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Federal Register

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, February 13, 2007
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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

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Presidential Documents

Title 3—

The President

Executive Order 13422 of January 18, 2007

Further Amendment to Executive Order 12866 on Regulatory Planning and Review

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered that Executive Order 12866 of September 30, 1993, as amended, is further amended as follows:

Section 1. Section 1 is amended as follows:

(a) Section 1(b)(1) is amended to read as follows:

''(1) Each agency shall identify in writing the specific market failure (such as externalities, market power, lack of information) or other specific problem that it intends to address (including, where applicable, the failures of public institutions) that warrant new agency action, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted.''

(b) by inserting in section 1(b)(7) after ''regulation'' the words ''or guidance document''.

(c) by inserting in section 1(b)(10) in both places after ''regulations'' the words ''and guidance documents''.

(d) by inserting in section 1(b)(11) after ''its regulations'' the words ''and guidance documents''.

(e) by inserting in section 1(b)(12) after ''regulations'' the words ''and guidance documents''.

Sec. 2. Section 2 is amended as follows:

(a) by inserting in section 2(a) in both places after ''regulations'' the words ''and guidance documents''.

(b) by inserting in section 2(b) in both places after ''regulations'' the words ''and guidance documents''.

Sec. 3. Section 3 is amended as follows:

(a) by striking in section 3(d) ''or 'rule' '' after '' 'Regulation' '';

(b) by striking in section 3(d)(1) ''or rules'' after ''Regulations'';

(c) by striking in section 3(d)(2) ''or rules'' after ''Regulations'';

(d) by striking in section 3(d)(3) ''or rules'' after ''Regulations'';

(e) by striking in section 3(e) ''rule or'' from ''final rule or regulation'';

(f) by striking in section 3(f) ''rule or'' from ''rule or regulation'';

(g) by inserting after section 3(f) the following:

''(g) ''Guidance document'' means an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.

(h) ''Significant guidance document'' —

(1) Means a guidance document disseminated to regulated entities or the general public that, for purposes of this order, may reasonably be anticipated to:

(A) Lead to an annual effect of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
(B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
(C) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients thereof; or
(D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order; and (2) Does not include:
(A) Guidance documents on regulations issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;
(B) Guidance documents that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;
(C) Guidance documents on regulations that are limited to agency organization, management, or personnel matters; or
(D) Any other category of guidance documents exempted by the Administrator of OIRA.''

Sec. 4. Section 4 is amended as follows:

(a) Section 4(a) is amended to read as follows: ''The Director may convene a meeting of agency heads and other government personnel as appropriate to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.''

(b) The last sentence of section 4(c)(1) is amended to read as follows: ''Unless specifically authorized by the head of the agency, no rulemaking shall commence nor be included on the Plan without the approval of the agency's Regulatory Policy Office, and the Plan shall contain at a minimum:''.

(c) Section 4(c)(1)(B) is amended by inserting ''of each rule as well as the agency's best estimate of the combined aggregate costs and benefits of all its regulations planned for that calendar year to assist with the identification of priorities'' after ''of the anticipated costs and benefits''.

(d) Section 4(c)(1)(C) is amended by inserting '', and specific citation to such statute, order, or other legal authority'' after ''court order''.

Sec. 5. Section 6 is amended as follows:

(a) by inserting in section 6(a)(1) ''In consultation with OIRA, each agency may also consider whether to utilize formal rulemaking procedures under 5 U.S.C. 556 and 557 for the resolution of complex determinations'' after ''comment period of not less than 60 days.''

(b) by amending the first sentence of section 6(a)(2) to read as follows: ''Within 60 days of the date of this Executive order, each agency head shall designate one of the agency's Presidential Appointees to be its Regulatory Policy Officer, advise OMB of such designation, and annually update OMB on the status of this designation.''

Sec. 6. Sections 9–11 are redesignated respectively as sections 10–12.

Sec. 7. After section 8, a new section 9 is inserted as follows:

''**Sec. 9.** *Significant Guidance Documents.* Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with advance notification of any significant guidance documents. Each agency shall take such steps as are necessary for its Regulatory Policy Officer to ensure the agency's compliance with the requirements of this section. Upon the request of the Administrator, for each matter identified as, or determined by the Administrator to be, a significant guidance document, the issuing agency shall provide to

OIRA the content of the draft guidance document, together with a brief explanation of the need for the guidance document and how it will meet that need. The OIRA Administrator shall notify the agency when additional consultation will be required before the issuance of the significant guidance document.''

Sec. 8. Newly designated section 10 is amended to read as follows:

''**Sec. 10.** *Preservation of Agency Authority*. Nothing in this order shall be construed to impair or otherwise affect the authority vested by law in an agency or the head thereof, including the authority of the Attorney General relating to litigation.''

THE WHITE HOUSE,
January 18, 2007.

[FR Doc. 07–293
Filed 1–22–07; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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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.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

2 CFR Part 2600

36 CFR Parts 1206 and 1209

[DOCKET NUMBER: NARA–06–0010]

RIN 3095–AB56

National Archives and Records Administration Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule; request for comment.

SUMMARY: The National Archives and Records Administration is establishing a new Part 2600 in 2 CFR that adopts the Office of Management and Budget's (OMB's) guidance in 2 CFR Part 180, as supplemented by this new part, as NARA's policies and procedures for nonprocurement and debarment and suspension. NARA is removing 36 CFR part 1209, the part containing NARA's implementation of the government-wide common rule on nonprocurement debarment and suspension. The new part in 2 CFR part 2600 will serve the same purpose as the common rule in a simpler way. This regulatory action is an administrative simplification that would make no substantive change in NARA's policy or procedures for nonprocurement debarment and suspension.

DATES: This final rule is effective February 28, 2007. Comments on this final rule must be received by February 22, 2007 at the address shown below. NARA intends to publish any changes to the rule resulting from this comment period before the February 28, 2007, effective date.

ADDRESSES: NARA invites interested persons to submit comments on this final rule. Please include ''Attn: RIN 3095–AB56'' and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* Submit comments by facsimile transmission to 301–837–0319.
- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Laura McCarthy at 301–837–3023 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: On August 31, 2005, the Office of Management and Budget (OMB) issued interim final guidance for government-wide procurement suspension and debarment (70 FR 51863). This guidance, located in 2 CFR Part 180, is substantively the same as the common rule, but is published in a form that each agency can adopt, thus eliminating the need for each agency to publish its separate version of the same rule. It also facilitates the ability to update government-side requirements without each agency having to re-promulgate its own rules.

NARA's current regulation on nonprocurement suspension and debarment is found in 36 CFR Part 1209. In accordance with OMB's guidance, this final rule places NARA's nonprocurement debarment and suspension regulations in subtitle B of title 2 of the CFR, along with other agencies' nonprocurement debarment and suspension. The new 2 CFR part 2600 adopts the OMB guidelines with the same additions and clarifications that NARA made to the government-wide ''common rule'' on this subject issued November 26, 2003 (68 FR 66544, 66616). The substance of NARA's nonprocurement debarment and suspension regulations is unchanged.

In light of the new part 2600, NARA is removing 36 CFR 1209, which is the current location for NARA's nonprocurement debarment and suspension regulations. NARA is also amending the section in 36 CFR part 1206 that provides the regulatory requirement provisions for the National Historical Publications and Records Commission (NHPRC) to reflect the new CFR location of these nonprocurement suspension and debarment requirements.

Because the regulatory amendments to 2 CFR part 2600 are an administrative simplification and there are no substantive changes in NARA's policy or procedures for nonprocurement debarment and suspension, NARA is publishing the revisions as a final rule with request for comments and not as a proposed rule. If NARA receives comments that result in any changes to the proposed final rule, the changes will be published before the February 28, 2007, effective date.

Executive Order 12866

OMB has determined this rule to be a nonsignificant regulatory action for the purposes of Executive Order 12866 and it has not been reviewed by the Office of Management and Budget.

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

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

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

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

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

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

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

2 CFR Part 2600

Administrative practice and procedures, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

36 CFR Part 1206

Archives and records, Grant programs—education, Reporting and recordkeeping requirements.

36 CFR Part 1209

Administrative practice and procedure, Grant programs, Loan programs, Reporting and recordkeeping requirements.

■ Accordingly, under the authority of 44 U.S.C. 2104(a), NARA amends the Code of Federal Regulations, Title 2, Subtitle B, and Title 36 parts 1206 and 1209, as follows:

Title 2—Grants and Agreements

■ 1. Add Chapter 26, consisting of part 2600, to Subtitle B to read as follows:

Chapter 26—National Archives and Records Administration

PART 2600—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 44 U.S.C. 2104(a).

§ 2600.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as NARA's policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for NARA to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

§ 2600.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see Subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970.

(b) Respondent in a NARA suspension or debarment action.

(c) NARA debarment or suspension official;

(d) NARA grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction;

§ 2600.30 What policies and procedures must I follow?

NARA policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in Subparts A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220) as supplemented by section 220 in this part (i.e., § 2600.220). For any section of OMB guidance in Subparts A through I of 2 CFR 180 that has no corresponding section in this part, NARA policies and procedures are those in the OMB guidance.

Subpart A—General

§ 2600.137 Who in NARA may grant an exception to let an excluded person participate in a covered transaction?

The Archivist of the United States or designee may grant an exception permitting an excluded person to participate in a particular covered transaction as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 2600.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the Appendix to 2 CFR part 180), NARA does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 2600.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant must include a term or condition in lower-tier transactions requiring lower-tier participants to comply with Subpart C of the OMB guidance in 2 CFR part 180.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 2600.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant's compliance with subpart C of 2 CFR part 180 and requires the participant to include a similar term or condition in lower-tier covered transactions.

Subparts E–J—[Reserved]

Title 36—Parks, Forests, and Public Property

Chapter XII—National Archives and Records Administration

PART 1206—[AMENDED]

■ 2. The authority citation for part 1206 continues to read as follows:

Authority: 44 U.S.C. 2104(a); 44 U.S.C. 2501–2506.

§ 1206.72 [Amended]

■ 3. Amend § 1206.72 by revising paragraph (a) to read as follows:

§ 1206.72 Where can I find the regulatory requirements that apply to NHPRC grants?

(a) In addition to this part 1206, NARA has issued other regulations that apply to NHPRC grants in 36 CFR ch. XII, subchapter A and 2 CFR Part 2600.

Additionally you must comply with 2 CFR Part 180. NARA also applies the principles and standards in the following Office of Management and Budget (OMB) Circulars for NHPRC grants:

(1) OMB Circular A–21, ''Cost Principles for Educational Institutions'';

(2) OMB Circular A–87, ''Cost Principles for State, Local and Indian Tribal Governments'';

(3) OMB Circular A–122, ''Cost Principles for Nonprofit Organizations''; and

(4) OMB Circular A–133, ''Audits of States, Local Governments, and Nonprofit Organizations.''

* * * * *

PART 1209—[REMOVED]

■ 4. Under authority 44 U.S.C. 2104(a); sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 (3 CFR 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235) part 1209 is removed.

Dated: January 18, 2007.

Allen Weinstein,

Archivist of the United States.

[FR Doc. E7–986 Filed 1–22–07; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Docket No. LS–06–06]

Soybean Promotion and Research: Qualified State Soybean Boards; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendment.

SUMMARY: The Agricultural Marketing Service (AMS) published a final rule and termination order (final rule) in the **Federal Register** on November 28, 1995 (60 FR 58499) regarding technical amendments to the Soybean Promotion, Research and Consumer Information Order (Order). AMS has found that section 1220.228(a)(1)(v)(A) pertaining to producer refunds, was mistakenly removed from the Order as part of the final rule. This document corrects the Order by adding the language that previously appeared in section 1220.228(a)(1)(v)(A).

DATES: *Effective Date:* January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, 202/720–1115 or via e-mail at *Kenneth.Payne@usda.gov*.

SUPPLEMENTARY INFORMATION: This document provides a correcting amendment to the Soybean Promotion, Research, and Consumer Information Order that appears at 7 CFR part 1220.

List of Subjects in 7 CFR 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 1220 is corrected by making the following amendment:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

■ 2. Amend § 1220.228 by adding paragraph (a)(1)(v) to read as follows:

§ 1220.228 Qualified State Soybean Boards.

(a)(1) * * *

(v) If the entity is authorized or required to pay refunds to producers, any requests from producers for refunds for contributions to it by the producer following the termination of authority to pay refunds, will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions to it pursuant to § 1220.223(a)(3);

* * * * *

Dated: January 17, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–875 Filed 1–22–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301 and 602

[TD 9300]

RIN 1545–BC15

Guidance Necessary To Facilitate Business Electronic Filing; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains correction to final regulations (TD 9300) that were published in the **Federal Register** on Friday, December 8, 2006 (71 FR 71040) designed to eliminate regulatory impediments to the electronic filing of certain income tax returns and other forms.

DATES: The correction is effective December 8, 2006.

FOR FURTHER INFORMATION CONTACT: Nathan Rosen, (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under sections 170, 556, 565, 936, 1017, 1368, 1377, 1502, 1503, 6038B and 7701 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9300) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9300), which was the subject of FR Doc. E6–20734, is corrected as follows:

On page 71041, column 1, in the preamble, under the paragraph heading ''*January 2006 Final Regulations Facilitating Electronic Filing*'', last paragraph of the column, second line, the language ''Treasury released TD 9243, (TD 9243,'' is corrected to read ''Treasury released final regulations (TD 9243,''.

On page 71041, column 2, in the preamble, under the paragraph heading ''*May 2006 Regulations Facilitating Electronic Filing*'', first paragraph, second line, the language ''Treasury Department released TD 9264'' is corrected to read ''Treasury Department released final and temporary regulations (TD 9264, 2006–26 I.R.B. 1150 [71 FR 30591])''.

