.

Proposed § 786.13(c) concerning blasting would require a blasting plan in accordance with the regulations at § 780.13, whenever blasting is planned during the abandoned coal refuse remining operation.

Proposed § 786.13(d) concerning maps and plans would apply the requirements of section 780.14 except as follows:

1. Proposed section 786.13(d)(1) would apply the maps and plans requirements of section 780.14(a), except that, in lieu of the requirements of §§ 779.24 and 779.25 referenced in § 780.14(a), the requirements of § 786.12(d) and (e) would apply.

2. Proposed §§ 786.13 (d)(1) and (2) contain requirements almost identical to those of § 780.14(b)(4) and (5) except that the proposed regulation reflects the fact that coal refuse would be utilized; that coal or refuse may be the usable product; that new ''spoil,'' as defined in § 701.5, would not be generated; and that vegetation-support material, rather than topsoil, would be used to reclaim the sites. Proposed paragraph (2)(ii) would also provide that the required maps and plans show the storage areas

for vegetative support material, ''rock waste'' (*e.g.*, road cut material), and combustible and noncombustible noncoal waste. This latter requirement corresponds to the proposed provision of § 829.89 that would allow disposal of noncombustible noncoal waste within refuse disposal areas. Proposed paragraph (2)(iii) would apply the requirements of § 780.14(b)(11) except for the requirement to show the location of excess spoil areas. The reference to excess spoil areas would not apply, because spoil will not be generated by abandoned coal refuse remining operations.

Proposed § 786.13(e) concerning requirements for an air pollution control plan would apply the requirements of § 780.15 except that, in lieu of the requirements of § 816.95 referenced in § 780.15, the requirements of § 829.95 would apply.

Proposed § 786.13(f) concerning fish and wildlife information would retain the requirements of § 780.16.

Proposed § 786.13(g) concerning protection of public parks and historic places would apply the requirements of § 780.31.

Section 786.14 Information on Reclamation Plans

Proposed § 786.14 would establish the information that is required on plans for reclamation. The following paragraphs discuss these requirements in detail.

Proposed § 786.14(a) essentially would apply the general requirements of § 780.18 except that, in lieu of the requirements of part 816 referenced in section 780.18, the corresponding requirements of part 829 would apply. The proposed regulation would not require the same detail and specificity that is required by the existing regulations regarding revegetation information. Rather, the proposed regulation would require that the application include a plan for revegetation as required by proposed § 829.111. We believe this requirement would provide us more than adequate information to assess the proposed revegetation plan.

Proposed § 786.14(b) essentially would apply the requirements of section 780.23 concerning postmining land use, except those related to existing land capability and productivity and those related to the information needed to propose a postmining land use different from the premining land use. For the reasons discussed above in the evaluation of each performance standard in sections 515 and 516 of SMCRA, detailed information on existing land capability, productivity, production, and land use is inappropriate to coal refuse remining operations. Proposed § 786.14(b) would, however, require a written description and photographs of existing land uses. The written description and photographs would describe and document both the existing land use and the location of any abandoned equipment and other noncoal mine waste left at the site. The proposed regulation would further require a detailed description of the proposed postmining land use and how it will be achieved. The proposed regulation would not apply the requirement of § 780.23(a) for a discussion of alternative land uses. Because the configuration of the abandoned refuse area before remining may not readily lend itself to a variety of postmining land uses after remining, we do not believe it is appropriate to require the permittee to expend the resources to identify such alternative uses. The proposed regulation would require that the plan be accompanied by any comments from the surface owner or State or local land use agencies that would have to initiate, implement, approve, or authorize the proposed land use. We believe this process would adequately identify any viable land use alternatives that exist.

Proposed § 786.14(c) would apply the requirements of § 780.25 for ponds, impoundments, banks, dams, and embankments. Therefore, to the extent such structures are included in the reclamation plan, they would be described in accordance with this section.

Proposed § 786.14(d) would apply the requirements of § 780.27 for mining near underground mines.

Proposed § 786.14(e) would apply the requirements of § 780.29 for diversions.

Section 786.15 Information on Hydrology

Section 786.15 would specify the information that is required on hydrology. The following paragraphs discuss those requirements in detail.

Section 786.15(a) Reprocessing Operations

Proposed § 786.15(a)(1) would apply the requirements of § 780.21 for the following types of information: Sampling and Analysis methodology, section 780.21(a); baseline hydrologic information, § 780.21(b); baseline information for the cumulative impact area, § 780.21(c); modeling, § 780.21(d); alternative water sources, § 780.21(e); probable hydrologic consequences determinations, section 780.21(f); cumulative hydrologic impact assessments, § 780.21(g); ground-water monitoring plans, section 780.21(i); and surface-water monitoring plans, § 780.21(j).

In addition, the requirements of § 780.21(h) pertaining to the hydrologic reclamation plan would be applied under proposed § 786.15(a)(2), with the exception of the requirement to restore approximate premining recharge capacity. Section 816.41(b)(2) does not require restoration of recharge capacity in coal mine waste disposal areas and fills. We believe that the restoration of recharge capacity is also not appropriate for areas affected by abandoned coal refuse remining operations.

Section 786.15(b) Removal Operations

This proposed section would apply, with appropriate adaptations, the major requirements for hydrologic information and analysis of the regulations at § 780.21 regarding: (1) The probable hydrologic consequences (PHC) determination required by section 780.21(f); (2) the cumulative hydrologic impact assessment (CHIA) required by § 780.21(g); and (3) the hydrologic reclamation plan (HRP) required by § 780.21(h). In addition, this proposed section would require the identification of BMPs that are proposed to either mitigate hydrologic impacts or create hydrologic enhancements.

The proposed rule also would apply, with appropriate adaptations, the other supporting requirements of § 780.21, including hydrologic information and analysis regarding sampling and analysis methodology, § 780.21(a); baseline information including supplemental information, § 780.21(b); baseline cumulative impact area information, § 780.21(c); modeling, § 780.21(d); alternative water source information, § 780.21(e); ground-water monitoring plans, section 780.21(i); and surface-water monitoring plans, § 780.21(j).

As background on the hydrologic information and analysis required by the existing permit regulations, we would like to summarize how the PHC, HRP, and CHIA relate to each other. The purpose of the PHC is to identify impacts on the hydrologic balance and the purpose of the HRP is to identify mitigation measures that would reduce adverse impacts on that balance. The PHC and HRP are provided by the operator in the permit application. The purpose of the CHIA, which is in part based on the PHC, is to determine the cumulative hydrologic effects in a specified watershed from the proposed mining operation together with all other anticipated mining operations in that watershed. The CHIA is prepared by the regulatory authority for an area that

includes the proposed permit area and is used in evaluating whether the operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

With regard to the requirements for hydrologic information and analysis, our proposed regulations would differ from the above-referenced regulations in four principal ways. Our proposed regulations would (1) Provide for a narrative PHC and encourage the use of available data, including that required by a National Pollutant Discharge Elimination System (NPDES) permit, to satisfy baseline requirements for seasonal flow conditions; (2) require the PHC to estimate improvements and/or enhancements as well as negative impacts to the hydrologic balance caused by the operator; (3) require surface and ground-water monitoring plans (and associated monitoring data collected during the abandoned coal refuse remining operation) only in cases where the PHC estimates negative impacts to the hydrology; and (4) require the HRP to identify the BMPs that will be proposed for use during the operation. These four differences are discussed in more detail below.

The first way our proposed regulation differs from the existing regulation on hydrology is that our proposed regulation at § 786.15(b)(1)(iii) would initially allow for a narrative PHC, including its requirement for baseline information on seasonal variations, to be based on available data, as opposed to the current requirements for a PHC based on site-specific data. We believe that for most coal refuse sites sufficient hydrologic information and data already exist to satisfy the PHC requirements for baseline information. Thus, our proposed regulation provides that a narrative PHC can be based on existing hydrologic information derived from (1) Modeling and other techniques; (2) data and findings for the proposed site including relevant hydrologic information that might have been previously required to obtain a point-source discharge permit under the NPDES program; or (3) other relevant remining operations. The proposed PHC would summarize probable hydrologic impacts or enhancements while providing support, generally in terms of available information and data, for any conclusions drawn. A PHC that contains an unsupported description of seasonal baseline variations or unsupported conclusions of probable hydrologic impacts or enhancements would not be acceptable.

When additional information or data are needed to support the PHC, we can request this information or data from the applicant pursuant to proposed § 786.15(b)(1)(v), which allows us to request supplemental information if adverse impacts are identified in the PHC, and proposed § 786.15(b)(3), which allows us to require any additional information (including site-specific hydrologic data) needed to ensure that the permit applicant will be able to comply with the performance standards of proposed part 829. Thus, whatever the initial level of hydrologic information and data submitted in the permit application, we have ample authority under the proposed regulations to request any additional information or data that is necessary to assess the applicant's conclusions as to probable hydrologic consequences.

The second way our proposed regulations would differ from existing regulations is that our proposed regulation at § 786.15(b)(1)(iv) would require in the PHC a description of the enhancement to local ground- and surface-water hydrology expected from the proposed coal refuse remining operation, with particular emphasis on decreased loads of pollutants achievable through improved water quality, decreased flow or infiltration of water, or some combination thereof.

The third way our proposed regulations would differ from the existing regulations is that our proposed regulations would not routinely require the operator either to develop monitoring plans for surface and ground water or to monitor surface and ground water during the abandoned coal refuse remining operation. The rationale for this approach and the conditions under which supplemental monitoring plans and monitoring data would be required are discussed below.

The major difference between abandoned coal refuse remining operations and other surface mining operations, with regard to the need for monitoring, is alluded to in section 517(b)(2) of SMCRA. That section requires monitoring of operations that disturb rock strata serving as aquifers that significantly ensure the hydrologic balance of water use. However, as previously noted, abandoned coal refuse remining operations will remove or reprocess only materials that have been relocated from other areas and placed on a refuse site. These operations will not disturb any strata that serve as aquifers, and thus the monitoring requirements of section 517(b)(2) should not apply.

Our proposed regulations would not routinely require monitoring plans (and associated monitoring data) for surface water and ground water. If, however, the PHC indicates probable adverse impacts to the hydrologic balance, then proposed § 786.15(b)(1)(v) would require compliance with the supplemental information requirements of § 780.21(b)(3) and the ground- and surface-water monitoring requirements of § 780.21(i) and (j). In this way, full monitoring would be assured whenever probable adverse hydrologic consequences are identified in the PHC.

The fourth way our proposed regulations differ from existing regulations is that proposed § 786.15(b)(3) would require that the HRP identify the specific BMPs to be used and any additional information we might require to ensure compliance with the performance standards of part 829. This requirement recognizes that the SMCRA regulatory authority always has the inherent authority to require additional information, including information pertaining to BMPs, if that information is needed to make a decision on a permit application.

In summary, we believe the approach that we have taken in our proposal with respect to baseline information, PHC and HRP requirements, and BMPs is reasonable and, at the same time, technically sound. Our belief is buttressed by the fact that the ground water and surface water at abandoned coal refuse sites are most often already adversely impacted. Abandoned coal refuse removal operations, therefore, could be reasonably expected to maintain or improve the existing hydrologic balance rather than adversely affect it, as indicated by statistical evidence presented below in summaries of data from the Pennsylvania regulatory program. Thus, our proposed regulations, which are intended to facilitate the remining of abandoned coal refuse piles and provide the same level of environmental protection as under sections 515 and 516 of SMCRA, reasonably could be expected to maintain or improve the hydrologic balance of abandoned coal refuse sites.

As noted, Pennsylvania has been a leader in promoting remining and in documenting the positive environmental effects of remining operations, and has a hydrologic remining data base that goes back to 1985. See Environmental Protection Agency, 2001, Coal Remining—Best Management Practices Guidance Manual, EPA–821–B–01–010, pp. 16–18. This EPA manual reports that, of 260 remining permits issued by Pennsylvania through 1997, 98 percent resulted in pollutional loads that were either lower than baseline or only slightly exceeded baseline and did not require long-term treatment.

Pennsylvania's database through 2003 contains hydrologic information on a total of over 300 remining operations. The two figures presented below are derived from information in that database for reclaimed sites and detail the environmental enhancements that can reasonably be expected from similar remining operations. According to staff of the Pennsylvania Department of Environmental Resources (personal communication with our staff, 2003), the figures and the database from which these figures were prepared consist of remining sites permitted in Pennsylvania under the alternative effluent provisions of section 301(p) of the Clean Water Act, 33 U.S.C. 1311(p), popularly referred to as the ''Rahall amendment of 1987.'' The sites represent all types of remining categories including coal refuse operations covered by our proposed regulations.

One hundred of the sites, having about 230 acid discharges prior to the remining, have been fully reclaimed. Figure 1 shows that most of these 230 discharges were either eliminated, improved, or at least did not worsen with respect to acidity, iron and manganese (Mn) loads. Figure 2, which is a composite of the 230 discharges, shows a significant aggregate reduction in acid and sulfate loads after remining.

FIGURE 1

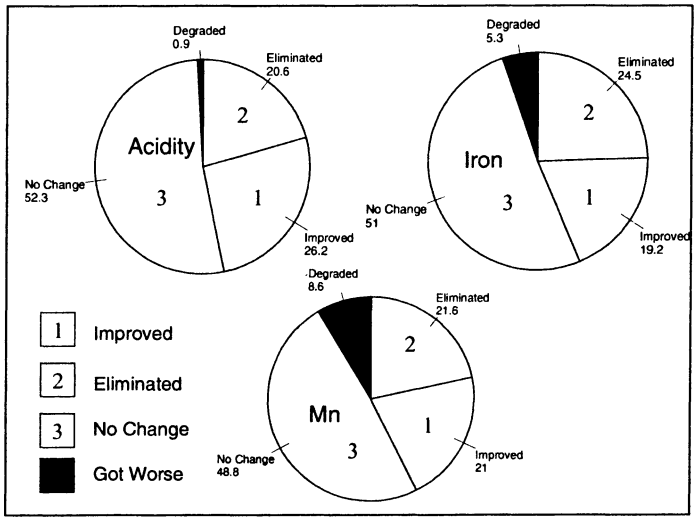
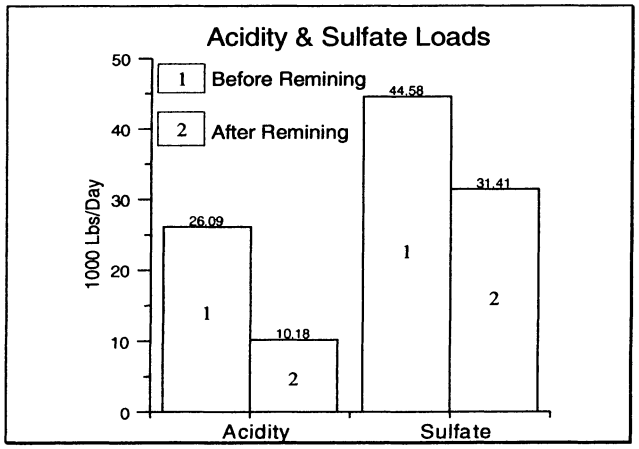


FIGURE 2



Section 786.16 Geologic and Refuse Information

Proposed § 786.16(a) would apply the requirements of sections 780.22(a)(1) and (3) that the permit application provide sufficient geologic data, if appropriate, and refuse data in sufficient detail to assist in determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary; whether the operation has been designed to prevent material damage to the hydrologic balance outside the permit area, and whether reclamation can be accomplished. The ''if appropriate'' caveat, which is not in the existing rule language, is included in the proposed language to expressly recognize that geologic data may not always be needed or helpful for coal refuse sites. The existing rule language does not require the submission of refuse data, but such information is clearly needed under the proposed rule. Proposed § 786.16(b) also would include the requirement of § 780.22(c) that authorizes us to request additional geologic and refuse data if deemed necessary to protect the hydrologic balance or meet the performance standards of this chapter. Section 780.22(c) does not require the submission of refuse data, but such information would be required under the proposed rule.

The proposed regulation would not apply the requirement of § 780.22(a)(2) for identifying all potentially acid- or toxic-forming strata. We do not believe it appropriate to retain this requirement because refuse piles are, by their very nature, potentially acid- or toxic-forming; they are not homogenous and would, therefore, require extensive sampling in order to accurately map their chemical variations. Furthermore, the previously noted Pennsylvania study would strongly suggest that this identification is not needed because abandoned coal refuse remining operations, particularly removal operations, would be expected to maintain or improve site conditions.

The proposed regulation also does not retain the requirements of § 780.22(b) to provide a description of the geology down to the strata below the coal seam to be mined, or down to any acquifer below the coal seam to be mined that could be adversely impacted by mining. These requirements are not appropriate because abandoned coal refuse remining operations will not disturb or mine any strata, including ''coal seams.''

Section 786.17 Information on Roads, Support Facilities

Proposed § 786.17 retains the requirements of § § 780.33 and 780.37 for roads, and the requirements of § 780.38 for support facilities.

Disposal of Excess Spoil

We have not proposed a counterpart in section 786 to the requirements of § 780.35 on excess spoil. The excess spoil requirements are not appropriate to abandoned coal refuse remining operations because, in order to mine the refuse, these operations will not remove overburden and, consequently, will not produce excess spoil.

Part 829—Special Permanent Program Performance Standards: Abandoned Coal Refuse Remining Operations

Proposed part 829 contains special performance standards for abandoned coal refuse remining operations. As discussed below, many of the provisions in part 829 incorporate by reference the requirements of parts 816 and 817, or adapt them as appropriate.

Section 829.1 Scope

This proposed section would state that part 829 contains the performance standards established under the authority of the EPAct and SMCRA. Section 829.1 states that the standards of this part would apply to all abandoned coal refuse remining operations unless otherwise specified. Where specified, the standards would apply either to refuse removal operations or to on-site refuse reprocessing operations. We also explain the use of the pronouns ''we'', ''our'', and ''us,'' which refer to the regulatory authority and the pronouns ''you'' and ''your,'' which refer to the applicant and operator. We use pronouns throughout this part in order to make the regulations more readable.

Section 829.2 Objectives

The objective of this part is to ensure that abandoned coal refuse remining operations are conducted in a manner that preserves and enhances environmental and other values following reclamation in accordance with the requirements of SMCRA, as amended by the EPAct.

Section 829.3 General Requirements

Proposed § 829.3 would require that any person intending to conduct abandoned coal refuse remining operations obtain a permit in accordance with part 786 and obtain a bond in accordance with subchapter J. Proposed § 829.3 specifies that any person who conducts abandoned coal refuse remining operations would be subject to the existing requirements of:

§ 816.43—Diversions.
§ 816.47—Hydrologic balance: Discharge structures.
§ 816.57—Hydrologic balance: Stream buffer zones.
§ 816.59—Coal recovery.
§ 816.61—Use of explosives: General requirements.
§ 816.62—Use of explosives: Pre-blasting survey.
§ 816.64—Use of explosives: Blasting schedule.
§ 816.66—Use of explosives: Blasting signs, warnings and access control.
§ 816.67—Use of explosives: Control of adverse effects.
§ 816.68—Use of explosives: Records of blasting operations.
§ 816.79—Protection of underground mining.
§ 816.87—Coal mine waste: Burning and burned waste utilization.
§ 816.97—Protection of fish, wildlife, and related environmental values.
§ 816.131—Cessation of operations: Temporary.
§ 816.132—Cessation of operations: Permanent.
§ 816.150—Roads: General.
§ 816.151—Primary roads.
§ 816.180—Utility installation.
§ 816.181—Support facilities.

Section 829.10 Information Collection

Proposed § 829.10 contains information on the Office of Management and Budget's approval of the information collection requirements of part 829. Part 829 sets forth the minimum environmental protection performance standards for abandoned coal refuse remining operations, and requires periodic submission of performance data or inspection surveys that relate to these operations. Proposed part 829 implements sections 515/516 of SMCRA, as amended by the EPAct. We estimate that each year, each of the 22 remining operators would require approximately 180 hours, depending on which requirements of §§ 829.3 and 829.81 are met, and $200 per operator to complete the requirements of this part. In addition, for each of the 22 remining applications that would be reviewed, the regulatory authority would require 20 hours, with no non-wage costs, to review the information required by part 829.

Section 829.11 Signs and Markers

Proposed § 829.11 retains the requirements of § 816.11 for signs and markers except that, in lieu of the requirements of § 816.22 referenced in § 816.11(f), our proposal would reference § 829.22, which applies to topsoil markers.

Section 829.13 Casing and Sealing of Drill Holes, Portals, and Other Openings

Proposed § 829.13 retains the requirements of §§ 817.13, 817.14, and 817.15 for the casing and sealing of holes and other openings that might be encountered except that, in lieu of the requirements of § 817.41 referenced in §§ 817.13 and 817.15 regarding the use of monitoring hole or other openings for water wells, the requirements of § 829.41 apply.

Section 829.22 Soils and Other Vegetation-Support Material

Proposed § 829.22 would provide different requirements than those of § 816.22 for reasons discussed below. Under our proposed regulations, the operator would be required to select and manage vegetation-support materials to achieve a vegetative cover at least equal to the existing vegetative cover on the abandoned coal refuse site. Proposed § 829.22(b) would apply the requirement of § 816.22(d)(4) for application of nutrients and soil amendments when necessary to establish the vegetative cover.

The proposed regulation, in part, includes requirements similar to those of § 816.22(b) and (e) which apply to surface mining operations where existing topsoil is not suitable to sustain vegetation. The proposed regulation would not apply the requirements of § 816.22(a), (c), and (d), which govern the removal, storage and redistribution of topsoil respectively, as most refuse piles have little, if any, retrievable topsoil. The proposed regulation at § 829.22, however, would provide us latitude, on a permit-specific basis, to require specific storage and redistribution plans for vegetation-support material.

We believe the approach of proposed § 829.22 would reflect the soil conditions encountered at the great majority of abandoned coal refuse sites. An abandoned coal refuse site usually contains a variety of vegetation-support materials that, when enriched with soil amendments, would be more suitable for vegetative growth than if the vegetation-support materials were left in an unaugmented state. As an example, the operator may select weathered earth materials on the surface of the abandoned coal refuse pile or refuse site and add appropriate soil amendments to produce a material much more suitable for sustaining vegetative growth. In this regard, sub-surface materials or soil from off the refuse pile or refuse site may also be available and better suited for revegetation than the weathered surface materials often found on a refuse pile or site. Under the proposed regulation, the refuse remining operator would identify, prior to permit approval, the vegetation-support material that will be used in reclamation. We recognize that sometimes acidic materials may be the only vegetation-support material available to an operator. In such situations, use of acid-tolerant vegetative species and the chemical treatment of the vegetative-support materials may be necessary to establish and sustain vegetative growth. The operator may use a certified soil scientist to certify that the proposed vegetation-support material is equal to or better than that existing on the abandoned coal refuse site. This certification is not, however, proposed as a requirement.