LaNita Van Dyke,

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

[FR Doc. E7–858 Filed 1–22–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2005–0021]

RIN 0651–AB92

Changes To Facilitate Electronic Filing of Patent Correspondence

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is amending the rules of practice to support implementation of the Office's electronic filing system (EFS) for patent correspondence, and in particular, the Web-based electronic filing system (EFS-Web). EFS-Web permits most patent correspondence, that is, most patent applications and other patent related documents, to be submitted in a portable document file (''PDF'') format. The major changes that the Office is adopting are changes to provide patent users with a process for showing that correspondence submitted in an application which has entered national stage under 35 U.S.C. 371 submitted via EFS-Web was actually received by the Office by relying on the acknowledgment receipt, and to treat certain correspondence as received, for timeliness purposes, as of the date submitted by applicant rather than the date received by the Office if the correspondence is filed via EFS-Web.

DATES: *Effective Date:* January 23, 2007. The changes apply to any paper, application, or reexamination proceeding filed in the Office on or after January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Fred A. Silverberg ((571) 272–7719), Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, or Robert A. Clarke ((571) 272–7735), Deputy Director of the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, directly by phone, or by facsimile to (571) 273–7719, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (Office) is amending the rules of practice to support implementation of the Office's electronic filing system (EFS) for patent correspondence, and in particular, the new Web-based electronic filing system (EFS-Web), which went into production (for the public) on March 17, 2006. Specifically, the changes in this final rule: (1) Provide patent users with a process for showing that certain national stage correspondence submitted via EFS-Web was actually received by the Office by relying on the acknowledgment receipt; and (2) create a new certificate of EFS-Web transmission, which will allow the Office to treat certain correspondence as received (for timeliness purposes) as of the date submitted by applicant rather than the date received by the Office if the correspondence is filed by EFS-Web. The procedure for the certificate of EFS-Web transmission is similar to the procedure for the existing certificate of mailing or transmission under § 1.8. For example, correspondence sent in reply to an Office action setting a three-month shortened statutory period for reply would be considered timely if transmitted via EFS-Web at 11:59 p.m. Pacific Time on the last day of the three-month period for reply even though it was received in the Office more than three months from the mailing of the Office action. Thus, the rules are amended so that EFS-Web submissions would be treated analogously to submissions filed via First-Class Mail or facsimile transmission with a certificate of mailing or transmission. This notice is also making minor changes to §§ 1.4, 1.6, and 1.33 to align the rules of practice to existing practices regarding EFS-Web.

Discussion of EFS-Web: The Office's electronic filing system previously provided two distinct electronic filing systems for filing patent correspondence namely: (1) EFS-Web, and (2) the client-side components ePAVE for form generation, validation and submission to the Office in combination with EFS-ABX for authoring the patent application specification. Prior to EFS-Web, the Office only provided for the electronic submission of limited patent correspondence using ePAVE and EFS–ABX. ePAVE and EFS–ABX were discontinued on November 1, 2006. *See Retirement of Electronic Filing System—Application Body Extensible Markup Language (EFS–ABX) and Electronic Packaging and Validation Engine (ePAVE) Components*, 1311 *Off. Gaz. Pat. Off.* 155 (October 24, 2006). Thus, EFS-Web is the sole system for electronic filing of most patent correspondence. EFS-Web permits most patent applications and other patent-related documents, to be submitted in a ''PDF'' file format. In addition, EFS-Web does not require any significant client side components (unlike ePAVE and EFS–ABX). Accordingly, EFS-Web allows users to streamline processing and filing of patent correspondence, and better integrates electronic filing into their current computer systems.

Under EFS-Web, correspondence officially submitted is accorded a ''receipt date,'' which is the date the correspondence was received by the Office (*e.g.*, in Alexandria, Virginia (Eastern Time zone)). The receipt date is not limited to an official business day, but can be a Saturday, Sunday or Federal holiday within the District of Columbia. Correspondence is officially submitted to the Office via EFS-Web when a user clicks the submit button on the Confirm and Submit screen after the correspondence has been uploaded to the USPTO server for, *inter alia*, user review. An acknowledgment receipt is automatically, electronically sent to the person filing the correspondence after the correspondence is officially submitted. The acknowledgment receipt contains the ''receipt date,'' the time the correspondence was received at the Office (not the local time at the submitter's location), and a full listing of the correspondence submitted. Accordingly, an acknowledgment receipt is a legal equivalent of a post card receipt described in the Manual of Patent Examining Procedure (MPEP), Section 503. As the acknowledgment receipt contains the time the correspondence was received at the Office, users may not be able to solely rely on the acknowledgment receipt to support a position that correspondence was submitted at a particular local time. Therefore, users are advised to keep a copy of papers submitted, including a certification of EFS-Web transmission under § 1.8, as evidence of the local time of all submissions to support a position that correspondence was submitted at a particular local time in the event such evidence is needed. For the filing of applications, the official filing date will continue to be stated on the Filing Receipt under § 1.54(b), which is sent to applicants after the submitted application parts are reviewed for compliance with the filing date requirements.

An acknowledgment receipt will not be generated until EFS-Web correspondence is officially submitted to and received by the Office. If a user officially submits correspondence to the Office by clicking on the submit button on the Confirm and Submit screen in EFS-Web, but no acknowledgment receipt is generated thereafter, the user should check private PAIR, if possible, for the acknowledgment receipt, which should be entered in private PAIR a short period of time after the

correspondence is officially submitted to the Office. If no acknowledgment receipt is available in private PAIR or the user does not have access to private PAIR, then the user should contact the Patent Electronic Business Center (EBC) for assistance. If a user becomes disconnected from EFS-Web prior to officially submitting correspondence to the Office or who otherwise has difficulty submitting correspondence through EFS-Web, the user is encouraged to contact the Patent EBC for assistance. Full technical support is currently available through the Patent EBC during their Standard Hours of Operation, which are Monday through Friday from 6 a.m. until midnight (eastern time), and Saturday and Sunday from 10 a.m. through 6 p.m. (eastern time) at 866–217–9197 (toll-free). The patent EBC may also be contacted by E-mail: *ebc@uspto.gov* or FAX: 571–273–0177. Limited assistance is available at all other times through the Office's Electronic Business Support (EBS) at 1–800–786–9199 or 571–272–1000.

If a transmission is attempted during a time when the Office's electronic filing system is down, the Office will not be able to accept any correspondence electronically. In this situation, the user is advised to use alternative filing methods. For the filing of an application, alternative methods to establish the filing date for an application are Express Mail under § 1.10 or hand-delivery to the Office. (Note that new applications filed under § 1.53 cannot be submitted by facsimile transmission (§ 1.6(d)(3)).) For other patent correspondence, alternative methods to establish timeliness of a submission are First-Class Mail with a certificate of mailing under § 1.8 (if applicable), facsimile transmission with a certificate of transmission under § 1.8 (if applicable), Express Mail under § 1.10, or hand-delivery to the Office. Certificate of mailing or transmission procedures under § 1.8 do not apply to: (1) The filing of a national patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date, including a request for a continued prosecution application of a design application under § 1.53(d) (*see* § 1.8(a)(2)(i)(A)); (2) the filing of an international application for patent (*see* § 1.8(a)(2)(i)(D)); (3) the filing of correspondence in an international application before the U.S. Receiving Office, the U.S. International Searching Authority, or the U.S. International Preliminary Examining Authority (*see* § 1.8(a)(2)(i)(E)); and (4) the filing of a copy of the international application and the basic national fee necessary to enter the national stage, as specified in § 1.495(b) (*see* § 1.8(a)(2)(i)(F)) regardless of the media that is used. Likewise, if the user cannot pay fees on-line because the RAM interface is down, the user should pay fees via alternative methods such as authorizing payment to a deposit account or by a credit card in a document (*e.g.*, a fee transmittal). Accordingly, users are strongly advised to submit their correspondence via EFS-Web sufficiently early in the day to allow time for alternative filing or payment methods when submissions via EFS or RAM cannot be initiated or correctly completed.

As EFS-Web is easy to use and readily available twenty-four hours a day, every day, some users may find it tempting to include correspondence to multiple applications in one, single EFS-Web submission, or to submit the required reply piecemeal over multiple sessions. Such submissions may result in processing delays in the Office, and should be avoided. In order to facilitate proper processing of any correspondence submitted via EFS-Web, each submission session must be limited to correspondence for a single application, with each distinct reply being contained in a separate paper (*see* § 1.4(c)). The application number or the patent number for which the correspondence pertains must be included in any submission to assure proper matching with the application file.

For more information on EFS-Web, *see* the Legal Framework for EFS-Web (*http://www.uspto.gov/ebc/portal/efs/legal.htm*), which provides guidance on the background statutes, regulations and policies that support the Office electronic filing system, including EFS-Web and the use of S-signature therein. The Legal Framework for EFS-Web is a valuable reference for applicants and patent practitioners using EFS-Web.

Although EFS-Web accepts most patent correspondence, there are still certain types of correspondence that are not permitted to be filed by EFS-Web, such as any correspondence for reexamination proceedings. *See* the Legal Framework for EFS-Web for a current list of types of correspondence that are not permitted to be filed using EFS-Web. If any additional types of correspondence are permitted to be filed via EFS-Web, they will be announced on the Office's Web site and will be added to the Legal Framework for EFS-Web in due course. Therefore, users are advised to periodically review the Legal Framework for EFS-Web to view current information on types of correspondence that are not permitted to be filed through EFS-Web.

Discussion of Specific Rules

Sections 1.4, 1.6, 1.8, and 1.33 governing applicant correspondence are amended to reflect use of electronic commerce, in particular EFS-Web, as follows:

Section 1.4: Section 1.4(d)(2) is amended to delete the reference to the character coded signature of paragraph (d)(3), which was only applicable to the ePAVE software, a component of the Office's older, discontinued patent electronic filing system. Since S-signatures are acceptable signatures in EFS-Web submissions in accordance with § 1.4(d)(2), this paragraph is also amended to eliminate the reference to ''EFS Tag(ged) Image File Format (TIFF)'' because EFS-Web does not accept TIFF attachments. In addition, a reference to § 1.6(a)(4) is added as a conforming amendment. Accordingly, the relevant phrase has been rewritten as ''via the Office Electronic Filing System as an attachment as provided in § 1.6(a)(4).''

A legible electronic image of a handwritten signature inserted, or copied and pasted by the person signing the correspondence into the correspondence may be considered to be an acceptable signature under § 1.4(d)(2) provided the signature is surrounded by a first single forward slash mark before the electronic image and a second single forward slash mark after the electronic image. That is, the legible electronic image of a handwritten signature must be enclosed between two single forward slashes, and the signer's name indicated below or adjacent to the signature as required by § 1.4(d)(2). The slashes must be inserted in the correspondence prior to, or at the same time as, the insertion of the signature. The slashes must not be added after the insertion of the signature.

Section 1.4(d)(3) is amended to provide requirements in using Office forms. The character coded signature requirements of former paragraph (d)(3) have been removed because such requirements were only applicable to the ePAVE software, which is now discontinued.

The Office provides forms to the public to use in certain situations to assist in the filing of correspondence for a certain purpose and to meet certain requirements. Use of the forms for purposes for which they were not designed is prohibited. No changes to certification statements on the Office forms (*e.g.*, oath or declaration forms, terminal disclaimer forms, petition forms, and the nonpublication request

form) may be made. For example, the following statements are certification statements on an oath or declaration form PTO/SB/01: (1) ''I believe the inventor(s) named below to be the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the invention entitled;'' (2) ''I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment specifically referred to above;'' (3) ''I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application;'' and (4) ''I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.'' As another example, the following statement is a certification on the nonpublication request form PTO/SB/35: ''I hereby certify that the invention disclosed in the attached application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication at eighteen months after filing.'' Other Office forms for patent applications or patents that contain certification statements include, but are not limited to, forms PTO/SB/01, PTO/SB/01A, PTO/SB/03, PTO/SB/03A, PTO/SB/04, PTO/SB/25, PTO/SB/26, PTO/SB/28, PTO/SB/35, PTO/SB/51, PTO/SB/51s, PTO/SB/53, PTO/SB/62, PTO/SB/63, PTO/SB/64, PTO/SB/64a, PTO/SB/66, and PTO/SB/101–110.

Most of the Office forms are static in that the forms do not allow users to customize the form to their particular needs. The existing text of a static form, other than a certification statement, may be modified, deleted or added to by a party, only if information identifying the form as an Office form (*e.g.*, the form number and the Office of Management and Budget (OMB) approval information in the header and footer of the form) is removed. For example, a static form could be amended to add additional signature blocks if the form number and OMB information is removed. EFS-Web forms, however, do allow for customization. For example, users may add, remove, or change certain additional data blocks (*e.g.*, signature blocks) as needed by selecting the ''add'' or ''remove'' buttons on the EFS-Web forms. These EFS-Web forms can be customized in a way provided for by the form without removing the text identifying the form as an Office form (*e.g.*, the form number and OMB information in the header and the footer). Currently, only forms PTO/SB/08 Information Disclosure Statement, PTO/SB/14 Application Data Sheet, PTO/SB/28 Petition to Make Special under the Accelerated Examination Program, PTO/SB/30 Request for Continued Examination (RCE) Transmittal, and PTO/SB/66 Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) are EFS-Web forms.

The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any form with text identifying the form as an Office form (*e.g.*, the form number and the OMB information in the header and footer) by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) that the existing text and any certification statement on the form has not been altered other than permitted by EFS-Web customization.

Section 1.4(d)(4) is amended to make conforming changes due to the removal of the character coded signature requirements of former paragraph (d)(3).

Section 1.6: Section 1.6(a)(4) is added to indicate that most patent applications and other patent correspondence, including, *inter alia*, amendments, drawing changes and extensions of time, may be submitted using the Office electronic filing system only in accordance with the Office electronic filing system requirements (see the Legal Framework for EFS-Web, which sets forth the electronic filing system requirements (*http://www.uspto.gov/ebc/portal/efs/legal.htm*)). The phrase ''using the Office electronic filing system only in accordance with the Office electronic filing system requirements'' codifies and continues the current EFS practice.