Section 829.41 Hydrologic-Balance Protection

Proposed § 829.41(a), which would apply to on-site reprocessing operations, would apply most of the requirements of § 816.41, hydrologic-balance protection; and § 816.42, hydrologic balance: water quality standards and effluent limitations. The proposed rule would not apply the requirement in § 816.41(b)(2) to restore recharge capacity. Also, in lieu of the requirements of § 780.21(h) referenced in § 816.41, the proposed rule would apply the requirements of § 786.15(a)(2).

Because the washing processes associated with on-site reprocessing operations often have comparable impacts on surface and ground water systems to those caused by other surface coal mining operations, our proposed rule would retain existing hydrologic balance performance standards. The sole exception is the requirement to restore recharge capacity. This requirement is not appropriate to reprocessing operations because they neither remove nor replace overburden, nor remove or disturb strata that serve as aquifers. Therefore, reprocessing does not involve actions that necessitate restoration of recharge capacity.

Proposed § 829.41(b)(1) applies to refuse removal operations and would apply most of the principal provisions of § 816.41, except for the requirement of § 816.41(b)(2) to restore recharge capacity. We believe it is not appropriate to require restoration of recharge capacity for sites of removal operations, because, like underground mines, removal operations do not remove or replace overburden. In order to ensure consistency of requirements related to abandoned coal refuse remining operations, the proposed regulation also would apply the ground- and surface-water monitoring requirements of proposed part 786 instead of those in § 816.41.

The proposed regulations generally would prohibit discharge of waste and water, into underground mine works. These requirements are similar to the requirements of § 816.41(i)(2). However, discharges from removal operations into underground works may in some cases be appropriate. Therefore, proposed § 829.41(b)(iv) would authorize discharges into underground mine works if we approve the discharge and the operator demonstrates that the operation would meet the following requirements of § 816.41(i): The permit would include baseline ground-water and geologic information to describe the hydrologic and geologic conditions associated with the underground mine works; the PHC would address the impacts that the discharges will have on ground- and surface-water users; the hydrologic reclamation plan would include measures to remediate potential impacts to ground- and surface-water users; and provision would be made for monitoring ground- and surface-water systems.

Section 829.45 Hydrologic Balance: Sediment Control Measures

Proposed § 829.45 would apply the sediment control requirements of § 816.45 except that, in lieu of the requirements of §§ 816.102 and 816.111(b) referenced in § 816.45, the requirements of §§ 829.102 and 829.111 would apply. See the discussion below of §§ 829.102 and 829.111.

Section 829.46 Hydrologic Balance: Siltation Structures

Proposed § 829.46 would apply the requirements of § 816.46 for siltation structures with the exception of § 816.46(b)(2), which is currently suspended. Also, in lieu of the requirements of §§ 816.42 and 816.49 referenced in section 816.46, the requirements of §§ 829.41(b) and 829.49 would apply. See the discussion infra of §§ 829.41(b) and 829.49.

Section 829.49 Impoundments

Proposed § 829.49 would apply the requirements of §§ 816.49 and 816.56 for impoundments and the rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities except that, in lieu of § 780.25 as referenced in § 816.49, the requirements of proposed § 786.14(c), would apply. Furthermore, proposed § 829.49(b) would allow the retention of permanent impoundments on reclaimed coal refuse in only two circumstances. First, the proposed rule would allow

retention of impoundments that do not have a retaining embankment (*e.g.*, dug-out type impoundments). Second, the proposed rule would allow the retention of impoundments on non-steep slope locations if the impounding structures meet the requirements of § 816.49. A retained structure that meets the requirements of § 816.49 would be suitable for the approved postmining land use, such as a wetland.

Excess Spoil

The proposed rule would not apply the excess spoil requirements of §§ 816.71 through 816.74. Because abandoned coal refuse remining operations will not remove overburden in order to extract the refuse, they will not generate spoil. Proposed § 829.102 would address the grading requirements appropriate to rock and refuse disposal.

Section 829.81 Redeposition and Handling of Coal Mine Waste and Coal Refuse Piles

Proposed § 829.81 would apply most of the requirements of § 816.81, 816.83, and 816.84 for coal mine waste. Proposed § 829.81(a) would specify that we may, on a site-specific basis, alter the ''design certification'' and ''foundation'' standards of § 816.81(c) and (d), and the inspection requirements of § 816.83(c). We are proposing this provision because abandoned coal refuse remining operations may occur on refuse sites with different refuse characteristics, and for different sites different refuse requirements may be appropriate. For example, some refuse remining operations may result in total removal of refuse from the site and others may result in small amounts of waste being left behind that can be graded into the surrounding terrain with little effect on site stability. Still other operations may result in relatively significant amounts of material being left on the site that would need to be configured during reclamation as a mound or refuse pile. And even within the same site, different aggregations of refuse material may have different physical characteristics and, following weathering, different stability characteristics. For example, cohesion is an important factor in slope stability analyses and resulting safety factors. Most pre-SMCRA coal refuse material has weathered extensively, resulting in finer clay-like particle sizes and increased cohesion. However, some refuse material has not weathered extensively, so rock sizes are coarse and the refuse may have little or no cohesion.

Because of the wide range in refuse material composition and weathering, as well as the varying amount of refuse material that may remain on the site following reclamation, we believe that the regulatory authority should have the latitude, on a site-specific basis, to allow alternate design and foundation standards for handling and redeposition of coal refuse. The regulatory authority could, for example, require safety factors ranging from 1.3–1.5 in lieu of requiring the same value in all cases. For these same reasons, detailed site inspections by a professional engineer or other specialist may not be warranted in every case. We believe that the regulatory authority can best decide, on a site-specific basis, the needed amount of detail in the inspection, the required inspection frequency, and/or the necessary qualifications of the inspector.

Proposed § 829.81(b) would provide that refuse waste deposited adjacent to the refuse site (i.e., next to the site where the coal refuse was originally deposited) must comply with the standards of §§ 816.81 through 816.84. We believe these standards are appropriate because such adjacent disposal would create new coal refuse disposal structures.

Proposed § 829.81(c) authorizes the underground disposal of coal refuse waste only when the requirements of both section 816.81(f) and proposed § 829.41(b)(1)(i) are met. The rationale for limiting the underground disposal of waste solely to refuse removal operations is addressed above in the preamble discussion of proposed § 829.41.

Proposed § 829.81(d) would not apply the 4-foot cover requirement of § 816.83(c)(4), because adequate amounts of nontoxic and noncombustible cover material are generally not available on abandoned coal refuse sites. However, proposed § 829.102, does require that any remaining refuse from an abandoned coal refuse remining operation must be covered with sufficient noncombustible and nontoxic material to prevent sustained combustion. Section 829.81(d) would allow us to approve site-specific variations in the amount and type of cover material used, to prevent sustained combustion and support vegetation.

Proposed § 829.81(e) would not apply the vegetation removal requirement of § 816.83(c)(1) or the permanent impoundment prohibition of § 816.83(c)(3), because these two topics are addressed in proposed §§ 829.22 and 829.49, respectively.

For placement of coal mine waste, proposed § 829.81(f) would apply the requirements of § 816.83(c); except that, in lieu of the requirements of § 816.22 referenced in § 816.83(c), the requirements of proposed section 829.22 would apply in order to ensure consistency of requirements related to abandoned coal refuse remining operations.

Section 829.89 Disposal of Noncoal Mine Waste

Proposed § 829.89(a) would apply the requirements of §§ 816.89(a) and (b) for the disposal of noncoal mine wastes with one exception. In lieu of the requirements of §§ 816.111 through 816.116 referenced in section 816.89(b), the operation would be required to comply with the cover and vegetation requirements of proposed § 829.111.

Proposed §§ 829.89(b) and (c), in lieu of the requirements of § 816.89(c), would authorize the disposal of noncombustible noncoal mine waste, including coal combustion wastes, within the refuse pile if the disposal will not adversely affect final site reclamation or public health and safety. This provision recognizes the possible benefits of bringing noncombustible alkaline wastes to the site as well as the probability of encountering large pieces of abandoned equipment or machinery, and would allow on-site disposal of both. We expect that the regulatory authority would require the applicant to provide an analysis of any noncombustible wastes proposed to be disposed at the site and that the regulatory authority would use this analysis to determine that the disposal would not adversely affect final site reclamation or public health and safety.

Section 829.95 Stabilization of Surface Areas

Proposed § 829.95 would apply the provisions of § 816.95 concerning the stabilization of surface areas except that the section has been reworded to reflect that vegetation-support material, instead of topsoil, would be used to repair rills and gullies.

Section 829.99 Slides and Other Damage

Proposed § 829.99 would apply the requirements of § 816.99(b) concerning operator responsibilities if a slide should occur. The proposed rule would not apply § 816.99(a), which requires the retention of an undisturbed natural barrier. The barrier requirement generally applies to contour and mountaintop removal mining operations that backfill spoil on the mined-out bench. This barrier provision, however, is not appropriate to abandoned coal refuse remining operations because these operations do not remove in-place

rock in order to extract the refuse. Consequently, the opportunity for the retention of an undisturbed natural barrier does not exist.

Section 829.100 Contemporaneous Reclamation

Proposed § 829.100 would apply the requirement of § 816.100 to reclaim the disturbed area as contemporaneously as practicable with the abandoned coal refuse remining operation. In addition, the proposed rule would require the permit to establish a schedule for the contemporaneous reclamation of the site.

During the formation of this rulemaking, personnel from OSM, the States, industry and the environmental community visited numerous abandoned coal refuse sites throughout the country. Some of these sites had been remined and reclaimed or were in the process of being reclaimed. Other partially remined sites had been abandoned and left unreclaimed. In order to minimize the amount of land left unreclaimed if a site permitted under this rule is abandoned, we are proposing that the permit contain a schedule defining contemporaneous reclamation. A schedule would make it possible for the regulatory authority to verify that reclamation is proceeding in a timely fashion and to take prompt action if there is a question about abandonment.

Section 829.102 Grading

As discussed below, proposed § 829.102 would apply, with some revision, many of the requirements of § 816.102, and would provide different requirements than those of §§ 816.106 and 816.107. The proposed rule would not retain the requirements of §§ 816.102(k), 816.104 and 816.105 because they pertain to removal of thin and thick overburden, mountaintop removal, and variances from approximate original contour (AOC). These standards all address removal and replacement of overburden and, as discussed above, overburden removal does not occur in abandoned coal refuse remining operations.

Proposed § 829.102 also would not apply the requirements of § 816.102(a)(1) and (k) for approximate original contour (AOC), the requirements of § 816.102(b) and (d) for excess spoil and the placement of spoil outside the permit, or the requirements of § 816.102(i) for permanent impoundments. It is not appropriate to require AOC for a remined refuse pile site, because the amount of spoil, rock waste, and refuse remaining after refuse remining may be either less than or greater than the amount needed to make the site closely resemble the general surface configuration of the land prior to the original placement of the refuse.

Because abandoned coal refuse remining operations will not remove overburden to extract the refuse, ''spoil,'' as defined in § 701.5, will not be generated by these operations. Rather, these operations may encounter existing spoil left by the abandoned mine operation. See the definition of ''spoil'' in section 701.5, which would encompass any existing spoil encountered at an abandoned coal refuse site. The proposed references to ''rock waste'' would refer to rock produced from such activities as road construction and highwall stabilization.

More specifically, proposed § 829.102(a) would require that grading be done in accordance with the redeposition handling requirements of proposed section 829.81. Proposed § 829.102(a) also would require that grading activities be completed according to the reclamation plan schedule required by proposed § 786.14(a).

Proposed § 829.102(b) would apply the requirements of § 816.102(a) except for the requirement to achieve AOC. As discussed above, a requirement to achieve AOC is not appropriate because the land surface and elevations of abandoned coal refuse remining sites have already been altered from their original pre-mined conditions, and refuse remining does not remove overburden. Proposed § 829.102(b) would apply the 1.3 static safety factor that is required by § 816.102(a)(3) and 816.102(e).

The proposed rule would not apply the requirements of § 816.102(b), (c), and (d), which primarily relate to spoil. As noted above, spoil will not be generated by abandoned coal refuse remining operations. The requirement of § 816.102(c) to compact waste where advisable is duplicative of § 816.81(a), which would be applied to abandoned coal refuse remining operations by proposed § 829.81(a).

Proposed § 829.102(c) would allow land adjacent to the refuse remining site to be graded to conform to the remining site. This paragraph further requires that vegetation-support material from the adjacent area be removed and stored prior to such grading so that it will be available for future use at both sites.

Proposed § 829.102(d) would apply the requirements of section 816.102(f) concerning covering or treating both exposed coal seams and combustible material to prevent sustained combustion. The requirement of § 816.102(f) to cover acid- and toxic-forming material would be addressed by proposed § 829.41.

Proposed § 829.102(e), (f), and (g) would generally apply the requirements of sections 816.102(g), (h) and (j). The permanent impoundments requirements of section 816.102(i) would be addressed at § 829.49 and would not be addressed in section 829.102.

Proposed § 829.102(h) would apply the principal elements of § 816.106. Under this proposed provision, highwalls and other mining-related rock cuts encountered or uncovered during refuse remining operations would be eliminated to the extent technically practicable given available backfill material and stability considerations. Such rock cuts may exist in refuse sites located in valley fills, hillside areas, and strip cuts. The proposed paragraph would require that available spoil, rock waste, or refuse from the abandoned coal refuse site disturbed by the operation would be used to eliminate rock cuts in a safe manner consistent with achieving site stability. Proposed § 829.102(h) does not contain an ''other reasonably available spoil'' provision comparable to that found in § 816.106(b)(1) concerning elimination of highwalls. This provision was not included because it could involve disturbance and potential destabilization of previously mined areas adjacent to those where the refuse remining will occur. While grading of adjacent areas may be necessary in some instances for stability purposes, it may not be desirable to disturb those areas in other instances, solely to obtain backfill material.

Proposed § 829.102(i) would apply to remining of abandoned coal refuse sites located on steep slopes. Unlike § 816.107(c), this paragraph would not prohibit disturbing land above the highwall, and would allow us to authorize up-slope disturbances when warranted for diversions or other operations-related activities. Proposed § 829.102(i)(1), which prohibits placing specified materials on the downslope below the elevation of the refuse site, would be consistent with the prohibitions in § 816.107(b) against placing materials on the downslope. Proposed § 829.102(i) would impose additional requirements to minimize the potential that refuse remining activities on steep slopes will result in unstable conditions. More specifically, proposed § 829.102(i)(2)(i) would require refuse on steep slopes to be removed in horizontal lifts, i.e., in horizontal layers, starting at the top of the refuse pile. Proposed § 829.102(i)(2)(ii) further would prohibit the removal of the toe of the refuse until the removal of refuse by

horizontal lifts progresses down to that level. Because alternate extraction methods may be necessary for some refuse remining sites, proposed § 829.102(i)(3) would allow us to waive the requirements of § 829.102(i)(2)(i) and (ii) if the permit demonstrates, on the basis of stability analyses, that the alternate methods would not result in unstable conditions during refuse remining.

Section 829.111 Revegetation, Standards for Success, and Bond Liability Period

Proposed § 829.111 would require compliance with the revegetation requirements of §§ 816.111(b)–(d), 816.113, and 816.114, while establishing revegetation success standards and responsibility periods that differ from those of § 816.116.

Proposed § 829.111(a) generally would retain the requirements of § 816.111(a), with the exception of the requirement for a diverse vegetative cover. Because of limitations often found in the quality of the soil or other surface materials at abandoned coal refuse sites, proposed paragraph (a) would not include the requirement of § 816.111(a)(1) to achieve a diverse cover on regraded areas and all other disturbed areas. For sites that are currently barren or sparsely vegetated, the proposal would require that the operator establish sufficient vegetation to stabilize the surface area. Such stabilization of the surface area should be attainable using surface materials found at the site, augmented by soil amendments and, where necessary, by additional soil brought in from borrow areas. This requirement for sufficient vegetation to stabilize the surface area is comparable to existing requirements for AML refuse reclamation projects. Proposed § 829.111(b) and (c) would require that the operator stabilize the surface from erosion in accordance with proposed § 829.95 and establish a vegetative cover no less than that which existed on the site prior to the abandoned coal refuse remining operation. In our field review of abandoned coal refuse sites, we found that many sites had little or no ground cover. When there was ground cover at these sites, the cover most often consisted of only a few species. Other abandoned coal refuse sites were reforested with a full tree canopy or contained wetlands with an extensive cover of marsh vegetation, often of a single species that developed on slurry ponds. In light of these observations, the proposed rule would require that erosion be stabilized and a vegetative cover be established that is no less than that encountered at the site prior to remining.

Proposed § 829.111(d) would incorporate § 816.116(c), which establishes the revegetation responsibility period and contains certain related requirements pertaining to the evaluation of revegetation success, with two modifications. As proposed, the rule would establish a revegetation responsibility period of two full years after the last year of augmented seeding, fertilizing, irrigating or other work for areas with an average annual precipitation greater than 26.0 inches. The responsibility period would be five full years after the last year of augmented seeding, fertilizing, irrigating or other work for areas with an average annual precipitation equal to or less than 26.0 inches.

At present, § 816.116(c)(2) contains two responsibility periods for areas with an average annual precipitation greater than 26.0 inches. Under paragraph (c)(2)(i), the period is five full years after the last year of augmented seeding, fertilizing, irrigating or other work; but paragraph (c)(2)(ii) reduces that period to two full years for lands eligible for remining if those lands are included in a permit issued under 30 CFR 785.25. Similarly, § 816.116(c)(3) currently contains two responsibility periods for areas with an average annual precipitation equal to or less than 26.0 inches. Under paragraph (c)(3)(i), the period is ten full years after the last year of augmented seeding, fertilizing, irrigating or other work; but paragraph (c)(3)(ii) reduces that period to five full years for lands eligible for remining if those lands are included in a permit issued under 30 CFR 785.25.

The shortened revegetation responsibility periods in paragraphs (c)(2)(ii) and (c)(3)(ii) of § 816.116 correspond to a provision in section 2503(b) of the Energy Policy Act of 1992 that added similar language to section 515(b)(20) of SMCRA as an incentive for remining operations.

Section 829.133 Postmining Land Use

Proposed § 829.133 would provide different requirements for postmining land use than those of § 816.133 which sets forth detailed criteria for determining premining uses of the land as well as detailed criteria for alternative postmining land uses. In lieu of these existing provisions, the proposed rule would require that all areas disturbed by abandoned coal refuse remining operations be restored to a condition capable of supporting the uses or higher or better uses than those that existed at the abandoned coal refuse site prior to commencement of the refuse remining operations.

Our proposal to require that the operator restore the abandoned coal refuse site to a condition capable of supporting an equivalent or higher or better use than that which existed before the remining operation is a function of the physical characteristics typically encountered at abandoned coal refuse sites. Most abandoned coal refuse sites pose environmental problems and are eligible for reclamation and acid mine drainage abatement under the Abandoned Mine Land Reclamation Fund. The range of environmental and safety problems typically found at these sites includes acid mine drainage and acid ponds, dust and erosion, unstable conditions, slides, lack of topsoil, refuse fires, etc. Many of these sites are little more than ''moonscapes'' where the existing vegetative cover is dramatically less than what one would ordinarily expect from an undeveloped land use. In such cases, the cost-effective postmining land use options available to the site are extremely limited. Accordingly, our proposed rule would require the site at least to be stabilized and covered with vegetation that would grow in available vegetative-support material and in a manner similar to the reclamation done under the AML program. In some cases, revegetation will involve planting wetland species, whereas in other cases, acid-tolerant species will be planted as the only species capable of achieving revegetation. In all cases, the site must be restored to a condition capable of supporting at least an equivalent use or a higher or better use than that which existed at the time of the abandoned coal refuse remining operation.

III. Public Comment Procedures

Electronic or Written Comments: If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

Except for comments provided in an electronic format, you should submit three copies of your comments if possible. We cannot ensure that comments received after the close of the comment period (see **DATES**) or at

locations other than those listed above (see **ADDRESSES**) will be considered or included in the Administrative Record.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, to the extent allowed by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment and you must submit your comment by regular mail, not by e-mail. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public hearings: We will hold a public hearing on the proposed regulations upon request only. The time, date, and address for any hearing will be announced in the **Federal Register** at least 7 days prior to the hearing.

Any person interested in participating at a hearing should inform Andy DeVito (see **FOR FURTHER INFORMATION CONTACT**), either orally or in writing by 4:30 p.m., Eastern time, on February 7, 2007. Any disabled individual who requires special accommodation to attend a public hearing should also contact Andy DeVito so that appropriate arrangements can be made.

If no one has contacted Mr. DeVito to express an interest in participating in a hearing by that date, a hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the Administrative Record.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who testifies at a public hearing provide us with a written copy of his or her testimony.

IV. Procedural Matters

What Are the Effects of This Rule on Federal Program States and on Indian Lands?

The proposed revisions, if adopted, will apply through cross-referencing in those States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The proposed regulations, if adopted, will also apply through cross-referencing to abandoned coal refuse remining operations on Indian lands, because we will amend the regulations in parts 750 and 785 for the purpose of incorporating by reference parts 786 and 829 into the programs for Indian lands and the Federal program States. Comments are specifically solicited as to whether unique conditions exist in any of these Federal program States or on Indian lands relating to this proposal that should be reflected either as changes to the national regulations or as specific amendments to any or all of the Federal programs or the Indian lands program.

How Will This Rule Affect State Programs?

Following publication of the final regulations, we will evaluate the State programs approved under section 503 of SMCRA to determine if any changes in those programs may be necessary. When we determine that a State program should be amended, the particular State will be notified in accordance with the provisions of 30 CFR 732.17. On the basis of the proposed regulations, we have made a preliminary determination that States may adopt similar regulations if they choose to, but we will not require them to amend their programs.