Under EFS-Web, correspondence is accorded a ''receipt date'' that is the date the correspondence is received (Eastern Time) at the Office's correspondence address set forth in § 1.1 (*e.g.*, Alexandria, Virginia) when it was officially submitted. The receipt date is not limited to an official business day, but can be a Saturday, Sunday or Federal holiday within the District of Columbia. Correspondence is officially submitted to the Office via EFS-Web when a user clicks the submit button on the Confirm and Submit screen after the correspondence has been uploaded to the USPTO server for, *inter alia*, user review.

The ''receipt date'' is recorded on an acknowledgment receipt, which is automatically sent to the person filing the correspondence after the correspondence is officially submitted. Under EFS-Web, the acknowledgment receipt contains a full listing of the correspondence submitted, including the count of pages and/or byte size for each piece of correspondence in the submission. Accordingly, the acknowledgment receipt is a legal equivalent of a post card receipt described in the Manual of Patent Examining Procedure (MPEP), Section 503. For the filing of applications, the official filing date will continue to be stated on the filing receipt under § 1.54(b), which is sent to applicants after the submitted application parts are reviewed for compliance with the filing date requirements.

Section 1.6(g) is added to provide a new procedure for establishing that national stage correspondence, national stage filings, or follow-on correspondence required by § 1.495(b), which had been submitted via EFS was, in fact, received by the Office in the event that the Office has no evidence of receipt.

To begin entry into the national stage, applicant is required to comply with § 1.495(b) within thirty months from the priority date. Thus, applicant must pay the basic national fee on or before thirty months from the priority date and be sure that a copy of the international application has been received by the U.S. Designated or Elected Office prior to expiration of thirty months from the priority date. Where the international application was filed with the United States Receiving Office as the competent receiving Office, the copy of the international application referred to in § 1.495(b) is not required. Payment of the basic national fee will indicate applicant's intention to enter the national stage and will provide a U.S. correspondence address in most instances. Applicants cannot pay the basic national fee with a surcharge after the thirty-month deadline. Failure to pay the basic national fee within thirty months from the priority date will result in abandonment of the application. The time for payment of the basic fee is not extendable. Similarly, the copy of the

international application, if required under § 1.495(b), must be provided within thirty months from the priority date to avoid abandonment of the application. Accordingly, the ability to present evidence of timely receipt of national stage correspondence is critical to potentially avoid abandonment of the application.

This new procedure is equivalent to the Office's domestic filing process for providing evidence of the Office's receipt of a continued prosecution application (CPA) for a design application under § 1.53(d) submitted by facsimile transmission in the event that the Office does not have evidence of receipt, as set forth in § 1.6(f) and MPEP 502.01. For a CPA, the procedure for providing evidence of receipt by the Office requires a petition be filed requesting that the CPA be accorded a filing date as of the date the CPA is shown to have been transmitted to and received in the Office (§ 1.6(f)). The showing must include, *inter alia*, a copy of the sending unit's report confirming transmission of the application or evidence that came into being after the complete transmission of the application and within one business day of the complete transmission of the application. Under the new procedure for providing evidence of a prior submission via EFS-Web, the petition and showing necessary to accept the re-submission of the correspondence as being filed on an earlier date is the same as the petition and showing required under § 1.6(f) with the exception that the acknowledgment receipt, or other equivalent evidence, must be provided rather than the sender's facsimile report.

If applicant has the acknowledgment receipt, applicant must include a copy of the acknowledgment receipt as evidence of the submission of the national stage correspondence. In the rare situations where applicant does not have the acknowledgment receipt, equivalent evidence, which is another piece of correspondence that shows substantially similar evidence that is provided by the acknowledgment receipt, will be considered in support of the petition.

Section 1.8: Section 1.8(a)(1)(i) is amended by adding new paragraph (C) to permit certain correspondence, excluding correspondence not entitled to a certificate of mailing or transmission or not permitted to be electronically transmitted, to be treated as being timely received on the local date at the location where submitted if filed with a certificate of transmission via the Office's electronic filing system, which is EFS-Web. *See* the Legal Framework for EFS-Web for a current list of types of correspondence that are not permitted to be filed using EFS-Web, such as any correspondence for reexamination proceedings. This rule change will provide a similar procedure for correspondence filed via EFS-Web that currently exists for correspondence filed via First-Class Mail under § 1.10 and facsimile transmission using a certificate of mailing or transmission under § 1.8. Users should place the certificate of transmission on the correspondence (*e.g.*, transmittal letter) submitted under EFS-Web in a similar manner as they would for correspondence submitted by facsimile transmission. *See* MPEP 512 for more information on certificate of mailing or transmission under § 1.8.

Prior to this amendment to § 1.8, a person could state on certain papers directed to the Office, the date on which the paper will be deposited in the United States Postal Service or transmitted by facsimile. This amendment to § 1.8 will permit a similar procedure for establishing timeliness when correspondence is filed via EFS-Web. Accordingly, if the date stated in the correspondence submitted via EFS-Web is within the period for reply, the reply, in most instances, will be considered to be timely. This is true even if the paper does not actually reach the Office until after the end of the period for reply.

Even with such procedures under § 1.8, the Office will continue its usual practice of recording the receipt date (*e.g.*, ''Office Date'' Stamp) on all papers received through the mail, by facsimile, or via EFS-Web except those filed under § 1.10 (*See* MPEP 513). The receipt date will also be the date that is entered on Office records and from which any subsequent periods are calculated.

The certificate of mailing or transmission under § 1.8 is not available for all correspondence. Paragraph (a)(2) of § 1.8 lists some correspondence for which the certification of mailing or transmission does not apply to, and no benefit will be given to such certificates if used. The list enumerated in § 1.8(a)(2) is not exhaustive, and the provisions of § 1.8 do not apply to the time periods or situations that have been explicitly excluded from § 1.8. For example, provisions of § 1.8(a) do not apply to time periods and situations set forth in §§ 1.217(e) and 1.703(f) because the exceptions are provided explicitly in §§ 1.217(e) and 1.703(f).

Paragraphs (b) and (c) of § 1.8 will also apply to a certification of EFS-Web transmission by new paragraph (a)(1)(i)(C) of this section. Paragraphs (b) and (c) concern the situation where a paper containing a certificate was timely filed, but never received by the Office. Specifically, § 1.8(b) permits a party to notify the Office of a previous mailing, or transmission, of correspondence when a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, but Office records do not show receipt of the correspondence. Applicant may notify the Office of the previous mailing or transmission and supply a duplicate copy of the previously mailed or transmitted correspondence and a statement attesting on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the person signing the statement did not sign the certificate of mailing or transmission, then the person signing the statement should explain how they have firsthand knowledge of the previous timely mailing or transmission. Such a statement should be filed promptly after the person becomes aware that the Office has not received the correspondence. Before notifying the Office of a previously submitted correspondence that appears not to have been received by the Office, applicants should check the Office's private Patent Application Information Retrieval (PAIR) System to see if the correspondence has been entered into the application file.

For EFS-Web submissions, applicants are encouraged to use the acknowledgment receipt generated by EFS-Web, if available, as part of the evidence to support the statement required by § 1.8(b)(3). An acknowledgment receipt is automatically electronically sent to the person filing the correspondence after the correspondence is officially submitted. As the acknowledgment receipt contains the time (Eastern Time) the correspondence was received at the Office, users may not be able to solely rely on the acknowledgment receipt to support a position that correspondence was submitted at a particular local time. Therefore, users are advised to keep a copy of papers submitted, including a certification of EFS-Web transmission, as evidence of the local time of all EFS-Web submissions to support a position that correspondence was submitted at a particular local time in the event such evidence is needed.

Section 1.33: Section 1.33(a) is amended to accommodate changes due to electronic commerce. The Office anticipates that, in the near term future, applicants may have the option to view Office communications via the Office's private PAIR system instead of receiving mailed communications. Also, when a submitter files correspondence using

EFS-Web, an acknowledgment receipt is typically generated and automatically sent via e-mail to the submitter. The acknowledgment receipt is also placed in the Office's electronic file and is viewable in private PAIR. To accommodate these processes, the phrases '', or otherwise make available,'' and ''the person associated with'' was added so the third sentence will read as follows: ''The Office will direct, or otherwise make available, all notices, official letters, and other communications relating to the application to the person associated with the correspondence address.'' In addition, the word ''generally'' was added to the following sentence as a conforming change: ''The Office will generally not engage in double correspondence with an applicant and a patent practitioner, or with more than one patent practitioner except as deemed necessary by the Director.''

Rule Making Considerations

Administrative Procedure Act

This notice adopts changes to the rules of practice that concern the manner of submitting certain correspondence via the Office's electronic filing systems. Specifically, the changes in this final rule: (1) Provide patent users with a process for showing that certain national stage correspondence submitted via EFS-Web was actually received by the Office by relying on the acknowledgment receipt; and (2) treat certain correspondence as received (for timeliness purposes) as of the date submitted by applicant rather than the date received by the Office if the correspondence is filed by EFS-Web, which will provide a similar procedure as the existing certificate of mailing or transmission under § 1.8. Therefore, these rule changes involve interpretive rules, or rules of agency practice and procedure. *See Bachow Communications Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are ''rules of agency organization, procedure, or practice'' and exempt from the Administrative Procedure Act's notice and comment requirement); *see also Merck & Co., Inc.* v. *Kessler,* 80 F.3d 1543, 1549–50, 38 USPQ2d 1347, 1351 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules (to which the notice and comment requirements of the Administrative Procedure Act apply)), and *Fressola* v. *Manbeck,* 36 USPQ2d 1211, 1215 (D.D.C. 1995) (''it is extremely doubtful whether any of the rules formulated to govern patent or trade-mark practice are other than 'interpretive rules, general statements of policy, * * * procedure, or practice.' '') (quoting C.W. Ooms, The United States Patent Office and the Administrative Procedure Act, 38 Trademark Rep. 149, 153 (1948)). Accordingly, prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law).

Regulatory Flexibility Act

As discussed previously, the changes in this final rule involve rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). As prior notice and an opportunity for public comment were not required pursuant to 5 U.S.C. 553 (or any other law) for the changes in this final rule, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for the changes in this final rule. See 5 U.S.C. 603.

Executive Order 13132

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The changes in this notice are limited to amending the rules of practice to support implementation of the Office's electronic filing system (EFS) for patent correspondence, and in particular, the new web-based electronic filing system (EFS-Web). The changes in this final rule: (1) Provide patent users with a process for showing that certain national stage correspondence submitted via EFS-Web was actually received by the Office by relying on the acknowledgment receipt; and (2) treat certain correspondence as received (for timeliness purposes) as of the date submitted by applicant rather than the date received by the Office if the correspondence is filed by EFS-Web, which will provide a similar procedure as the existing certificate of mailing or transmission under § 1.8. The collections of information involved in this notice have been reviewed and previously approved by OMB under the following OMB control numbers: 0651–0021, 0651–0031 and 0651–0032. The United States Patent and Trademark Office is not resubmitting the information collections package for OMB control numbers 0651–0031 and 0651–0032 to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under OMB control numbers 0651–0031 and 0651–0032. The United States Patent and Trademark Office is resubmitting the information collections package for OMB control numbers 0651–0021 to OMB for its review and approval because the changes in this notice do affect the information collection requirements associated with the information collection under OMB control number 0651–0021.

The title, description and respondent description of the information collection under OMB control number 0651–0021 are shown below with estimates of the annual reporting burdens. Included in the estimates is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0021.

Title: Patent Cooperation Treaty.

Form Numbers: PCT/RO/101, PCT/RO/134, PTO–1382, PTO–1390, PCT/IPEA/401, PTO/SB/61/PCT, PTO/SB/64/PCT, PCT/Model of power of attorney, PCT/Model of general power of attorney.

Type of Review: Approved through March 2007.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 355,655.

Estimated Time per Response: 15 minutes to 8 hours.

Estimated Total Annual Burden Hours: 347,889.

Needs and Uses: The general purpose of the Patent Cooperation Treaty (PCT) is to standardize the format and filing procedures so that applicants may file one international application in one location, in one language, and pay one initial set of fees to seek protection for an invention in more than 100 designated countries. This collection of information is necessary so that respondents can file an international

patent application and so that the USPTO can fulfill its duties to process, search, and examine international patent applications under the provisions of the PCT.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.4 is amended by revising paragraphs (d)(2) introductory text, (d)(3), and (d)(4)(ii) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(d) * * *

(2) *S-signature.* An S-signature is a signature inserted between forward slash marks, but not a handwritten signature as defined by § 1.4(d)(1). An S-signature includes any signature made by electronic or mechanical means, and any other mode of making or applying a signature not covered by a handwritten signature of § 1.4(d)(1). Correspondence being filed in the Office in paper, by facsimile transmission as provided in § 1.6(d), or via the Office electronic filing system as an attachment as provided in § 1.6(a)(4), for a patent application, patent, or a reexamination proceeding may be S-signature signed instead of being personally signed (*i.e.*, with a handwritten signature) as provided for in paragraph (d)(1) of this section. The requirements for an S-signature under this paragraph (d)(2) of this section are as follows.

* * * * *

(3) *Forms.* The Office provides forms to the public to use in certain situations to assist in the filing of correspondence for a certain purpose and to meet certain requirements for patent applications and proceedings. Use of the forms for purposes for which they were not designed is prohibited. No changes to certification statements on the Office forms (*e.g.*, oath or declaration forms, terminal disclaimer forms, petition forms, and nonpublication request form) may be made. The existing text of a form, other than a certification statement, may be modified, deleted, or added to, if all text identifying the form as an Office form is removed. The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any Office form with text identifying the form as an Office form by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) of this chapter that the existing text and any certification statements on the form have not been altered other than permitted by EFS-Web customization.

(4) * * *

(ii) *Certifications as to the signature:*

(A) *Of another:* A person submitting a document signed by another under paragraph (d)(2) of this section is obligated to have a reasonable basis to believe that the person whose signature is present on the document was actually inserted by that person, and should retain evidence of authenticity of the signature.

(B) *Self certification:* The person inserting a signature under paragraph (d)(2) of this section in a document submitted to the Office certifies that the inserted signature appearing in the document is his or her own signature.