Section 529 of SMCRA authorizes the Secretary to promulgate separate regulations for anthracite coal mines. That provision is implemented through § 785.11 for permitting requirements and part 820 for performance standards. The Federal regulatory requirements essentially incorporate the anthracite program of the Commonwealth of Pennsylvania. That program, therefore, applies to anthracite culm banks and refuse piles. No change to § 785.11 or part 820 is considered necessary to apply these proposed regulations to anthracite refuse sites. Once proposed regulations for abandoned coal refuse remining operations are finalized, Pennsylvania may modify its anthracite program in accordance with part 732 to incorporate the provisions provided herein in order to facilitate the removal and/or reprocessing of anthracite refuse sites.

Executive Order 12866—Regulatory Planning and Review

These regulations are considered significant and are subject to review by the Office of Management and Budget under Executive Order 12866.

a. The regulations may raise novel legal or policy issues, which is the reason why they are considered significant under Executive Order 12866.

b. The regulations would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. The regulations would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. The regulations will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments or communities. The proposed regulations will not have an adverse economic impact on the coal industry or State regulatory authorities. This determination is based on the fact that the proposed regulations will facilitate the removal and/or reprocessing of coal refuse piles, abandoned prior to the enactment of SMCRA, by private industry for use as fuel for electric power generation. Coal refuse removal and reprocessing operations conducted under the new regulations are by choice. It is expected that such operations will result in significant positive benefits, both tangible and intangible. The benefits of such operations include:

Elimination of Health and Safety Problems

Serious health and safety problems are associated with refuse disposal sites. These problems include:

Refuse piles placed on hillsides, such as exist throughout Appalachia, may be unstable and slip, resulting in landslides.

Refuse is often easily combustible because of its significant coal content. As a result, burning refuse banks have been serious problems, both in terms of the noxious fumes emitted and the potential for fires spreading to adjacent areas and to nearby residences. Most of the burning piles have been reclaimed using AML Fund monies, but unreclaimed refuse piles have the

potential for catching on fire and becoming a hazard.

Refuse piles are attractive for off-road vehicle use which, because of the piles' unstable and steep slopes, can result in injury and even death.

Automobile accidents have been reported where dirt and rock have washed across highways from an adjacent abandoned refuse pile.

Many of these hazards will be eliminated by the removal and reclamation of the refuse piles that will be facilitated by the proposed regulations.

Elimination or Reduction of Existing Ongoing Environmental Problems

Refuse pile removal, followed by grading and revegetating the site, will eliminate or significantly reduce environmental problems associated with such piles including (1) Acid drainage and pollution of adjacent streams resulting from the large amounts of pyritic materials that are often present; (2) uncontrolled erosion resulting in stream siltation and downstream flooding; and (3) diminished aesthetic qualities.

Establishment of Vegetative-Support Material and Vegetative Cover

There is generally little or no topsoil existing on the surface of abandoned refuse sites. Typically, the topsoil was either buried or lost during the original refuse placement. Vegetation may be sparse and vary widely throughout the site. Removal of refuse material followed by reclamation of the site would allow identification of more suitable vegetation-support materials such as weathered earth or sub-surface materials that, with appropriate soil amendments, would be more suitable for vegetative growth than the existing vegetation-support materials without soil amendments. OSM recognizes that sometimes acidic materials are the only vegetation-support material available to an operator. In such situations, use of acid-tolerant vegetative species may be necessary in addition to surface treatment with chemicals. The end result would be establishment of a vegetative cover sufficient to prevent erosion and sedimentation, and compatible with a higher land use.

Recovery of Lost Coal Values

Refuse piles may have a carbon content ranging from a low of 27.5 percent to a high of 98.9 percent of the original coal values that were mined. Recovery of these formerly ''lost'' coal values, either by reprocessing or by directly burning the refuse, in a sense increases the nation's coal resources. Since the percentage of recoverable coal varies widely, we are, for computation purposes, assuming that the coal refuse, on average, contains from 5,000 to 8,000 Btu/lb, or about half the Btu value of bituminous coal. Therefore, the 9 million tons of refuse projected to be recovered/utilized annually represents, theoretically, at least 4.5 million tons of coal that could be added to the coal reserve base each year.

Reclamation Without Recourse to Limited Abandoned Mine Land Funds

Available data on reclaiming refuse sites indicates that the average reclamation costs will range from $200 to $70,000 per acre. These data also indicate that, depending on its size and configuration, a refuse pile contains approximately 40,000 tons of refuse per acre. Assuming that the analysis provided in the previous paragraph is reasonable, the 9 million tons of refuse projected to be recovered annually equates to 222 acres reclaimed annually. Reclamation costs for these 222 acres are estimated, using an average cost of $14,797 per acre, to be $3.3 million. Therefore, there is the potential for an estimated annual savings of $3.3 million in AML fund expenditures because government will be relieved of most reclamation costs for sites remined under the proposed regulations.

Increased Employment

It is projected that refuse burning power plants will be fueled by 20–22 refuse removal/reprocessing operations that will be active at any given time. Four categories of employees that will be working at either the co-generation stations or the refuse recovery operations have been identified. These categories include the construction workers for building new power generating stations; the power plant employees; refuse removal/reprocessing operation employees; and truck drivers.

Increased and Improved Variety of Potential Land Uses

Land use alternatives for these reclaimed sites could include, for example, returning the site to a forest, grassy field, or wildlife habitat that existed prior to mining; or creating areas that will allow residential or commercial development, or construction of parks, ball fields, gun clubs or other sports facilities.

Numerous examples of these uses for former refuse sites abound throughout the coal regions. It is expected that such uses will be enhanced by the proposed regulations.

Enhancement of Local Quality of Life and Adjacent Property Values

Removal or reprocessing these refuse sites will have a significant synergistic effect in that, by eliminating the attendant health, safety, and environmental problems, land use alternatives at the site will increase, the quality of life in nearby communities will be improved, and, it is anticipated, adjacent property values will often be enhanced.

Costs Associated With the Rule

Once fully implemented, the annual costs of this rule is estimated to be approximately $624,000 per year. That figure is based on an assumption that approximately 16 permit applications will be submitted each year under this rule and that it will cost each applicant $28,000 to prepare a permit application, and $11,000 for a regulatory authority to review and approve the application. Costs resulting from the rule would include the following:

- *Industry costs.* We estimate that annually, approximately 16 companies will apply for permits under these regulations. The estimated cost to prepare a permit application under the proposed regulations is approximately $28,000 per applicant. This estimate is based on the burden hours associated with the regulatory wage hour requirements in the rule multiplied by industry compliance costs of $60.00 per hour. See the burden hour tables below in the section on the Paperwork Reduction Act. Permit applicant costs would be covered by the profits derived from the sale of the coal removed.
- *State Costs.* There would be costs to those States that decide to issue equivalent State regulations. We estimate that approximately 7–10 States may voluntarily decide to promulgate equivalent State regulations. Fifty percent of State costs would be covered by the annual regulatory grant to the State from the Federal government. Costs would vary by State; however, grants to the States do not have per regulation cost breakdown. We can estimate that it will cost a State approximately $4500 to promulgate regulations and submit a State program amendment to OSM. This estimate is based on the burden hours associated with the regulatory requirements in 30 CFR 732.17 for submitting a State program amendment. The State cost is then reduced by 50 percent to $4,500 as a result of the annual regulatory grant given to the State by OSM. In addition, it will cost States approximately $11,000 to review and approve an application submitted under the

proposed regulations. This estimate is based on the burden hours associated with the regulatory requirements in the rule multiplied by State compliance costs of $45.00 per hour. See the burden hour tables below in the section on the Paperwork Reduction Act.

• *Federal Costs.* There would be costs to the Federal government in reviewing and approving submitted State program amendments. Data for FY 2005, available from OSM's cost accounting system, indicates that the average cost to process a proposed State program amendment is approximately $830.00 and for a final rule, $6,120. If 10 States were to submit proposed and final State program amendments the cost to the Federal Government would be approximately $130,700 (10 × [$830 + $6,120] = $130,700).

Regulatory Flexibility Act

The Department of the Interior certifies that these 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.*). For the reasons previously stated, the proposed regulations will not have an adverse economic impact on the coal industry or State regulatory authorities. Further, the regulations will not produce adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously stated, the regulations are not considered ''major'' under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The regulations:

a. Do not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Do 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 for the reasons stated above.

Unfunded Mandates

These regulations do not impose an unfunded mandate on State, Tribal, or local governments or the private sector of more than $100 million per year. The regulations do not have a significant or unique effect on State, Tribal, or local governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630, the regulations do not have takings implications to require a takings implication analysis.

Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the regulations do not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13132—Federalism

In accordance with Executive Order 13132, the regulations do not have Federalism implications sufficient to warrant the preparation of a Federalism Assessment for the reasons discussed above.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of these regulations on Federally-recognized Indian tribes and have determined that the proposed additions of parts 786 and 829 would not have substantial direct effects on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These regulations are not considered a significant energy action under Executive Order 13211. The proposed additions of parts 786 and 829 would not have a significant effect on the supply, distribution, or use of energy.

Paperwork Reduction Act

In accordance with 44 U.S.C. 3507(d), OSM has submitted the information collection and recordkeeping requirements of 30 CFR parts 786 and 829 to the Office of Management and Budget (OMB) for review and approval.

30 CFR Part 786

Title: Requirements for Permits for Abandoned Coal Refuse Remining Operations—30 CFR part 786.

OMB Control Number: 1029–XXX1.

*Summary:*Proposed 30 CFR part 786 sets forth the requirements for obtaining a permit for abandoned coal refuse remining operations. The requirements would ensure that the permit applicant obtains a permit to conduct an abandoned coal refuse remining operation in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended by the Energy Policy Act of 1992 (EPAct).

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 16 Surface coal mining permit applicants and 15 State regulatory authorities.

Total Annual Responses: 31.

Total Annual Burden Hours: 10,542.

SUMMARY ANNUAL BURDEN TO RESPONDENTS FOR 30 CFR 786

Section	Number of applicants	Hours per applicant	Number of States	Hours per State	Total hours requested
786.12(a)	16	25	15	5	475
786.12(b) & (c)	16	17	15	1	287
786.12(d)	16	16	15	6	346
786.12(e)	16	35	15	20	860
786.13(a)	16	15	15	5	315
786.13(b)	16	8	2	158	
786.13(c)	2	4	2	2	12
786.13(d)	16	40	15	20	940
786.13(e)	2	3	2	1	8
786.13(f)	16	8	15	4	188
786.13(g)	16	8	15	4	188

SUMMARY ANNUAL BURDEN TO RESPONDENTS FOR 30 CFR 786—Continued

Section	Number of applicants	Hours per applicant	Number of States	Hours per State	Total hours requested
786.14(a)	16	60	15	40	1,560
786.14(b)	16	10	15	5	235
786.14(c)	16	25	15	10	550
786.14(d)	8	30	8	5	280
786.14(e)	16	30	15	20	780
786.15	16	75	15	50	1,950
786.16	16	30	15	20	780
786.17	16	30	15	10	630
Total					10,542

Total Non-Wage Burden Costs: $77,560.