* * * * *

■ 3. Section 1.6 is amended by adding new paragraphs (a)(4) and (g) to read as follows:

§ 1.6 Receipt of correspondence.

(a) * * *

(4) Correspondence may be submitted using the Office electronic filing system only in accordance with the Office electronic filing system requirements. Correspondence submitted to the Office by way of the Office electronic filing system will be accorded a receipt date, which is the date the correspondence is received at the correspondence address for the Office set forth in § 1.1 when it was officially submitted.

* * * * *

(g) *Submission of the national stage correspondence required by § 1.495 via the Office electronic filing system.* In the event that the Office has no evidence of receipt of the national stage correspondence required by § 1.495, which was submitted to the Office by the Office electronic filing system, the party who submitted the correspondence may petition the Director to accord the national stage correspondence a receipt date as of the date the correspondence is shown to have been officially submitted to the Office.

(1) The petition of this paragraph (g) requires that the party who submitted such national stage correspondence:

(i) Informs the Office of the previous submission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence under § 1.495;

(ii) Supplies an additional copy of the previously submitted correspondence;

(iii) Includes a statement that attests on a personal knowledge basis, or to the satisfaction of the Director, that the correspondence was previously officially submitted; and

(iv) Supplies a copy of an acknowledgment receipt generated by the Office electronic filing system, or equivalent evidence, confirming the submission to support the statement of paragraph (g)(1)(iii) of this section.

(2) The Office may require additional evidence to determine if the national stage correspondence was submitted to the Office on the date in question.

■ 4. Section 1.8 is amended by revising paragraphs (a)(1)(i) and (b)(3) to read as follows:

§ 1.8 Certificate of mailing or transmission.

(a) * * *

(1) * * *

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail;

(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); or

(C) Transmitted via the Office electronic filing system in accordance with § 1.6(a)(4); and

* * * * *

(b) * * *

(3) Includes a statement that attests on a personal knowledge basis or to the

satisfaction of the Director to the previous timely mailing, transmission or submission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement. If the correspondence was transmitted via the Office electronic filing system, a copy of an acknowledgment receipt generated by the Office electronic filing system confirming submission may be used to support this statement.

* * * * *

■ 5. Section 1.33 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

(a) *Correspondence address and daytime telephone number.* When filing an application, a correspondence address must be set forth in either an application data sheet (§ 1.76), or elsewhere, in a clearly identifiable manner, in any paper submitted with an application filing. If no correspondence address is specified, the Office may treat the mailing address of the first named inventor (if provided, see §§ 1.76(b)(1) and 1.63(c)(2)) as the correspondence address. The Office will direct, or otherwise make available, all notices, official letters, and other communications relating to the application to the person associated with the correspondence address. For correspondence submitted via the Office's electronic filing system, however, an electronic acknowledgment receipt will be sent to the submitter. The Office will generally not engage in double correspondence with an applicant and a patent practitioner, or with more than one patent practitioner except as deemed necessary by the Director. If more than one correspondence address is specified in a single document, the Office will select one of the specified addresses for use as the correspondence address and, if given, will select the address associated with a Customer Number over a typed correspondence address. For the party to whom correspondence is to be addressed, a daytime telephone number should be supplied in a clearly identifiable manner and may be changed by any party who may change the correspondence address. The correspondence address may be changed as follows:

* * * * *

Dated: January 17, 2007.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E7–906 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2006–0386; FRL–8272–5]

Approval and Promulgation of Implementation Plans; Texas; El Paso County Carbon Monoxide Redesignation to Attainment, and Approval of Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On January 20, 2006, the Texas Commission on Environmental Quality (TCEQ) submitted a State Implementation Plan (SIP) revision to request redesignation of the El Paso carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). This submittal also included a CO maintenance plan for the El Paso area and associated Motor Vehicle Emission Budgets (MVEBs). The maintenance plan was developed to ensure continued attainment of the CO NAAQS for a period of 10 years from the effective date of EPA approval of redesignation to attainment. In this action, EPA is approving the El Paso CO redesignation request and the maintenance plan with its associated MVEBs as satisfying the requirements of the Federal Clean Air Act (CAA) as amended in 1990.

DATES: This rule is effective on March 26, 2007 without further notice, unless EPA receives relevant adverse comment by February 22, 2007.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2006–0386, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Mr. Thomas Diggs at *diggs.thomas@epa.gov*. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand Delivery:* Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2006–0386. 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.

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 Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public

inspection in the Region 6 FOIA Review Room between the hours of 8:30am and 4:30pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, Air Planning Section, (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–8542; fax number 214–665–7263; e-mail address *riley.jeffrey@epa.gov*.

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

Table of Contents

I. Background

Under the 1990 Federal Clean Air Act (CAA) Amendments, El Paso was designated and classified as a moderate nonattainment area for CO because it did not meet the 8-hour CO NAAQS for this criteria pollutant (56 FR 56694). El Paso's classification as a moderate nonattainment area under sections 107(d)(4)(A) and 186(a) of the CAA imposed a schedule for attainment of the CO NAAQS by December 31, 1995.

The El Paso nonattainment area has unique considerations for CO attainment planning due to airshed contributions from Ciudad Juarez, Mexico. Section 179B of the 1990 CAA Amendments contains provisions for CO nonattainment areas affected by emissions emanating from outside the United States. Under CAA Section 179B, the EPA shall approve a SIP for the El Paso nonattainment area if the TCEQ establishes to the EPA's satisfaction that implementation of the plan would achieve timely attainment of the NAAQS but for emissions emanating from Ciudad Juarez. This provision prevents El Paso County from being reclassified to a higher level of nonattainment should monitors continue to record CO concentrations in excess of the NAAQS.

To meet the CAA attainment schedule of December 31, 1995, Texas submitted an initial revision to the SIP for the El Paso CO moderate nonattainment area in a letter dated September 27, 1995. This submittal, as well as a February 1998 supplemental submittal, included air quality modeling demonstrating that El Paso would attain the CO NAAQS by December 31, 1995, but for emissions emanating outside of the United States from Mexico. The EPA approved a revision to the Texas SIP submitted to show attainment of the 8-hour CO NAAQS in the El Paso CO nonattainment area under Section 179B provisions, as well as approving the El Paso area's CO emissions budget and a CO contingency measure requirement. The State submitted the revisions to satisfy Section 179B and Part D requirements of the CAA. This approval was published July 2, 2003 (68 FR 39457) and became effective September 2, 2003. TCEQ also submitted all the requirements for the moderate area classification and EPA approved them. See further discussion in Section II.B.2.

On January 20, 2006, the State of Texas submitted a revision to the SIP which consists of a request for redesignation of the El Paso carbon monoxide (CO) nonattainment area to attainment for the CO NAAQS, as well as an 8-hour CO maintenance plan to ensure that El Paso County remains in attainment of the 8-hour CO NAAQS.

In this action, we are approving a change in the legal designation of the El Paso area from nonattainment for CO to attainment, in addition to approving the maintenance plan that is designed to keep the area in attainment for CO until 2015. Under the CAA, we can change designations if acceptable data are available and if certain other requirements are met. Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before we can approve the redesignation request, we must decide that all applicable SIP elements have been fully approved. Approval of the applicable SIP elements may occur simultaneously with final approval of the redesignation request. The State of Texas has incorporated a CO maintenance plan into this submittal to satisfy the requirement of a fully approved maintenance plan for the area.

II. EPA's Evaluation of the El Paso Redesignation Request and Maintenance Plan

We have reviewed the El Paso CO redesignation request and maintenance plan and believe that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). The following are descriptions of how the section 107(d)(3)(E) requirements are being addressed.

(a) Redesignation Criterion: The Area Must Have Attained the Carbon Monoxide (CO) NAAQS

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. The area is designated attainment for the 1-hour CO NAAQS and designated nonattainment for the 8-hour CO NAAQS. As described in 40 CFR 50.8, the 8-hour CO NAAQS for carbon monoxide is 9 parts per million (ppm), (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. Attainment of the 8-hour CO standard is not a momentary phenomenon based on short-term data. Instead, we consider an

area to be in attainment if each of the 8-hour CO ambient air quality monitors in the area doesn't have more than one exceedance of the 8-hour CO standard over a one-year period. If any monitor in the area's CO monitoring network records more than one exceedance of the 8-hour CO standard during a one-year calendar period, then the area is in violation of the 8-hour CO NAAQS. In addition, our interpretation of the CAA and EPA national policy [1] has been that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least a continuous two-year calendar period. In addition, the area must also continue to show attainment through the date that we promulgate the redesignation in the **Federal Register**.

The State of Texas' CO redesignation request for the El Paso area is based on an analysis of quality assured ambient air quality monitoring data that are relevant to the redesignation request. As presented in Chapter 3, Table 3–1 of the State's maintenance plan, ambient air quality monitoring data for consecutive calendar years 1999 through 2005 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the El Paso nonattainment area. We have evaluated the ambient air quality data and have determined that the El Paso area has not violated the 8-hour CO standard and continues to demonstrate attainment. The El Paso nonattainment area has quality-assured data showing no violations of the 8-hour CO NAAQS for the most recent consecutive two-calendar-year period (2004 and 2005). Therefore, we believe the El Paso area has met the first component for redesignation: Demonstration of attainment of the CO NAAQS. We note too that the State of Texas has also committed, in the maintenance plan, to continue the necessary operation of the CO monitoring network in compliance with 40 CFR Part 58.

(b) Redesignation Criterion: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D of the CAA

To be redesignated to attainment, section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. We interpret section 107(d)(3)(E)(v) to mean that for a redesignation to be approved by us, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

1. CAA Section 110 Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. On July 2, 2003, we approved the El Paso CO element revisions to Texas's SIP as meeting the requirements of section 110(a)(2) of the CAA (see 68 FR 39457).

2. Part D Requirements

Before the El Paso ''moderate'' CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 3 of Part D contains specific provisions for ''moderate'' CO nonattainment areas. The relevant subpart 1 requirements are contained in sections 172(c) and 176. Our General Preamble (see 57 FR 13529 to 13532, April 16, 1992) provides EPA's interpretations of the CAA requirements for ''moderate'' CO areas such as El Paso with CO design values that are less than or equal to 12.7 ppm. The General Preamble (see 57 FR 13530, *et seq.*) provides that the applicable requirements of CAA section 172 are: 172(c)(3) (emissions inventory), 172(c)(5) (new source review permitting program), 172(c)(7) (the section 110(a)(2) air quality monitoring requirements), and 172(c)(9) (contingency measures). Regarding the requirements of sections 172(c)(3) (inventory) and 172(c)(9) (contingency measures), please refer to our discussion below of sections 187(a)(1) and 187(a)(3), which are the more specific provisions of subpart 3 of Part D of the CAA.

It is also worth noting that we interpreted the requirements of sections 172(c)(2) (reasonable further progress—RFP) and 172(c)(6) (other measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See EPA's September 4, 1992, John Calcagni memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'', and the General Preamble, 57 FR at 13564, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4) (identification of certain emissions increases) and 172(c)(8) (equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

For the section 172(c)(5) New Source Review (NSR) requirements, the CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Texas has an approved NSR program (see 60 FR 49781, September 27, 1995) that meets the requirements of CAA section 172(c)(5). For the CAA section 172(c)(7) provisions (compliance with the CAA section 110(a)(2) Air Quality Monitoring Requirements), our interpretations are presented in the General Preamble (57 FR 13535). CO nonattainment areas are to meet the ''applicable'' air quality monitoring requirements of section 110(a)(2) of the CAA. Information concerning CO monitoring in Texas is included in the Annual Monitoring Network Review (MNR) prepared by the State and submitted to EPA. Our personnel have concurred with Texas' annual network reviews and have agreed that the El Paso network remains adequate.

In Chapter 5, Section 5.4 of the maintenance plan, the State commits to the continued operation of the existing CO monitoring network according to applicable Federal regulations and guidelines (40 CFR part 58).

The relevant subpart 3 provisions were created when the CAA was amended on November 15, 1990. The new CAA requirements for ''moderate'' CO areas, such as El Paso, required that the SIP be revised to include a 1990 base year emissions inventory (CAA section 187(a)(1)), contingency provisions (CAA section 187(a)(3)), corrections to existing motor vehicle inspection and maintenance (I/M) programs (CAA section 187(a)(4)), periodic emission inventories (CAA section 187(a)(5)), and the implementation of an oxygenated fuels program (CAA section 211(m)(1)). Sections 187(a)(2), (6), and (7) do not apply to the El Paso area because its design value was below 12.7 ppm at the time of classification. How the State met these requirements and our approvals, are described below:

[1] Refer to EPA's September 4, 1992, John Calcagni policy memorandum entitled ''Procedures for Processing requests to Redesignate areas to Attainment.''

A. 1990 base year emissions inventory (CAA section 187(a)(1)): EPA approved an emissions inventory on September 12, 1994 (see 59 FR 46766).

B. Contingency provisions (CAA section 187(a)(3)): EPA approved the use of 46 tons per day in incremental CO reduction credits from the Texas low-enhanced vehicle inspection and maintenance program, as fulfillment of the State's CO attainment contingency measure requirement for the El Paso nonattainment area under section 172(c)(9) on July 2, 2003 (see 68 FR 39457).

C. Corrections to the El Paso basic I/M program (CAA section 187(a)(4)): EPA approved the Texas Motorist Choice (TMC) I/M Program (which includes El Paso) on November 14, 2001 (see 66 FR 57261).

D. Periodic emissions inventories (CAA section 187(a)(5)): The State submitted an initial revision to the SIP for the El Paso CO moderate nonattainment area in a letter dated September 27, 1995. This submittal, as well as a February 1998 supplemental submittal contained a commitment to submit emission inventory updates. TCEQ continues to submit the Periodic Emissions Inventory (PEI) every three years.

E. Oxygenated fuels program implementation (CAA section 211(m)): EPA approved the El Paso oxygenated fuels program on September 12, 1994 (see 59 FR 46766).