SUMMARY ANNUAL NON-WAGE COST TO RESPONDENT FOR 30 CFR 786

Section	Number of applicants	Cost per applicant	Total costs
786.12(a)	16	50	800
786.12(b) & (c)	16	50	800
786.12(d)	16	50	800
786.12(e)	16	50	800
786.13(a)	16	50	800
786.13(b)	16	50	800
786.13(c)	2	100	200
786.13(d)	16	120	1,920
786.13(e)	2	20	40
786.13(f)	16	100	1,600
786.13(g)	16	200	3,200
786.14(a)	16	600	9,600
786.14(b)	16	25	400
786.14(c)	16	300	4,800
786.14(d)	8	25	200
786.14(e)	16	145	2,320
786.15	16	2,000	32,000
786.16	16	1,000	16,000
786.17	16	30	480
Total			77,560

30 CFR part 829

Title: Special Permanent Program Performance Standards—Abandoned Coal Refuse Remining Operations—30 CFR part 829.

OMB Control Number: 1029–XXX2.

Summary: Proposed 30 CFR part 829 sets forth the minimum environmental protection performance standards and would require periodic submission of performance data or inspection surveys that would apply to abandoned coal refuse remining operations. These regulations would implement sections 515 and 516 of SMCRA, as amended by EPAct.

Bureau Form Number: None.

Frequency of Collection: Once and quarterly.

Description of Respondents: 22 Surface coal mining operators and 22 State regulatory authorities.

Total Annual Responses: 44.

Total Annual Burden Hours: 4,372.

SUMMARY ANNUAL BURDEN TO RESPONDENTS FOR 30 CFR 829

Section	Number of operators	Hours per operator	Number of states	Hours per state	Total hours requested
.3	22		22		2,200
(i)	22	16	0	0	352
(iii)	0	0	22	20	440
(vi)	4	120	0	0	480
(vii)	4	4	0	0	16
(ix)	4	50	0	0	200
(x)	4	12	0	0	48
(xii)	22	12	0	0	264
(xiv)	4	16	0	0	64

SUMMARY ANNUAL BURDEN TO RESPONDENTS FOR 30 CFR 829—Continued

Section	Number of operators	Hours per operator	Number of states	Hours per state	Total hours requested
(xvii)	22	15	0	0	330
.41	22	80	0	0	1,760
.49	22	16	0	0	352
.81	4	15	0	0	60
Total					4,372

Total Non-Wage Burden Costs:
$4,400.

SUMMARY OF ANNUAL NON-WAGE COST TO RESPONDENTS FOR 30 CFR 829

Section	Number of operators	Cost per operator	Number of states	Cost per state	Total non-wage costs requested
.3	22	150	0	0	3,300
.41	0	0	0	0	0
.49	22	50	0	0	1,100
.81	0	0	0	0	0
Total					4,400

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of OSM and State regulatory authorities, including whether the information will have practical utility;

(b) The accuracy of OSM'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 collection on the respondents.

Under the Paperwork Reduction Act, OSM must obtain OMB approval of all information and recordkeeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. These numbers appear in §§ 786.10 and 829.10. To obtain a copy of OSM's information collection clearance requests, explanatory information, and related forms, contact John A. Trelease at (202) 208–2783 or by e-mail at *jtreleas@osmre.gov.*

By law, OMB must respond to OSM's request for approval within 60 days of publication of these proposed regulations, but may respond as soon as 30 days after publication. Therefore, to ensure consideration by OMB, you must send comments regarding these burden estimates or any other aspect of these information collection and recordkeeping requirements by February 16, 2007, to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, via e-mail to *OIRA_DOCKET@omb.eop.gov*, or via facsimile to (202) 395–6566. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, Room 210—SIB, 1951 Constitution Ave, NW., Washington, DC 20240, or electronically to *jtreleas@osmre.gov.*

National Environmental Policy Act

We have prepared a draft environmental assessment (EA) of the proposed regulations as required by the procedures implementing the National Environmental Policy Act of 1969 (NEPA). We have made a tentative determination that the proposed regulations would enhance reclamation of abandoned coal refuse piles while guaranteeing environmental protection to the same level provided under sections 515 and 516 of SMCRA. We anticipate that a finding of no significant impact will be made for the final regulations in accordance with our procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). The EA will be completed and a finding made on the significance of any resulting impacts before we publish the final regulations.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make the proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections (a ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 786.11)? (5) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? (6) What else could we do to make the proposed regulations easier to understand? Send a copy of any comments that concern how we could make the proposed regulations easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 786

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 829

Reporting and recordkeeping requirements, Environmental protection, Surface mining.

Dated: May 19, 2006.

Julie A. Jacobson,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons discussed in the preamble, the Office of Surface Mining proposes to amend 30 CFR Chapter VII as set forth below:

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for part 701 continues to read as follows:

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

2. Section 701.5, is amended by adding alphabetically the definition of ''abandoned coal refuse remining operations'' to read as follows:

§ 701.5 Definitions.

* * * * *

Abandoned coal refuse remining operations means those surface mining activities for the on-site reprocessing of abandoned coal refuse and for the removal of abandoned coal refuse on lands that would otherwise be eligible for expenditure under section 404 and section 402(g)(4) of the Act. Reprocessing operations include on-site activities that separate the coal from waste material using specific gravity or floatation methods, as well as activities that use mechanical means to sort and size the refuse material prior to separation. Removal operations include on-site activities that remove refuse from the site as well as those activities that use mechanical means to sort and size the refuse material prior to its removal. The term ''abandoned coal refuse remining operations'' does not encompass the removal of refuse for non-fuel uses.

* * * * *

3. Add part 786 to read as follows:

PART 786—REQUIREMENTS FOR PERMITS FOR ABANDONED COAL REFUSE REMINING OPERATIONS

Sec.

786.1 Scope.
786.2 Objectives.
786.3 Definitions.
786.10 Information collection.
786.11 General requirements.
786.12 Information on environmental resources.
786.13 Information on operation plans.
786.14 Information on reclamation plans.
786.15 Information on hydrology.
786.16 Information on geology and refuse.
786.17 Information on roads and support facilities.

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

§ 786.1 Scope.

This part sets forth requirements for obtaining a permit for abandoned coal refuse remining operations. Unless otherwise specified in this part, the requirements of this part apply to removal and reprocessing operations. As used throughout this part, the pronouns ''we'', ''our'', and ''us'' refer to the regulatory authority and the pronouns ''you'' and ''your'' refer to the applicant and operator.

§ 786.2 Objectives.

The objective of this part is to ensure that you obtain a permit to conduct your abandoned coal refuse remining operations in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977, as amended by the Energy Policy Act of 1992.

§ 786.3 Definitions.

As used in this part, the term:

Best management practices (BMPs) means schedules of activities, operating and maintenance procedures, treatment requirements, practices or prohibition of practices that have as their goal preventing or reducing chemical pollution to off-site surface or ground water, and controlling excessive sediment concentrations to off-site surface water.

§ 786.10 Information collection.

The collections of information contained in part 786 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–XXX1. We will use the information collected to determine if a permit to conduct abandoned coal refuse remining operations should be issued and to ensure that such operations are conducted in accordance with the requirements of Act. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Response is required to obtain a benefit in accordance with Public Law 95–87. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 210–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

§ 786.11 General requirements.

An abandoned coal refuse remining operation, as defined in § 701.5 of this chapter, includes both reprocessing operations and removal operations. If you intend to conduct an abandoned coal refuse remining operation, then you must submit a permit application that contains the information required by subchapter G except that part 786 applies in lieu of the information required for surface mining activities under parts 779 and 780 of this chapter, or the information required for underground mining activities under parts 783 and 784 of this chapter. Your permit application must also demonstrate that the operation will be conducted in compliance with the performance standards of part 829 of this chapter. You may not begin a remining operation until we have issued you a permit.

§ 786.12 Information on environmental resources.

(a) *General and climatological information.* Your permit application must include the information required under §§ 779.11, 779.12, and 779.18 of this chapter.

(b) *Vegetation information requirements.* Your permit application must contain photographs and a written description of the vegetative cover prior to redisturbance. The photographs and written description must be in sufficient detail to estimate the vegetative ground cover and species diversity on the abandoned coal refuse site.

(c) *Soil resources and other vegetation-support material information requirements.* Your permit application must provide information about soil or other vegetation-support material for the permit area, and the adjacent area if required, that is sufficient to assure us that suitable soil materials will be available to achieve the vegetative cover and species diversity approved in the reclamation plan.

(d) *Maps: general requirements.* Your permit application must include the information required under § 779.24 of this chapter except as follows:

(1) If you do not plan to blast, in lieu of the information required by § 779.24(d) of this chapter, you must provide the location, with identification

of the current use, of all buildings on and within 300 feet of the proposed permit;

(2) If you plan to blast, you must provide the location, with identification of the current use, of all buildings on and within 1000 feet of the proposed permit area, provided that this additional map coverage may be submitted with the anticipated blast design required in § 816.61 of this chapter; and

(3) The requirements of § 779.24(f) of this chapter, do not apply.

(e) *Cross sections, maps, and plans.* Your permit application must include the information required under § 779.25 of this chapter, except as follows:

(1) For operations on steep slopes, instead of the information required by § 779.25(a)(3) of this chapter, you must include typical cross sections showing the projected ground line underlying the refuse, adjacent ground line, and the surface of the refuse;

(2) Instead of the information required by § 779.25(a)(4) of this chapter, you must include cross sections, maps, and plans that show the coal crop lines and the strike and dip of coal seams that outcrop within the proposed permit area; and

(3) The requirements of § 779.25(a)(6) of this chapter do not apply.

§ 786.13 Information on operation plans.

(a) *General requirements.* Your permit application must contain a description of the abandoned coal refuse remining operations proposed to be conducted during the life of the operations within the proposed permit area. At a minimum, you must include the following:

(1) A narrative description of the type and method of proposed engineering techniques, the anticipated annual and total tonnage of refuse removed and/or reprocessed, and the major equipment to be used for all aspects of those operations; and

(2) Separate narratives for removal operations and reprocessing operations. Your narratives must identify the facilities associated with those operations and explain the construction, modification, use, maintenance, and removal of the facilities associated with removal operations and with reprocessing operations (unless retention of such facilities is necessary for the postmining land use as specified in part 829 of this chapter). The facilities include:

(i) Dams, embankments, and other impoundments;

(ii) Refuse handling, storage, and transportation areas and structures;

(iii) Refuse and noncoal waste screening, removal, handling, storage, transportation, and disposal areas and structures;

(iv) Reprocessing equipment and associated facilities;

(v) Removal equipment and associated facilities; and

(vi) Water and air pollution control facilities.

(b) *Existing structures.* Your permit application must include the information required under § 780.12 of this chapter. The description of existing structures must indicate whether the structures are associated with removal operations or with reprocessing operations.

(c) *Blasting.* Your permit application must include information required under § 780.13 of this chapter if you plan to blast during the abandoned coal refuse remining operation.

(d) *Maps and plans.* Your permit application must contain maps and plans as follows:

(1) Maps and plans that show the lands proposed to be affected throughout the life of the operation and any change in a facility or feature to be caused by the proposed operation, if the facility or feature was identified by the maps and plans required by paragraphs (d) and (e) of § 786.12.