(c) Redesignation Criterion: The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k). As noted above, EPA previously approved SIP revisions for the El Paso CO nonattainment area that were required by the 1990 amendments to the CAA. In this action, we are also approving the maintenance plan proposed by the State, and the State's commitment to maintain an adequate monitoring network (contained in the maintenance plan). Thus, with this final rule to approve the El Paso redesignation request and maintenance plan, we will have fully approved the El Paso CO element of the SIP under section 110(k) of the CAA.

(d) Redesignation Criterion: The Area Must Show That the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions. The CO emissions reductions for El Paso, that are further described in Sections 3.5 and 5.3.3 of the El Paso maintenance plan, were achieved primarily through the Federal Motor Vehicle Control Program (FMVCP), an oxygenated fuels program, and a motor vehicle inspection and maintenance (I/M) program.

In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles (''fleet turnover''), emission reductions are realized for a particular area such as El Paso. For example, EPA promulgated lower hydrocarbon (HC) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-duty vehicles and light-duty trucks) in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet.

As stated in Section 5.3.3 of the maintenance plan, significant additional emission reductions were realized from El Paso's basic I/M program. The program requires annual inspections of vehicles at independent inspection stations. We note that further improvements to the El Paso area's basic I/M program, to meet the requirements of EPA's November 5, 1992 (57 FR 52950) I/M rule, and upgrading the I/M program to meet the requirements for a low-enhanced program, were approved by us into the SIP on November 14, 2001 (68 FR 39457).

Oxygenated fuels are gasolines that are blended with additives that increase the level of oxygen in the fuel and, consequently, reduce CO tailpipe emissions. TAC Title 30, Chapter 114, Section 114.100, ''Oxygenated Fuels Program'', contains the oxygenated fuels provisions for the El Paso nonattainment area. This rule requires all El Paso area gas stations to sell fuels containing a 2.7% minimum oxygen content (by weight) during the wintertime CO high pollution season. The use of oxygenated fuels has significantly reduced CO emissions and contributed to the area's attainment of the CO NAAQS.

We have evaluated the various State and Federal control measures, and believe that the improvement in air quality in the El Paso nonattainment area has resulted from emission reductions that are permanent and enforceable.

(e) Redesignation Criterion: The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance 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 promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period 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 adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, we issued further maintenance plan interpretations in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992), ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental'' (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' from John Calcagni, Director, Air Quality Management Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, dated September 4, 1992 (hereafter the September 4, 1992 Calcagni Memorandum).

In this **Federal Register** action, EPA is approving the maintenance plan for the El Paso CO nonattainment area because we believe, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A and is consistent with our interpretations of the CAA, as reflected in the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the State's January 20, 2006, submittal, is provided as follows:

1. Emissions Inventories—Attainment Year and Projections

EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble (see 57 FR 13498, April 16, 1992) and the September 4, 1992, Calcagni Memorandum referenced above. Under our interpretations, areas seeking to redesignate to attainment for CO may demonstrate future maintenance of the CO NAAQS either by showing that future CO emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration.

For the El Paso area, the State selected the emissions inventory approach for demonstrating maintenance of the CO NAAQS; however, the State also conducted ''hot spot'' CO modeling to demonstrate that CO exceedances are not currently occurring at a potential hot spot and will not occur at such locations in the future. The maintenance plan submitted by the TCEQ on January 20, 2006, includes comprehensive inventories of CO emissions for the El Paso area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. The State selected 2002 as the year from which to develop the attainment year inventory and included interim-year projections out to 2015. More detailed descriptions of the 2002 attainment year inventory and the projected inventories are documented in the maintenance plan in Chapter 2. Summary emission figures from the 2002 attainment year, the interim projected years, and the final maintenance year of 2015 are provided in Table 1 below.

TABLE 1.—EL PASO COUNTY CO EMISSIONS FOR 2002–2015 (TPD)

	2002	2005	2011	2015
Point Source	4.67	4.42	4.78	5.03
Area Source	16.42	16.80	17.61	18.17
Nonroad Mobile	45.90	48.71	55.23	59.18
Onroad Mobile	360.34	325.50	245.16	232.02
Total	427.33	385.43	322.78	314.40

As presented in Chapter 3, Table 3–1 of the State's maintenance plan, ambient air quality monitoring data for consecutive calendar years 1999 through 2004 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the El Paso nonattainment area. To further demonstrate maintenance of the CO NAAQS, the TCEQ agreed to additional ''hot spot'' modeling as requested by EPA on the basis of EPA's Office of Air Quality Planning and Standards' (OAQPS) September 30, 1994 Ozone/Carbon Monoxide Redesignations Reference Document. The modeling was done specifically to address two concerns—the El Paso CO monitoring network has a limited number of sites, and therefore may not have identified all the hot spots in the El Paso area; and in the future, urban growth may increase mobile emissions enough to cause exceedances of the NAAQS.

The TCEQ performed CO modeling at a heavily utilized intersection to demonstrate that CO exceedances are not currently occurring at a potential hot spot and will not occur at that location in the future. A modeling protocol detailing hotspot selection, proposed model usage, and data analysis was submitted by the State on February 17, 2005, and was approved by EPA via a letter dated March 30, 2005. The modeling protocol and approach taken are detailed in Chapter 4 of the maintenance plan. As shown in Table 4–2 of the maintenance plan, the current (base) case hot spot analysis predicted a maximum 8-hour CO concentration of 7.8 ppm, and the 2015 future case analysis predicted a maximum 8-hour CO concentration of 2.2 ppm. Both of these values are below the 9 ppm NAAQS, and demonstrate current and projected compliance with the CO standard. A more detailed evaluation by EPA of this hot spot analysis is provided in the TSD.

2. Demonstration of Maintenance—Projected Inventories

As we noted above, total CO emissions were projected forward by the State for the years 2005, 2011, and 2015. We note the State's approach for developing the projected inventories follows EPA guidance on projected emissions and we believe they are acceptable.[2] The projected inventories show that CO emissions are not estimated to exceed the 2002 attainment level during the time period 2002 through 2015 and, therefore, the El Paso area has satisfactorily demonstrated maintenance. The year 2005 was selected as the year of designation of attainment for the 8-hour CO NAAQS, so the final projection year, 2015, was intended to represent the last year of the 10-year maintenance plan. The year 2011 was selected as an interim year for conformity determination. These projected inventories were developed using EPA-approved technologies and methodologies. No new control strategies for point and area sources were relied upon in the projected inventories. CO emission reductions anticipated from EPA's national rule for the Spark Ignition Small Engine Rule, Phase 1, were relied upon as a new control strategy for Nonroad sources. TCEQ relied upon emissions reductions anticipated from existing control strategies: FMVCP, Texas Oxygenated Fuel SIP, and the Texas I/M Program. Please see the TSD for more information on EPA's review and evaluation of the State's methodologies, modeling, inputs, etc., for developing the projected emissions inventories.

3. Monitoring Network and Verification of Continued Attainment

The TCEQ commits to maintain an appropriate air monitoring network for the El Paso area throughout the 10-year maintenance period. As required by 40 CFR Part 58.20(d), TCEQ will consult with EPA in annual review of the air monitoring network to determine the

[2] ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas'', signed by D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

adequacy of the CO monitoring network, whether or not additional monitoring is needed, and if/when monitor sites can be discontinued. The TCEQ also commits to adhere to data quality requirements as specified in 40 CFR Part 58 Quality Assurance Requirements.

Texas commits to track the progress of the maintenance plan by continuing to periodically update the emissions inventory (EI). It will compare the updated EIs against the projected 2005, 2011 and 2015 EIs.

TCEQ also commits to continuing all the applicable control strategies, i.e., the measures approved into the El Paso SIP. For example, these measures include the Federal Motor Vehicle Control Program (FMVCP), an oxygenated fuels program, and a motor vehicle inspection and maintenance (I/M) program.

Based on the above, we are approving these commitments as satisfying the relevant requirements and we note that his final rulemaking approval will render the State's commitments federally enforceable.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures. In the January 20, 2006 submittal, Texas specifies the contingency trigger as a violation of the 8-hour CO standard base upon air quality monitoring data from the El Paso monitoring network. In the event that a monitored violation of the 8-hour CO standard occurs in any portion of the maintenance area, the State will first analyze the data to determine if the violation was caused by actions outside TCEQ's jurisdiction (e.g., emissions from Mexico or another state) or within its jurisdiction. If the violation was caused by actions outside TCEQ's jurisdiction, TCEQ will notify the EPA. If TCEQ determines the violation was caused by actions within TCEQ's jurisdiction, TCEQ commits to adopt and implement the identified contingency measures as expeditiously as practicable, but no later than 18 months.

The State will analyze one or more of the following contingency measures to reattain the standard:

- Vehicle idling restrictions.
- Improved vehicle I/M.
- Improved traffic control measures.

The maintenance plan indicates that the State may evaluate other potential strategies to address any future violations in the most appropriate and effective manner possible. Based on the above, we find that the contingency measures provided in the State's El Paso CO maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA.

5. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Texas has committed to submit a revised maintenance plan eight years after our approval of the redesignation. This provision for revising the maintenance plan is contained in Chapter 5, Section 5.1 of the El Paso CO maintenance plan.

The maintenance plan adequately addresses the five basic components of a maintenance plan. EPA believes that the 8-hour CO maintenance plan SIP revision submitted by the State of Texas for the El Paso area meets the requirements of Section 175A of the CAA. For more information, please refer to our Technical Support Document.

III. EPA's Evaluation of the Transportation Conformity Requirements

Table 2 documents the motor vehicle emissions budgets (MVEBs) for the El Paso CO nonattainment area that have been established by this CO redesignation request. The MVEB is that portion of the total allowable emissions defined in the SIP revision allocated to on-road mobile sources for a certain date for meeting the purpose of the SIP, in this case maintaining compliance with the NAAQS in the nonattainment or maintenance area. EPA's conformity rule (40 CFR part 51, subpart T and part 93, subpart A) requires that transportation plans, programs and projects in nonattainment or maintenance areas conform to the SIP. The motor vehicle emissions budget is one mechanism EPA has identified for demonstrating conformity. Upon the effective date of this SIP approval, all future transportation improvement programs and long range transportation plans for the El Paso area will have to show conformity to the budgets in this plan; previous budgets approved or found adequate will no longer be applicable.

TABLE 2.—EL PASO CO MVEB FOR 2002–2015 (TPD)

Year	MVEB
2002	29.66
2011	18.56
2015	16.63

Our analysis indicates that the above figures are consistent with maintenance of the CO NAAQS throughout the maintenance period. In accordance with EPA's adequacy process, these MVEBs were posted on EPA's adequacy Web site for public notice on May 4, 2006 and were open for comment until June 5, 2006. No comments were received during this period. Therefore, we are finding as adequate and approving the 29.66 tpd for 2002 through 2010, 18.56 tpd for 2011 through 2014, and 16.63 tpd for 2015 and beyond, CO emissions budgets for the El Paso area. Budget modeling was developed for TCEQ under contract by the Texas Transportation Institute (TTI), utilizing El Paso travel model datasets developed by the El Paso Metropolitan Planning Organization. The modeling incorporated two onroad source control strategies that apply in the El Paso area: The El Paso Oxygenated Fuel Program, and the I/M program (both detailed in Chapter 5, Section 5.3.3 of the maintenance plan).

IV. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. As stated above, the El Paso area has shown continuous attainment of the CO NAAQS since 1999 and has met the applicable Federal requirements for redesignation to attainment. The maintenance plan will not interfere with attainment or any other applicable requirement of the CAA. No control measures in the El Paso SIP are being removed.

V. Final Action

EPA is approving the redesignation of the El Paso area to attainment of the 8-hour CO NAAQS, as well as approving the El Paso area CO maintenance plan. We also are approving the associated MVEBs.

We have evaluated the State's submittal and have determined that it meets the applicable requirements of the Clean Air Act and EPA regulations, and is consistent with EPA policy.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if relevant adverse comments are received on this

direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We would address all public comments in a subsequent final rule based on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 26, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 11, 2007.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. In § 52.2270, the second table in paragraph (e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding an entry at the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
* * * *	*	*	*	*
El Paso County Carbon Monoxide Maintenance Plan.	El Paso, TX	1/11/06	1/23/07 [Insert FR page number where document begins].	

PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.344 is amended by revising the Carbon Monoxide table entry for El Paso County to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—CARBON MONOXIDE

Designated area	Designation		Category/classification	
	Date [1]	Type	Date [1]	Type
El Paso, El Paso County	1/23/07	Attainment.		
* * * *	*		*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. E7–926 Filed 1–22–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Guilford County, North Carolina and Incorporated Areas Docket Nos.: FEMA–D–7636, FEMA–D–7672 and FEMA–B–7465			
Back Creek	At the Alamance/Guilford County boundary	+579	Guilford County (Unincorporated Areas).
	Approximately 150 feet upstream of SR 100	+644	
Tributary 2	At the confluence with Back Creek	+589	Guilford County (Unincorporated Areas).
	At the Alamance/Guilford County boundary	+635	
Tributary (Stream No. 90)	At the confluence with Back Creek	+595	Guilford County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Sanitary Landfill Road	+638	
Beaver Creek (Stream No. 83)	At the Alamance/Guilford County boundary	+569	Guilford County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Mount Hope Church Road.	+668	
Beaver Creek Tributary	At the confluence with Beaver Creek	+592	Guilford County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Brick Church Road	+631	
Benaja Creek (Stream No. 48)	Approximately 1.2 miles upstream of Railroad Crossing	+712	Guilford County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Railroad Crossing	+718	
Big Alamance Creek (Stream No. 68).	Approximately 1,000 feet upstream of the confluence with Big Alamance Creek Tributary 1.	+686	Guilford County (Unincorporated Areas), Town of Pleasant Garden.
	Approximately 1.3 miles upstream of Minder Road	+757	
Big Alamance Creek Tributary 3	At the confluence with Big Alamance Creek	+589	Guilford County (Unincorporated Areas).
	Approximately 325 feet upstream of Thacker Dairy Road	+613	
Tributary 4	Approximately 100 feet upstream of the confluence with Big Alamance Creek.	+592	Guilford County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Alamance Church Road	+672	
Tributary 8	Approximately 900 feet upstream of the confluence with Big Alamance Creek.	+659	Guilford County (Unincorporated Areas), Town of Pleasant Garden.
	Approximately 100 feet upstream of Hagon Stone Park Road.	+712	
Tributary 9	At the confluence with Big Alamance Creek Tributary 8	+663	Guilford County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Fieldview Road	+713	
Boulding Branch	Approximately 50 feet upstream of Montileu Avenue	+854	City of High Point.
	At North Centennial Street	+888	
Tributary 1	Approximately 225 feet upstream of the confluence with Boulding Branch.	+775	City of High Point.
	Approximately 1,350 feet upstream of Hickory Lane	+844	
Tributary 2	Approximately 200 feet downstream of Barcliff Drive	+794	City of High Point.
	Approximately 350 feet upstream of Waynick Street	+838	
Tributary 3	Approximately 400 feet upstream of the confluence with Boulding Branch.	+798	City of High Point.
	Approximately 1,000 feet upstream of McGuinn Drive	+849	
Brush Creek (Stream No. 54)	At the downstream side of Brass Eagle Loop	+778	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 1,550 feet upstream of Airport Center Drive	+879	
Bull Run	At the confluence with Deep River (Stream No. 1)	+704	Guilford County (Unincorporated Areas), City of Greensboro, Town of Jamestown.
	Approximately 1,000 feet upstream of Ruffin Road	+845	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Bull Run (Stream No. 28)	At the confluence with Deep River(Stream No. 1)	+704	Guilford County (Unincorporated Areas), City of Greensboro, Town of Jamestown.
	Approximately 1,000 feet upstream of Ruffin Road	+845	
Bull Run Tributary 1 (Stream No. 29).	At the confluence with Bull Run	+778	City of Greensboro.
	Approximately 330 feet upstream of Old Fox Trail	+808	
Chocolate Creek	At the confluence with North Prong Stinking Quarter Creek	+616	Guilford County (Unincorporated Areas).
	Approximately 3.0 miles upstream of Alamance Church Road.	+687	
Copper Branch	Approximately 1,150 feet upstream of the confluence with Deep River (Stream No. 1).	+700	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 600 feet upstream of I–85	+822	
Deep River Tributary 3 (Stream No. A).	Approximately 50 feet upstream of Edinburgh Drive	+762	City of High Point.
	Approximately 0.7 mile upstream of Edinburgh Drive	+806	
Deep River Tributary 30	Approximately 500 feet upstream of the confluence with West Fork Deep River (Stream No. 2).	+762	City of High Point.
	Approximately 0.5 mile upstream of the confluence with West Fork Deep River (Stream No. 2).	+800	
Tributary 31	Approximately 750 feet upstream of the confluence with West Fork Deep River (Stream No. 2).	+778	City of High Point.
	Approximately 650 feet upstream of Arden Place	+863	
East Belews Creek Tributary 1	At the Guilford/Forsyth County boundary	+733	Town of Stokesdale.
	Approximately 1.2 miles upstream of Coldwater Road	+786	
Tributary 1A	At the Guilford/Forsyth County boundary	+733	Town of Stokesdale.
	Approximately 680 feet upstream of Coldwater Road	+758	
Tributary 2	At the Guilford/Forsyth County boundary	+750	Guilford County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Water Oak Road	+776	
East Fork Deep River (Stream No. 23).	Approximately 100 feet upstream of Regency Drive	+799	City of Greensboro, City of High Point, Guilford County (Unincorporated Areas).
	Approximately 1,275 feet upstream of Industrial Village	+870	
East Fork Deep River Tributary 1.	At the confluence with East Deep River	+842	City of Greensboro.
	Approximately 0.4 mile upstream of U.S. Route 421	+860	
Tributary 2	Approximately 500 feet upstream of the confluence with East Fork Deep River.	+790	Guilford County (Unincorporated Areas), City of Greensboro, City of High Point.
	Approximately 1,300 feet upstream of I–40	+866	
Haw River Tributary 15	Approximately 0.5 mile upstream of the confluence with Haw River.	+635	Guilford County (Unincorporated Areas).
	At the Alamance/Guilford County boundary	+665	
Tributary 19	Approximately 1.0 mile upstream of the confluence with Haw River.	+844	Guilford County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Haw River.	+901	
Hiatt Branch	Approximately 1,650 feet downstream of U.S. 311	+823	City of High Point.
	Approximately 0.5 mile upstream of U.S. 311	+870	
Horney Branch	Approximately 100 feet upstream of Old Mill Road	+839	City of High Point.
	Approximately 500 feet upstream of Viking Drive	+864	
Horsepen Creek (Stream No. 55).	Approximately 120 feet downstream of railroad	+742	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 200 feet downstream of Distribution Drive	+835	
Tributary 1 (Stream No. 57)	At the confluence with Horsepen Creek	+757	City of Greensboro.
	Approximately 1,375 feet upstream of Derbyshire Drive	+833	
Tributary 2 (Stream No. 56)	At the confluence with Horsepen Creek	+761	City of Greensboro.
	Approximately 1,800 feet upstream of Hobbs Road	+853	
Tributary A	At the confluence with Horsepen Creek Tributary 2	+777	City of Greensboro.
	Approximately 300 feet upstream of Friendly Acres Drive	+811	
Tributary B	At the confluence with Horsepen Creek Tributary 2	+778	City of Greensboro.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1.1 miles upstream of Hobbs Road	+861	
Tributary C	At the confluence with Horsepen Creek	+758	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 2,275 feet upstream of Four Farms Road	+784	
Tributary D	At the confluence with Horsepen Creek	+772	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 0.8 mile upstream of Chance Road	+831	
Tributary E	At the confluence with Horsepen Creek	+775	City of Greensboro.
	Approximately 150 feet upstream of Green Meadow Drive	+826	
Tributary F	At the confluence with Horsepen Creek	+785	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 400 feet upstream of Joseph Bryan Boulevard.	+822	
Tributary G	At the confluence with Horsepen Creek	+797	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 0.6 mile upstream of the confluence with Horsepen Creek.	+828	
Tributary H	At the confluence with Horsepen Creek	+796	City of Greensboro.
	Approximately 0.4 mile upstream of Ballinger Road	+806	
Tributary I	At the confluence with Horsepen Creek Tributary H	+806	City of Greensboro.
	Approximately 100 feet upstream of Friendway Road	+861	
Tributary J	At the confluence with Horsepen Creek Tributary H	+806	City of Greensboro.
	Approximately 700 feet upstream of Friendly Avenue	+864	
Tributary K	At the confluence with Horsepen Creek	+822	City of Greensboro.
	Approximately 250 feet upstream of North Chimney Rock Road.	+888	
Jordan Branch	At the confluence with North Buffalo Creek	+704	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 50 feet downstream of Railroad	+769	
Kennedy Mill Creek	At the Guilford/Davidson County boundary	+801	City of High Point.
	Approximately 900 feet upstream of Hodgin Street	+848	
Tributary 1	At the Guilford/Davidson County boundary	+815	City of High Point.
	Approximately 0.3 mile upstream of Woodbine Street	+903	
Tributary 1A	At the confluence of Kennedy Mill Creek Tributary 1	+816	City of High Point.
	Approximately 1,400 feet upstream of the confluence with Kennedy Mill Creek Tributary 1.	+839	
Kings Creek	At the Guilford/Forsyth County boundary	+724	Guilford County (Unincorporated Areas), Town of Stokesdale.
	Approximately 1.4 miles upstream of Anthony Road	+815	
Knight Road Branch	Approximately 1,700 feet upstream of the confluence with West Fork Deep River (Stream No. 2).	+819	Guilford County (Unincorporated Areas), City of High Point.
	At the Guilford/Forsyth County boundary	+838	
Lake Hamilton	At the confluence with North Buffalo Creek	+785	City of Greensboro.
	Approximately 70 feet upstream of East Kemp Road	+815	
Long Branch (Stream No. 25)	Approximately 1.6 miles upstream of West Wendover Avenue.	+837	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 550 feet upstream of I–40	+863	
Mears Fork Creek	At Strader Road	+790	City of Summerfield.
	Approximately 0.7 mile upstream of Strader Road	+805	
Mile Branch Tributary 1	Approximately 700 feet upstream of the confluence with Mile Branch.	+729	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 0.7 mile upstream of the confluence with Mile Branch.	+780	
Mile Run Creek	At the confluence with South Buffalo Creek	+729	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 150 feet downstream of Orchard Street	+767	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Muddy Creek	At the confluence with North Buffalo Creek	+713	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 850 feet upstream of North Dudley Street	+777	
Muddy Creek East Tributary	At the Guilford/Randolph County boundary	+814	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 1,000 feet upstream of Baker Road	+855	
Tributary 2	At the High Point ETJ/Archdale City boundary	+789	Guilford County (Unincorporated Areas), City of High Point.
	At the High Point ETJ/Archdale City boundary	+799	
Tributary 4	At the Guilford/Randolph County boundary	+771	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 1,500 feet upstream of Liberty Road	+826	
Tributary 5	At the High Point ETJ/Archdale City boundary	+778	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 550 feet upstream of Liberty Road	+814	
Tributary 6	At the High Point ETJ/Archdale City boundary	+777	City of High Point.
	Approximately 1,250 feet upstream of Liberty Road	+816	
North Buffalo Creek (Stream No. 66).	Approximately 50 feet downstream of Rankin Mill Road	+697	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 90 feet upstream of South Holden Road	+816	
North Buffalo Creek Tributary 1	At the confluence with Jordan Branch	+747	City of Greensboro.
	Approximately 700 feet upstream of Allyson Avenue	+779	
Tributary 2	At the confluence with Muddy Creek	+718	City of Greensboro.
	Approximately 0.4 mile upstream of Woodmore Drive	+750	
Tributary 3	At Briarcliff Road	+744	City of Greensboro.
	Approximately 0.5 mile upstream of the confluence of North Buffalo Creek.	+756	
Tributary 4	At the confluence with North Buffalo Creek	+750	City of Greensboro.
	Approximately 200 feet upstream of South Aycock Street	+769	
Tributary 5	Approximately 950 feet upstream of the confluence with North Buffalo Creek Tributary A.	+775	City of Greensboro.
	Approximately 75 feet upstream of Forest Hill Drive	+843	
Tributary 6	At the confluence with Lake Hamilton	+800	Guilford County (Unincorporated Areas).
	Approximately 100 feet upstream of Waycross Drive	+823	
Tributary A	At the confluence with North Buffalo Creek	+760	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 0.4 mile upstream of Joseph M. Bryan Boulevard.	+806	
North Little Alamance Creek Tributary 6.	Approximately 700 feet upstream of the confluence with North Little Alamance Creek.	+627	Guilford County (Unincorporated Areas).
	Approximately 1,900 feet upstream of U.S. 70	+649	
North Prong Stinking Quarter Creek (Stream No. 88).	At the Alamance/Guilford County boundary	+589	Guilford County (Unincorporated Areas).
	Approximately 700 feet upstream of Liberty Road	+735	
North Prong Stinking Quarter Creek Tributary.	At the confluence with North Prong Stinking Quarter Creek	+637	Guilford County (Unincorporated Areas).
	Approximately 250 feet upstream of Coble Church Road	+667	
Payne Creek	At the confluence of Payne Creek Tributary 2	+826	City of High Point.
	Approximately 130 feet upstream of Council Street	+858	
Payne Creek Tributary 1 (Stream No. 99).	At State Route 68	+826	City of High Point.
	Approximately 170 feet upstream of West Rotary Drive	+868	
Tributary 1A (Stream No. 97).	Approximately 100 feet upstream of State Route 68	+822	City of High Point.
	Approximately 800 feet upstream of Carr Street	+863	
Tributary 1B	Approximately 50 feet upstream of the confluence with Payne Creek Tributary 1 (Stream No. 99).	+807	City of High Point.
	Approximately 0.2 mile upstream of the confluence with Payne Creek.	+834	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Tributary 1C	Approximately 200 feet upstream of the confluence with Payne Creek Tributary 1 (Stream No. 99).	+810	City of High Point.
	Approximately 1,400 feet upstream of the confluence with Payne Creek Tributary 1 (Stream No. 99).	+839	
Tributary 2	At the confluence with Payne Creek	+826	City of High Point.
	Approximately 460 feet upstream of North Rotary Drive	+868	
Parks Creek	Approximately 0.4 mile downstream of the Alamance/Guilford County boundary.	+633	Guilford County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the Alamance/Guilford County boundary.	+656	