(2) Maps and plans that delineate removal areas and reprocessing areas must include the information required by § 780.14 of this chapter, except as follows:

(i) Instead of the information required by § 780.14(b)(4) of this chapter, the maps and plans must show the areas for storing, sorting, sizing and blending of coal refuse; the areas for reprocessing refuse; any waste redisposal areas associated with a refuse removal or on-site reprocessing operation; and the areas for loading the refuse product or coal for sale;

(ii) Instead of the information required by § 780.14(b)(5) of this chapter, the maps and plans must show the storage areas for vegetation-support material, rock waste, noncombustible noncoal waste, and combustible noncoal waste;

(iii) Instead of the information required by § 780.14(b)(11) of this chapter, the maps and plans must show the location of each sediment pond and permanent water impoundment, coal reprocessing waste bank, coal reprocessing waste dam, or embankment;

(3) The preparation and certification requirements of § 780.14(c) of this chapter apply to the maps and plans prepared in accordance with this paragraph.

(e) *Air pollution control plan.* Your permit application must contain the information required by § 780.15 of this chapter, except that the fugitive dust control plan required by § 780.15(b)(2) of this chapter must comply with the requirements of § 829.95 of this chapter, instead of the requirements of § 816.95 of this chapter.

(f) *Fish and wildlife information.* Your permit application must contain the information required by § 780.16 of this chapter.

(g) *Protection of public parks and historic places.* Your application must contain the information required by § 780.31 of this chapter.

§ 786.14 Information on reclamation plans.

(a) *General requirements.* Your permit application must contain a plan for reclamation of the lands within the proposed permit area, showing how you will comply with section 515 of the Act, subchapter K of this Chapter, and the environmental protection performance standards of the regulatory program. The plan must include, at a minimum, all of the information for the proposed permit area as follows:

(1) A detailed timetable for the completion of each major step in the reclamation plan;

(2) A detailed estimate of the cost of reclamation of the proposed operations that we require to be covered by a performance bond under subchapter J of this chapter, with supporting calculations for the estimate;

(3) A plan for grading, soil stabilization, and compacting, with contour maps or cross sections that show anticipated final surface configuration of the proposed permit area, in accordance with § 829.102 of this chapter;

(4) A plan for removal, storage, and redistribution of soil or other vegetation-support material that meets the requirements of § 829.22 of this chapter. We may require chemical and physical analyses, field-site trials, or greenhouse tests if we determine them necessary or desirable for demonstrating the suitability of the vegetation-support materials;

(5) A plan for revegetation as required by § 829.111 of this chapter, including mulching techniques that you plan to use and measures you propose for determining revegetation success;

(6) A description of the measures that you will use for maximizing the use and conservation of solid fuel resources as required in § 816.59 of this chapter;

(7) A description of measures that you will use for ensuring that all debris, acid-forming and toxic-forming materials, and materials constituting a

fire hazard are disposed of in accordance with the requirements of §§ 829.89 and 829.102 of this chapter, and a description of contingency plans that you will use to preclude sustained combustion of such materials;

(8) A description, including appropriate cross sections and maps, of the measures that you will use to seal or manage any mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings occurring within the proposed permit area, in accordance with § 829.13 of this chapter, and

(9) A description of steps that you will take to comply with the applicable requirements of the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*), and other applicable Federal and State air and water quality laws and regulations and health and safety standards.

(b) *Postmining land use.* Your application must contain a narrative description of the existing land uses, with photographs, and a plan describing the proposed use, following reclamation, of the land within the proposed permit area. You must also include in your plan a copy of any comments regarding the proposed postmining land use made by persons who hold equitable or legal title to the surface of the proposed permit area, or made by State or local agencies that would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation. The description of the proposed land use must explain:

(1) How you will achieve the proposed postmining land use and the necessary support activities that you will need to achieve this land use; and

(2) The consideration that you have given to making all of the proposed abandoned coal refuse remining operations consistent with surface owner plans and applicable State and local land use plans and programs.

(c) *Ponds, impoundments, banks, dams, and embankments.* Your application must contain the plans required under § 780.25 of this chapter. These plans must be consistent with the requirements of part 829 of this chapter.

(d) *Surface mining near underground mining.* If your abandoned coal refuse remining operation is within 500 feet of an underground mine, your application must describe the measures that you will use to comply with § 816.79 of this chapter.

(e) *Diversions.* Your application must contain descriptions, including maps and cross sections, of stream channel diversions and other diversions that you will construct within the proposed permit area to comply with § 816.43 of this chapter.

§ 786.15 Information on hydrology.

(a) *Reprocessing operations.* Your application for a reprocessing operation must contain:

(1) All of the information required under § 780.21(a) through (g) and (i) through (j) of this chapter; and

(2) A hydrologic reclamation plan with maps and descriptions, indicating how you plan to meet the relevant requirements of § 829.41 of this chapter. The plan must be specific to the local hydrologic conditions and must address any potential adverse impacts to the hydrologic balance identified in the probable hydrologic consequences (PHC) determination required by § 780.21(f). You must include preventive and remedial measures and the steps you will take during refuse removal and reclamation through bond release to:

(i) Minimize disturbances to the hydrologic balance within the permit and adjacent areas;

(ii) Prevent material damage outside the permit area;

(iii) Meet applicable Federal and State water quality laws and regulations; and

(iv) Protect the rights of present water users;

(v) Avoid acid or toxic drainage;

(vi) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to stream flow;

(vii) Provide water-treatment facilities when needed;

(viii) Control drainage; and

(ix) Protect or replace rights of present water users.

(b) *Removal Operations.* (1) Your application for a removal operation must meet the following requirements for hydrologic information and analysis:

(i) A determination of the probable hydrologic consequences (PHC), as required by § 780.21(f), of expected enhancements or adverse impacts to the hydrologic balance on or off the permit area that may result from the coal refuse removal operation and subsequent reclamation;

(ii) Any data you collect for the PHC determination must comply with the requirements for sampling and analyses of § 780.21(a) of this chapter;

(iii) You may prepare a narrative PHC determination based on existing relevant hydrologic information. For example, you may derive the required baseline descriptions of seasonal flow rates from modeling and other techniques, as provided by § 780.21(d) of this chapter, from data and findings of other mining operations in the area, or even from point-source discharge permits obtained under the National Pollutant Discharge Elimination System (NPDES);

(iv) A discussion of expected enhancements of the local hydrologic balance on or off the permit area, including discussion of the decreased loads of pollutants achievable through improved water quality, decreased flow, or infiltration of water, or some combination thereof. You must support this discussion with data from paragraphs (b)(1)(ii) or (b)(1)(iii) of this section and identification of the Best Management Practices (BMPs) that you propose under paragraph (b)(3) of this section.

(v) The supplemental information requirements in § 780.21(b)(3) of this chapter and the ground- and surface-water monitoring plan requirements of §§ 780.21(i) and (j) of this chapter will apply if the PHC identifies adverse impacts to the hydrologic balance on or off the permit area. Also, if the PHC identifies adverse impacts to legitimate water uses, the requirements of § 780.21(e) of this chapter pertaining to alternative water source information will apply.

(2) We must comply with the requirements of § 780.21(g) for a cumulative hydrologic impact assessment.

(3) You must include a hydrologic reclamation plan (HRP) with maps and descriptions and identification of specific BMPs, including sediment control measures, and any additional information that we may require in order to ensure compliance with the requirements of subchapter K, part 829.

(4) You must monitor discharges as required by a National Pollutant Discharge Elimination System permit obtained under 40 CFR part 434.

§ 786.16 Information on geology and refuse.

(a) Your application must include geologic information, if appropriate, and refuse information in sufficient detail to assist us in determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which ground- and surface-water monitoring is necessary; whether reclamation can be accomplished; and whether the operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(b) We may require the collection and analysis of additional refuse or geologic information if we determine it to be necessary to protect the hydrologic

balance or to meet the performance standards of this chapter.

§ 786.17 Information on roads and support facilities.

(a) *Relocation or use of public roads.* Your application must contain the information required by § 780.33 of this chapter.

(b) *Road systems.* Your application must contain the information required by § 780.37 of this chapter, and must be in accordance with § 816.150 of this chapter.

(c) *Support facilities.* Your application must contain the information required by § 780.38 of this chapter, and must be in accordance with § 816.181 of this chapter.

4. Part 829 is added to read as follows:

PART 829—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS-ABANDONED COAL REFUSE REMINING OPERATIONS

Sec.
829.1 Scope.
829.2 Objectives.
829.3 General requirements.
829.10 Information collection.
829.11 Signs and markers.
829.13 Casing and sealing of drill holes, portals or other openings.
829.22 Soils and other vegetation-support material.
829.41 Hydrologic-balance protection.
829.45 Hydrologic-balance protection: Sediment control measures.
829.46 Hydrologic-balance protection: Siltation structures.
829.49 Impoundments.
829.81 Redeposition and handling of coal mine waste, and coal refuse piles.
829.89 Disposal of noncoal mine wastes.
829.95 Stabilization of surface areas.
829.99 Slides and other damage.
829.100 Contemporaneous reclamation.
829.102 Grading.
829.111 Revegetation, standards for success, and bond liability period.
829.133 Postmining land use.

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

§ 829.1 Scope.

This part sets forth special environmental protection performance standards for abandoned coal refuse remining operations. Unless otherwise specified in this part, the requirements of this part apply to removal and reprocessing operations. As used throughout this part, the pronouns ''we'', ''our'', and ''us'' refer to the regulatory authority and the pronouns ''you'' and ''your'' refer to the applicant and operator.

§ 829.2 Objectives.

This part is intended to ensure that you conduct your abandoned coal refuse remining operations in a manner that preserves and enhances environmental and other values in accordance with the Surface Mining Control and Reclamation Act of 1977, as amended by the Energy Policy Act of 1992.

§ 829.3 General requirements.

(a) If you intend to conduct abandoned coal refuse remining operations, you must obtain a permit in accordance with part 786 of this chapter and comply with the bond and insurance requirements of subchapter J of this chapter.

(b) You must conduct your operation in accordance with the following requirements of part 816 of this chapter:

(1) § 816.43 Diversions.
(2) § 816.47 Hydrologic balance: Discharge Structures.
(3) § 816.57 Hydrologic Balance: Stream buffer zones.
(4) § 816.59 Coal Recovery.
(5) § 816.61 Use of explosives: General requirements.
(6) § 816.62 Use of explosives: Pre-blasting survey.
(7) § 816.64 Use of explosives: Blasting schedule.
(8) § 816.66 Use of explosives: Blasting signs, warnings, and access control.
(9) § 816.67 Use of Explosives: Control of adverse effects.
(10) § 816.68 Use of Explosives: Records of blasting operations.
(11) § 816.79 Protection of underground mining.
(12) § 816.87 Coal mine waste: Burning and burned waste utilization.
(13) § 816.97 Protection of fish, wildlife, and related environmental values.
(14) § 816.131 Cessation of operations: Temporary.
(15) § 816.132 Cessation of operations: Permanent.
(16) § 816.150 Roads.
(17) § 816.151 Roads: Primary.
(18) § 816.180 Utility installations.
(19) § 816.181 Support facilities.

(c) In addition, you must conduct your operations in accordance with the requirements of this part.

§ 829.10 Information collection.