Philadelphia Lake	At the confluence with North Buffalo Creek	+728	City of Greensboro.
	Approximately 1,100 feet upstream of West Cone Boulevard	+810	
Polecat Creek Tributary 2	Approximately 350 feet upstream of the confluence with Polecat Creek (Stream No. 42).	+715	Guilford County (Unincorporated Areas), Town of Pleasant Garden.
	Approximately 2.0 miles upstream of the confluence with Polecat Creek (Stream No. 42).	+745	
Tributary 3	At the confluence with Polecat Creek Tributary 2	+718	Guilford County (Unincorporated Areas), Town of Pleasant Garden.
	Approximately 1.7 miles upstream of the confluence with Polecat Creek Tributary 2.	+780	
Reedy Fork Tributary 1	Approximately 1,200 feet upstream of the confluence with Reedy Fork Creek.	+626	Guilford County (Unincorporated Areas).
	Approximately 1,100 feet upstream of Turner Smith Road	+728	
Tributary 2	Approximately 1,100 feet upstream of the confluence with Reedy Fork Creek.	+640	Guilford County (Unincorporated Areas).
	Approximately 350 feet upstream of Middlestream Road	+743	
Tributary 3	At the confluence with Reedy Fork Tributary 2	+686	Guilford County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Turner Smith Road	+715	
Tributary 4	Approximately 1,000 feet upstream of the confluence with Reedy Fork.	+620	Guilford County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Busick Quarry Road	+636	
Tributary 7	At the upstream side of Brookbank Road	+779	City of Summerfield.
	Approximately 1.1 miles upstream of Brookbank Road	+795	
Tributary 8	Approximately 1,000 feet upstream of the confluence with Reedy Fork Creek.	+633	Guilford County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Reedy Fork Creek.	+651	
Tributary 9	At the upstream side of Reedy Fork Parkway	+688	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 0.5 mile upstream of U.S. Route 29	+702	
Tributary 10	Approximately 0.5 mile upstream of the confluence with Reedy Fork Creek.	+745	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 1.0 mile upstream of the confluence with Reedy Fork Creek.	+752	
Rich Fork Tributary 1 (Stream No. 92).	Approximately 100 feet upstream of the confluence of Rich Fork Tributary 1B (Stream No. 93).	+791	City of High Point.
	Approximately 950 feet upstream of Greenwood Drive	+846	
Tributary 1 B1	Approximately 100 feet upstream of the confluence with Rich Fork Tributary 1B (Stream No. 93).	+822	City of High Point.
	Approximately 375 feet upstream of Idol Street	+858	
Tributary 1A	Approximately 100 feet downstream of Carolyndon Drive	+781	City of High Point.
	Approximately 600 feet upstream of Westover Drive	+853	
Tributary 2	At the Guilford/Davidson County boundary	+807	City of High Point.
	Approximately 0.3 mile upstream of the Guilford/Davidson County boundary.	+827	
Tributary 1B (Stream No. 93).	Approximately 100 feet upstream of State Route 68	+833	City of High Point.
	Approximately 400 feet upstream of Pinehurst Drive	+833	
Richland Creek (Stream No. 59)	Approximately 0.5 mile upstream of Church Street	+721	Guilford County (Unincorporated Areas), City of Greensboro.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 900 feet upstream of Guilford Courthouse National Park LP.	+805	
(Stream No. 30)	Approximately 200 feet upstream of the confluence of Stream No. 31.	+837	City of High Point.
	Approximately 1,350 feet upstream of West Green Drive	+877	
Richland Creek Tributary 1	At the confluence with Richland Creek (Stream No. 59)	+750	City of Greensboro.
	Approximately 1,500 feet upstream of Pheasant Run Drive	+810	
Tributary 2	Approximately 250 feet upstream of the confluence with Richland Creek (Stream No. 30).	+713	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 0.6 mile upstream of the confluence with Richland Creek (Stream No. 30).	+809	
Tributary 3	Approximately 625 feet upstream of the confluence with Richland Creek.	+724	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 75 feet upstream of Lawndale Avenue	+828	
Tributary 4	At the confluence with Richland Creek Tributary 3	+753	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 1,500 feet upstream of Central Avenue	+829	
Tributary 5	At the confluence with Richland Creek Tributary 3	+745	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 1,700 feet upstream of I–85	+803	
Tributary 6	Approximately 350 feet upstream of the confluence with Richland Creek (Stream No. 30).	+752	City of High Point.
	Approximately 1,700 feet upstream of I–85	+783	
Tributary 9	At the confluence with Richland Creek (Stream No. 30)	+774	City of High Point.
	Approximately 2,100 feet upstream of the confluence with Richland Creek (Stream No. 30).	+807	
Tributary 10	Approximately 50 feet downstream of I–85 (BUS)	+785	City of High Point.
	Approximately 400 feet upstream of East Springfield Road	+828	
Tributary 11	At the confluence with Richland Creek Tributary 10	+805	City of High Point.
	Approximately 650 feet upstream of Model Farm Road	+837	
Tributary 12	At Nathan Hunt Drive	+793	City of High Point.
	Approximately 100 feet upstream of Tate Street	+863	
Tributary 14	At I–85 (BUS)	+809	City of High Point.
	Approximately 400 feet upstream of Fraley Road	+863	
Tributary 15	Approximately 50 feet upstream of Surrett Drive	+828	City of High Point.
	Approximately 100 feet upstream of South Elm Street	+857	
Tributary 17	At the confluence with Richland Creek (Stream No. 30)	+849	City of High Point.
	Approximately 550 feet upstream of Lincoln Drive	+869	
Rock Creek Tributary (Stream No. 81).	At Sedalia Road	+640	Guilford County (Unincorporated Areas), Town of Sedalia.
	Approximately 1,900 feet upstream of Sedalia Road	+648	
Rock Creek Tributary 3	Approximately 750 feet upstream of the confluence with Rock Creek (Stream No. 80).	+632	Guilford County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Rock Creek (Stream No. 80).	+652	
Rose Creek	At the Guilford/Rockingham County boundary	+679	Guilford County (Unincorporated Areas).
	Approximately 1,056 feet upstream of Chrismon Road	+694	
Ryan Creek	At the confluence with South Buffalo Creek (Stream No. 67)	+735	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 350 feet upstream of U.S. Route 220	+799	
Sandy Ridge Tributary	At the downstream side of NC 68	+800	Guilford County (Unincorporated Areas).
	At Gilmore Dairy Road	+832	
Smith Branch	Approximately 1,700 feet upstream of the confluence with Reedy Fork Creek.	+675	Guilford County (Unincorporated Areas).
	Approximately 1.7 miles upstream of Turner Smith Road	+758	
South Buffalo Creek (Stream No. 67).	Approximately 350 feet upstream of East Lee Street	+715	Guilford County (Unincorporated Areas), City of Greensboro.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1,100 feet upstream of Guilford College Road.	+876	
South Buffalo Creek Tributary 1	At the confluence with South Buffalo Creek	+807	City of Greensboro.
	Approximately 300 feet upstream of Pennoak Road	+837	
Tributary 2	At the confluence with South Buffalo Creek	+792	City of Greensboro.
	Approximately 1,050 feet upstream of Bernav Avenue	+855	
Tributary 3	Approximately 600 feet upstream of the confluence with South Buffalo Creek.	+745	City of Greensboro.
	Approximately 1,500 feet upstream of Oak Street	+834	
Tributary 4	At the confluence with South Buffalo Creek	+713	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 1,250 feet upstream of South English Street	+770	
Tributary 5	At the confluence with South Buffalo Creek	+719	City of Greensboro.
	Approximately 1,100 feet upstream of South English Street	+773	
Tributary 6	At Bothwell Street	+720	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 350 feet upstream of Barksdale Drive	+737	
Tributary 7	At the confluence with South Buffalo Creek	+726	City of Greensboro.
	Approximately 900 feet upstream of Tuscaloosa Street	+757	
Tributary 8	At the confluence with South Buffalo Creek	+728	City of Greensboro.
	Approximately 800 feet upstream of South Benbow Road	+739	
Tributary 9	At the confluence with South Buffalo Creek	+735	City of Greensboro.
	Approximately 50 feet downstream of East Vandalia Road	+746	
Tributary 10	Approximately 180 feet upstream of the confluence with Ryan Creek.	+736	City of Greensboro.
	Approximately 50 feet downstream of Webster Road	+807	
Tributary 11	Approximately 100 feet upstream of the confluence with Ryan Creek.	+746	City of Greensboro.
	Approximately 750 feet upstream of Pinecraft Road	+806	
Tributary A	At the confluence with South Buffalo Creek	+807	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 0.7 mile upstream of Tower Road	+902	
Tributary B	At the confluence with South Buffalo Creek Tributary A	+809	City of Greensboro.
	Approximately 550 feet upstream of Richland Street	+886	
South Prong Stinking Quarter Creek.	At the confluence with Stinking Quarter Creek	+575	Guilford County (Unincorporated Areas).
	At the Guilford/Randolph County boundary	+625	
Tributary 1	At the confluence with South Prong Stinking Quarter Creek	+575	Guilford County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Smithwood Road	+676	
Stinking Quarter Creek	At the Alamance/Guilford County boundary	+556	Guilford County (Unincorporated Areas).
	At the confluence with South Prong Stinking Quarter Creek Tributary 1 and South Prong Stinking Quarter Creek.	+575	
Tributary 2	At the confluence with Stinking Quarter Creek	+559	Guilford County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Stinking Quarter Creek.	+577	
Stream No. 13	Approximately 800 feet upstream of East Hartley Drive	+817	City of High Point.
	Approximately 0.6 mile upstream of SR 68	+881	
Tributary 1	Approximately 400 feet upstream of the confluence with Stream No. 13.	+806	City of High Point.
	Approximately 2,400 feet upstream of the confluence with Stream No. 13.	+854	
Tributary 2	Approximately 300 feet upstream of the confluence with Stream No. 13.	+807	City of High Point.
	Approximately 1,700 feet upstream of the confluence with Stream No. 13.	+825	
Tributary 3	Approximately 250 feet upstream of the confluence with Stream No. 13.	+817	City of High Point.
	Approximately 400 feet upstream of Pine Valley Road	+856	
Tributary 4	At the confluence with Stream No. 13	+818	City of High Point.
	Approximately 1,650 feet upstream of SR 68	+893	
Tributary 5	At the confluence with Stream No. 13	+818	City of High Point.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1,150 feet upstream of SR 68	+866	
Stream No. 27	Approximately 50 feet upstream of Rosecrest Drive	+812	City of High Point.
	Approximately 1,850 feet upstream of Enterprise Drive	+852	
Tributary 2	Approximately 350 feet upstream of the confluence with Stream No. 27.	+786	City of High Point.
	Approximately 1,700 feet upstream of Alpine Drive	+833	
Stream No. 31	Approximately 80 feet upstream of Vail Avenue	+854	City of High Point.
	Approximately 300 feet upstream of Taylor Avenue	+869	
Stream No. 33	Approximately 150 feet upstream of Wise Avenue	+813	City of High Point.
	Approximately 500 feet upstream of West Russell Avenue	+850	
Tributary 2	At the confluence with Stream No. 33	+813	City of High Point.
	Approximately 400 feet upstream of East Green Drive	+841	
Stream No. 34	Approximately 450 feet downstream of Habersham Road	+817	City of High Point.
	Approximately 1,850 feet downstream of Pendleton Street	+851	
Stream No. 34 Tributary	Approximately 100 feet upstream of the confluence with Stream No. 34.	+753	City of High Point.
	Approximately 1,700 feet upstream of Triangle Lake Road	+828	
Stream No. 34A	At the upstream side of Jackson Lake Road	+745	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 200 feet upstream of Baker Road	+827	
Tributary 1	At the confluence with Stream No. 34A	+752	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 1,650 feet upstream of the confluence with Stream No. 34A.	+782	
Tributary 2	At the confluence with Stream No. 34A	+753	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 1,650 feet upstream of the confluence with Stream No. 34A.	+793	
Tributary 3	At the confluence with Stream No. 34A	+769	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 0.5 mile upstream of the confluence with Stream No. 34A.	+820	
Tributary 4	At the confluence with Stream No. 34A Tributary 3	+775	City of High Point.
	Approximately 1,700 feet upstream of the confluence with Stream No. 34A Tributary 3.	+825	
Tributary 6	At the confluence with Stream No. 34A	+794	City of High Point.
	Approximately 450 feet upstream of North Hall Street	+818	
Tributary 7	At the confluence with Stream No. 34A	+817	City of High Point.
	Approximately 1,350 feet upstream of Baker Road	+864	
Tickle Creek	At the Alamance/Guilford County boundary	+647	Guilford County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the Alamance/Guilford County boundary.	+659	
Travis Creek	At the Alamance/Guilford County boundary	+618	Guilford County (Unincorporated Areas).
	Approximately 950 feet upstream of SR 61/Frieden Church Road.	+670	
Tributary A to Travis Creek	At the Alamance/Guilford County boundary	+623	Guilford County (Unincorporated Areas).
	Approximately 600 feet upstream of Howerton Road	+674	
Tributary to Travis Creek	At the Alamance/Guilford County boundary	+632	Guilford County (Unincorporated Areas).
	Approximately 0.6 mile upstream from the Alamance/Guilford County boundary.	+660	
Tributary to West Fork Deep River.	Approximately 1,550 feet upstream of the confluence with West Fork Deep River (Stream No. 2).	+816	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 0.6 mile upstream of the confluence with West Fork Deep River (Stream No. 2).	+831	
Twin Lakes Tributary	At the confluence with South Buffalo Creek	+753	City of Greensboro.
	Approximately 100 feet downstream of Merryweather Road	+827	
Tributary 1	At the confluence with Twin Lakes Tributary	+797	City of Greensboro.
	Approximately 100 feet downstream of Merritt Drive	+828	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Deep River Tributary 26	Approximately 800 feet downstream of the Guilford/Randolph County boundary.	+701	Guilford County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the Guilford/Randolph County boundary.	+722	
Polecat Creek Tributary 4	At the Guilford/Randolph County boundary	+695	Guilford County (Unincorporated Areas).
	Approximately 1,400 feet upstream of SR 62	+712	
Unnamed Tributary to West Fork Deep River.	Approximately 750 feet upstream of the confluence with West Fork Deep River Tributary 1.	+832	Guilford County (Unincorporated Areas).
	Approximately 200 feet upstream of Adkins Road	+855	
West Fork Deep River (Stream No. 2).	Approximately 1,750 feet upstream of the confluence with West Fork Deep River Tributary 1 (Stream No. 3).	+833	Guilford County (Unincorporated Areas).
	At the Guilford/Forsyth County boundary	+862	