The collections of information contained in part 829 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-XXX2. We will use the information collected to ensure that permittees conducting abandoned coal refuse remining operations will meet appropriate performance standards. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. Response is required to obtain a benefit in accordance with Public Law 95–87. Send comments regarding burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Room 202–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

§ 829.11 Signs and markers.

You must comply with the requirements of § 816.11 of this chapter except that, instead of the requirements of § 816.22 of this chapter referenced in § 816.11(f), the requirements of § 829.22 apply.

§ 829.13 Casing and sealing of drill holes, portals or other openings.

You must comply with the requirements of §§ 817.13, 817.14, and 817.15 of this chapter except that, instead of the requirements of § 817.41 of this chapter referenced in §§ 817.13 and 817.15 regarding the use of monitoring holes or other openings for water wells, the requirements of § 829.41 apply.

§ 829.22 Soils and other vegetation-support material.

(a) You must select readily available vegetation-support materials and demonstrate to us that such material is suitable to support the level of vegetation required by § 829.111. You may use material from off site as vegetation-support material. You must remove and stockpile material from the remining site or off site that is to be used for vegetation support, before any other surface disturbance. You must distribute the vegetation support material as approved by us.

(b) You must apply nutrients and soil amendments to the redistributed material when necessary to establish the vegetative cover.

§ 829.41 Hydrologic-balance protection.

(a) *Reprocessing operations.* You must comply with the hydrologic balance requirements of §§ 816.41 and 816.42 of this chapter for reprocessing operations except that the requirement in § 816.41(b)(2) to restore recharge capacity does not apply. Also, instead of the requirements of § 780.21(h) of this chapter referenced in § 816.41, the requirements in § 786.15(a)(2) of this chapter apply.

(b) *Removal operations.* (1) You must comply with the hydrologic balance requirements of §§ 816.41 and 816.42 of

this chapter for removal operations except as follows:

(i) Instead of the requirements in sections of 30 CFR part 780 referenced in §§ 816.41 and 816.42, the requirements of § 786.15(b) of this chapter apply;

(ii) The requirement of § 816.41(b)(2) of this chapter to restore recharge capacity does not apply;

(iii) Ground- and surface-water monitoring must be conducted in accordance with the requirements of § 786.15(b) of this chapter; and

(iv) Discharges into an underground mine are prohibited unless we expressly authorize such discharge and you meet the following requirements:

(A) The requirements of § 816.41(i) of this chapter are met;

(B) The permit application includes baseline ground-water and geologic information in sufficient detail to describe the geologic and hydrologic conditions associated with the underground mine works;

(C) The determination of Probable Hydrologic Consequences addresses the impacts that the discharges will have on ground- and surface-water users and the potential for seepage or drainage of water from the underground works;

(D) The hydrologic reclamation plan includes measures to remediate potential impacts to ground- and surface-water users and potential impacts from seepage and drainage out of the underground works; and

(E) The ground- and surface-water monitoring plans provide for the monitoring of the ground- and surface-water systems that could be impacted by the underground discharges.

(2)[Reserved]

§ 829.45 Hydrologic balance: Sediment control measures.

You must comply with the requirements of § 816.45 of this chapter except that, instead of the requirements to §§ 816.102 and 816.111(b) referenced in § 816.45, the requirements in §§ 829.102 and 829.111(b) apply.

§ 829.46 Hydrologic balance: Siltation structures.

You must comply with the requirements of § 816.46 of this chapter, except as currently suspended. However, instead of the requirements of § 816.42 and the requirements for siltation structures and spill ways incorporating §§ 816.49, and 816.49(a)(9) referenced in § 816.46 of this chapter, the requirements of §§ 829.41(b) and 829.49 apply.

§ 829.49 Impoundments.

You must comply with the impoundments requirements of §§ 816.49 and 816.56 of this chapter except that:

(a) Instead of the requirements of § 780.25 referenced in § 816.49 of this chapter, the requirements of § 786.14(c) of this chapter apply.

(b) Upon completion of the operation, you may only retain permanent impoundments on reclaimed coal refuse:

(1) Where the impoundment is not confined by a constructed dam, e.g., is a dug-out type impoundment; or

(2) You have removed the abandoned coal refuse from within the confines of an impounding structure located on non-steep slope land, and the remaining or reconstructed impounding structure meets the appropriate design, construction, inspection, and certification requirements of § 816.49 of this chapter.

§ 829.81 Redeposition and handling of coal mine waste, and coal refuse piles.

You must place coal mine waste from an abandoned coal refuse site or generated as a result of a coal refuse remining operation according to the standards of §§ 816.81, 816.83, and 816.84 of this chapter, except:

(a) We may alter, on a site-specific basis, the design certification, foundation requirements, and inspection requirements of §§ 816.81(c), 816.81(d), and 816.83(d) of this chapter.

(b) If you take refuse reprocessing waste or waste generated by removal operations and deposit it adjacent to the abandoned coal refuse site, you must meet the standards of §§ 816.81, 816.83, and 816.84 of this chapter.

(c) You may not take coal mine waste generated by removal operations and deposit it in underground mine works unless you meet the requirements of §§ 816.81(f) and 829.41(b)(1)(i) of this chapter.

(d) Instead of the cover requirement at § 816.83(c)(4) of this chapter, you must cover or treat refuse piles generated by abandoned coal refuse remining operations with sufficient noncombustible and nontoxic material to prevent sustained combustion, as required under § 829.102(d), and to support revegetation, as required under § 829.111.

(e) Instead of the vegetation removal and impoundment requirements of § 816.83(c)(1) and (c)(3) of this chapter, you must comply with the requirements of §§ 829.22 and 829.49.

(f) Instead of the topsoil and subsoil storage requirements of § 816.22 of this chapter referenced in § 816.83(c) of this chapter, you must comply with the requirements of § 829.22.

§ 829.89 Disposal of noncoal mine wastes.

(a) You must comply with the requirements of § 816.89(a) and (b) of this chapter except that you must cover and revegetate the site in accordance with the requirements of § 829.111 instead of the requirements of §§ 816.111 through 816.116 of this chapter referenced by § 816.89(b).

(b) Instead of the requirements of § 816.89(c) of this chapter, you may dispose in refuse piles any noncombustible, noncoal waste encountered during refuse remining and/or any combustion byproducts generated from coal burning facilities.

(c) You must demonstrate that the disposal will not adversely affect final site reclamation or public health and safety and that it accords with other applicable provisions of State and Federal law.

§ 829.95 Stabilization of surface areas.

(a) You must protect and stabilize all exposed surface areas to provide equal or better erosion control and air pollution control than existed before disturbing the abandoned coal refuse site.

(b) In areas where refuse has been regraded and covered with vegetation-support material, if rills and gullies form, you must fill, regrade, or otherwise stabilize with vegetation support material, and reseed or replant the areas, whenever such rills and gullies either:

(1) Disrupt the approved postmining land use or the reestablishment of the vegetative cover; or

(2) Cause or contribute to a violation of water-quality standards for receiving streams.

§ 829.99 Slides and other damage.

You must comply with the requirements of § 816.99(b) of this chapter for abandoned coal refuse remining operations.

§ 829.100 Contemporaneous reclamation.

Your reclamation efforts, including but not limited to, grading, soil or vegetation-support material replacement, and revegetation, on all disturbed land that is reaffected by on-site abandoned coal refuse remining operations must occur as contemporaneously as practicable with the abandoned coal refuse remining operations. Before we approve your permit, you must provide a schedule that meets this requirement for contemporaneous reclamation in a manner we determine is acceptable.

§ 829.102 Grading.

(a) You must conduct grading activities:

(1) According to this section and § 829.81, and

(2) According to the schedule we approve in the reclamation plan required under § 786.14(a) of this chapter.

(b) You must grade disturbed areas to:

(1) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 or greater, and to prevent slides;

(2) Minimize erosion and water pollution both on and off the site; and

(3) Support the approved postmining land use.

(c) You may grade land adjacent to the abandoned coal refuse remining operations to blend with the refuse extraction area to achieve the postmining land use and stability requirements under paragraph (b)(1) of this section. If you do so, you must remove and stockpile the vegetation-support material from the affected adjacent land for use as required by § 829.22.

(d) You must adequately cover or treat the coal seams and combustible materials exposed, used, or produced during mining with noncombustible and nontoxic materials to prevent sustained combustion.

(e) You may use cut-and-fill terraces where:

(1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or

(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(f) You may leave small depressions if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation and are compatible with the stability of the reclaimed site.

(g) You must conduct preparation of final-graded surfaces in a manner that minimizes erosion and provides a surface for soils and other vegetation-support material that will minimize slippage.

(h) You must eliminate highwalls and other rock cuts encountered during operations to the maximum extent technically practical in accordance with the following criteria:

(1) All spoil, rock waste and refuse waste generated or encountered by the operation must be used to backfill the highwalls and rock cuts to the extent that use of the material satisfies the stability requirements of paragraph (b)(1) of this section; and

(2) Any highwall and rock-cut remnant must be stable and not pose a hazard to the public health and safety or to the environment. You must demonstrate to our satisfaction that the remnant is stable.

(i) You must comply with these standards when conducting abandoned coal refuse remining activities on steep slopes:

(1) You must not place the following materials on steep slopes below the elevation of the abandoned refuse:

(i) Spoil and rock waste;

(ii) Waste materials of any type;

(iii) Debris, including that from clearing and grubbing; and

(iv) Abandoned or disabled equipment.

(2) You must conduct refuse extraction and grading operations on steep slopes in a manner to prevent instability of the refuse area, and must comply with the following:

(i) You must extract the refuse by horizontal lifts starting at the highest elevation of the refuse pile; and

(ii) You must not remove the toe of the refuse pile until the extraction by horizontal lifts has progressed to the elevation of the toe.

(3) We may waive, in writing, the requirements of paragraphs (i)(2)(i) and (i)(2)(ii), if the permit demonstrates with stability analyses that the refuse will retain a static safety factor of 1.3 during extraction activities.

§ 829.111 Revegetation, standards for success, and bond liability period.

(a) Revegetation timing and mulching must comply with §§ 816.111(b) through (d), 816.113 and 816.114 of this chapter.

(b) On regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, you must establish a vegetative cover that is in accordance with the approved permit and reclamation plan and that is:

(1) Effective and permanent;

(2) Comprised of species native to the area or of introduced species when we approve the use of those species as desirable and necessary to achieve the approved postmining land use;

(3) Capable of stabilizing the surface from erosion as required by § 829.95.

(c) You must establish a vegetative ground cover that is no less than the ground cover that existed before redisturbance, as required by § 816.116(b)(5) of this chapter.

(d) The requirements of § 816.116(c) of this chapter concerning revegetation responsibility periods and evaluation of revegetation success are applicable to abandoned coal refuse remining operations with the following modifications:

(1) For operations in areas with an average annual precipitation greater than 26.0 inches, the revegetation responsibility period will be two full years rather than the times specified in § 816.116(c)(2); and

(2) For operations in areas with an average annual precipitation of 26.0 inches or less, the revegetation responsibility period will be five full years rather than the times specified in § 816.116(c)(2).

§ 829.133 Postmining land use.

You must restore all areas disturbed by abandoned coal refuse remining operations to a condition capable of supporting the use that the abandoned coal refuse site was capable of supporting before commencement of abandoned coal refuse remining operations, or a higher or better use.

[FR Doc. E7–453 Filed 1–16–07; 8:45 am]

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