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

ADDRESSES

City of Greensboro

Maps are available for inspection at Greensboro Stormwater Management Division, 2602 South Elm Eugene Street, Greensboro, North Carolina.

City of High Point

Maps are available for inspection at the High Point City Hall, 211 South Hamilton Street, High Point, North Carolina.

Town of Jamestown

Maps are available for inspection at the Jamestown Town Hall, 301 East Main Street, Jamestown, North Carolina.

Town of Pleasant Garden

Maps are available for inspection at the Town of Pleasant Garden Kirkman Municipal Building, 4920 Alliance Church Road, Pleasant Garden, North Carolina.

Town of Sedalia

Maps are available for inspection at the Sedalia Town Hall, 6121 Burlington Road, Gibsonville, North Carolina.

Town of Stokesdale

Maps available for inspection at the Stokesdale Town Hall, 8416 U.S. Highway 158, Stokesdale, North Carolina.

City of Summerfield

Maps are available for inspection at the Summerfield Town Planning Office, 4117 Oak Ridge Road (Highway 150), Summerfield, North Carolina.

Guilford County (Unincorporated Areas)

Maps are available for inspection at the Guilford County Planning and Development Office, 201 South Eugene Street, Greensboro, North Carolina.

Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.''

Dated: January 12, 2007.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–886 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 010507D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Increase

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

ACTION: Temporary rule; inseason trip limit increase.

SUMMARY: NMFS increases the trip limit in the commercial hook-and-line fishery for king mackerel in the Florida east coast subzone to 75 fish per day in or from the exclusive economic zone (EEZ). This trip limit increase is necessary to maximize the socioeconomic benefits of the quota.

DATES: This rule is effective 12:01 a.m., local time, February 1, 2007, through March 31, 2007, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Steve.Branstetter@noaa.gov*.

FOR COASTAL MIGRATORY PELAGIC FISH (KING MACKEREL, SPANISH MACKEREL, CERO, COBIA, LITTLE TUNNY, AND, IN THE GULF OF MEXICO ONLY, DOLPHIN AND BLUEFISH) IS MANAGED UNDER THE FISHERY MANAGEMENT PLAN FOR THE COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC (FMP). THE FMP WAS PREPARED BY THE GULF OF MEXICO AND SOUTH ATLANTIC FISHERY MANAGEMENT COUNCILS (COUNCILS) AND IS IMPLEMENTED UNDER THE AUTHORITY OF THE MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT (MAGNUSON-STEVENS ACT) BY REGULATIONS AT 50 CFR PART 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg) (50 CFR 622.42(c)(1)(i)(A)(*1*)).

In accordance with 50 CFR 622.44(a)(2)(i), beginning on February 1, if less than 75 percent of the Florida east coast subzone quota has been harvested by that date, king mackerel in or from that subzone may be possessed on board or landed from a permitted vessel in amounts not exceeding 75 fish per day. The 75–fish daily trip limit will continue until a closure of the subzone's fishery has been effected or the fishing year ends on March 31, 2007.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel for vessels using hook-and-line gear in the Florida east coast subzone will not be reached before February 1, 2007. Accordingly, a 75–fish trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida east coast subzone effective 12:01 a.m., local time, February 1, 2007. The 75–fish trip limit will remain in effect until the fishery closes or until the end of the current fishing season (March 31, 2007) for this subzone. From November 1 through March 31, the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL, boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit increase. Allowing prior notice and opportunity for public comment for this trip limit increase is contrary to the public interest because it requires time, thus delaying fishermen's ability to catch more king mackerel than the present trip limit allows and preventing fishermen from reaping the socioeconomic benefits derived from this increase in daily catch.

As this action allows fishermen to increase their harvest of king mackerel from 50 fish to 75 fish per day in or from the EEZ of the Florida east coast subzone, the AA finds it relieves a restriction and may go into effect on its effective date pursuant to 5 U.S.C. 553(d)(1). This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 18, 2007.

James P. Burgess,

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

[FR Doc. E7–945 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 011707G]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2007 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 22, 2007, through 1200 hrs, A.l.t., March 10, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2007 TAC of pollock in Statistical Area 630 in the GOA is 3,234 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2007 TAC of pollock in Statistical Area 630 in the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,934 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 in the GOA. NMFS was unable to publish a notice providing time for public comment

because the most recent, relevant data only became available as of January 17, 2007.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 18, 2007.

James P. Burgess,

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

[FR Doc. 07–265 Filed 1–18–07; 2:04 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 14
Tuesday, January 23, 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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2005N–0279]

RIN 0910–ZA26

Food Labeling; Gluten-Free Labeling of Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to define the term ''gluten-free'' for voluntary use in the labeling of foods, to mean that the food does not contain any of the following: An ingredient that is any species of the grains wheat, rye, barley, or a crossbred hybrid of these grains (all noted grains are collectively referred to as ''prohibited grains''); an ingredient that is derived from a prohibited grain and that has not been processed to remove gluten (e.g., wheat flour); an ingredient that is derived from a prohibited grain and that has been processed to remove gluten (e.g., wheat starch), if the use of that ingredient results in the presence of 20 parts per million (ppm) or more gluten in the food; or 20 ppm or more gluten. A food that bears the claim ''gluten-free'' or similar claim in its labeling and fails to meet the conditions specified in the proposed definition of ''gluten-free'' would be deemed misbranded. FDA also is proposing to deem misbranded a food bearing a gluten-free claim in its labeling if the food is inherently free of gluten and if the claim does not refer to all foods of that same type (e.g., ''milk, a gluten-free food'' or ''all milk is gluten-free''). In addition, a food made from oats that bears a gluten-free claim in its labeling would be deemed misbranded if the claim suggests that all such foods are gluten-free or if 20 ppm or more gluten is present in the food. Establishing a definition of the term ''gluten-free'' and uniform conditions for its use in the labeling of foods is needed to ensure that individuals with celiac disease are not misled and are provided with truthful and accurate information with respect to foods so labeled. This proposed action is in response to the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA).

DATES: Submit written or electronic comments by April 23, 2007.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0279, 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(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, 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: Rhonda R. Kane, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD, 301–436–2371, FAX: 301–436–2636, e-mail: *rhonda.kane@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Celiac Disease

Celiac disease (also known as celiac sprue and gluten-sensitive enteropathy) is a chronic inflammatory disorder of the small intestine in genetically susceptible individuals triggered by ingesting certain storage proteins, commonly referred to as ''gluten,'' that naturally occur in some cereal grains (Refs. 1 through 3). In such individuals, the consumption of gluten stimulates the production of antibodies and inflammatory cells, resulting in an abnormal immune response, which damages the tiny, fingerlike protrusions called ''villi'' that line the small intestine and function to absorb nutrients from food (Ref. 4). Over time, continued dietary exposure to gluten can destroy the intestinal villi of individuals who have celiac disease, leading to a lack of absorption of nutrients and wide variety of other serious health problems (Ref. 4).

The symptoms and clinical manifestations of celiac disease are highly variable among affected individuals and differ in severity. The reasons for this variability are unknown, but may depend upon the age and immunological status of the individual, the amount, duration or timing of the exposure to gluten, and the specific area and extent of the gastrointestinal tract involved by disease (Ref. 5). Symptoms of celiac disease may be: (1) ''Classical,'' affecting the digestive tract (e.g., abdominal bloating; cramping and pain; chronic diarrhea; vomiting; constipation) and resulting in gastrointestinal malabsorption; or (2) ''atypical,'' affecting mainly other parts of the body (e.g., fatigue; irritability; behavior changes; bone or joint pain; tingling numbness in the legs; ulcers in the mouth; tooth discoloration or loss of enamel; itchy skin rash with blisters called dermatitis herpetiformis) (Refs. 1, 4, 6, and 7).

A large portion of the subpopulation that has celiac disease may not experience any symptoms at all and are classified as having ''silent'' or ''latent'' forms of celiac disease (Refs. 1 and 8). Persons who have the silent form of celiac disease have most of the diagnostic features commonly seen in individuals with classical or atypical celiac disease, such as specific serum antibodies and evidence of damaged intestinal villi. Those who have the latent form of celiac disease have specific serum antibodies, but no

evidence of damaged intestinal villi (Ref. 1).

In addition to the aforementioned clinical symptoms and ailments, celiac disease is associated with a number of significant health problems and disorders, including but not limited to: Iron-deficiency anemia, vitamin deficiencies, protein-calorie malnutrition, weight loss, short stature, growth retardation in children, delayed puberty, infertility, miscarriage, and osteoporosis (Refs. 1, 6, 9, and 10). Individuals with unmanaged celiac disease are at an increased risk of developing other serious medical conditions, such as Type I diabetes mellitus, intestinal cancers, and both intestinal and extraintestinal non-Hodgkin's lymphomas (Refs. 7 and 11 through 13).

Celiac disease has no cure, but individuals who have this disease are advised to avoid all sources of gluten in their diet (Refs. 1 and 6). Over time, strictly avoiding consumption of all sources of gluten can resolve the symptoms, mitigate and possibly reverse the damage, and reduce the associated health risks of celiac disease (Ref. 14). For some individuals with celiac disease, failure to avoid consumption of gluten can lead to severe and sometimes life-threatening complications that can affect multiple organs of the body (Refs. 5, 6, and 15).

B. Prevalence of Celiac Disease in the United States

Precise prevalence data for celiac disease are not available. The overall prevalence of celiac disease in the U.S. is currently estimated to range from about 0.4 percent to about 1 percent of the general population, or approximately 1.5 to 3 million Americans (Refs. 1 and 16). However, the number of Americans with physician-diagnosed celiac disease is estimated at between 40,000 (Ref. 17) and 60,000 (Ref. 18).

This discrepancy between estimated prevalence and diagnosed cases has been linked primarily to the fact that celiac disease can be silent or latent. Some researchers have suggested that the true prevalence is underreported (Ref. 8). Silent and latent forms of celiac disease may go undetected in individuals for years before they develop symptoms causing them to seek medical attention (Ref. 13). In addition, celiac disease is often mistaken for other gastrointestinal malabsorption disorders that have similar diarrheal symptoms (e.g., irritable bowel syndrome), which further delays its diagnosis (Ref. 19). Only recently has the medical community become more aware of the need to screen for celiac disease when patients experience health problems that may be associated with the disease or when patients have family members, especially first- and second-degree relatives, who have celiac disease (Ref. 1).

C. Gluten and the Grains of Concern for Individuals with Celiac Disease

1. Meaning of the Term ''Gluten''

There is no single definition of the term ''gluten.'' Technically, the term ''gluten'' refers to a specific complex of proteins that forms when wheat flour is mixed with a liquid and physically manipulated, such as in the kneading of a bread (Ref. 20). This complex of proteins is composed of both ''gliadins'' and ''glutenins,'' which are found in approximately equal proportions in most wheat varieties (Refs. 21 through 23). The gliadins belong to a category of proteins called ''prolamins'' and the glutenins belong to a category of proteins called ''glutelins'' (Refs. 20 and 24).

Although, strictly speaking, ''gluten'' pertains only to wheat proteins, this term is frequently used to refer to the combination of prolamin and glutelin proteins naturally occurring in other grains, including those that have not been demonstrated to cause harmful effects in individuals with celiac disease (e.g., ''corn gluten'' and ''rice gluten'') (Ref. 25). However, in discussions of celiac disease in the medical literature, the term ''gluten'' is used to refer to either gluten in wheat or collectively to the proteins (e.g., prolamins and glutelins) in just those grains that have been demonstrated to cause harmful health effects in individuals who have celiac disease (Refs. 3 and 25).

2. Grains of Concern to Individuals With Celiac Disease

The grains that are reported to contain gluten that can cause harmful health effects in individuals with celiac disease and should be avoided by them are as follows: Wheat (including durum wheat, spelt wheat, and kamut), rye, barley, and crossbred hybrids of these grains (e.g., triticale, which is a cross between wheat and rye), and possibly oats (Refs. 26 through 30). Rye, barley, and triticale are taxonomically very closely related to wheat and contain peptides structurally similar to those found in wheat (Refs. 30 and 31). Although oats are not as closely related to wheat (Ref. 30), they are reported to contain some peptides similar to those found in wheat, which may help to explain why some individuals with celiac disease are sensitive to oats (Ref. 32). In contrast, the cereal grains believed to be well tolerated by individuals with celiac disease and which are not taxonomically as closely related to wheat and are not reported to contain similar peptides to those found in wheat include: Amaranth, buckwheat, corn (maize), Indian ricegrass, Job's tears, millet, quinoa, ragi, rice, sorghum, teff (tef), and wild rice (Refs. 26, 27, 29 through 31, 33, and 34).

There is evidence that both the prolamins (i.e., gliadins) and glutelins (i.e., glutenins) in wheat adversely affect individuals with celiac disease (Refs. 2, 27, and 35 through 37). Wheat gliadin subtypes alpha, beta, gamma, and omega have been shown to cause damage to the intestinal tract of individuals with celiac disease (Refs. 38, 39, and 40, p. 41). Moreover, it is also believed that the prolamins in rye (i.e., secalins) and the prolamins in barley (i.e., hordeums) are responsible for causing adverse health effects in individuals with celiac disease (Refs. 13, 23, 28, 41, and 42). Oats also have prolamins (i.e., avenins) that have some amino acid sequences similar to those occurring in wheat and are believed to be harmful to a small subset of individuals with celiac disease (Ref. 32). Although the prolamins of the aforementioned grains and the wheat glutelins are recognized to cause adverse health effects in individuals with celiac disease, all cereal grains contain other types of proteins, including albumins and globulins, which are not currently associated with celiac disease (Refs. 20 and 21). There is still much unknown about all the specific proteins in the different grains that can affect individuals with celiac disease (Ref. 43).

3. Uncertainty About Including Oats in the Diet of Individuals With Celiac Disease

Currently, there is no general agreement among experts about the extent to which oats present a hazard for individuals with celiac disease. Whether oats should or should not be consumed by individuals with celiac disease has been the subject of controversy for more than 50 years (Ref. 44). There are inconclusive and conflicting results from research on the effects of oat consumption on individuals with celiac disease.

Some of this research, in particular early research, suggests that oat consumption is harmful to individuals with celiac disease (Refs. 26 and 28). More recent studies found that 1 of 19 study participants (Ref. 45) and 4 of 9 participants (Ref. 32) could not tolerate an average of about 50 grams dry weight of oats. The oats used in both studies

were tested to ensure that they did not contain gluten proteins from wheat, rye, or barley.

However, multiple studies in the last 10 years have shown that the ingestion of oats in the diet of individuals who have celiac disease, in both children and adults, does not necessarily lead to increased intestinal or skin symptoms or to altered intestinal pathology, and appears to be preferred to a diet without oats (Refs. 46 through 51). The average amount of oats consumed by participants in each of these studies differed, ranging from about 15 grams to 60 grams dry weight per day. A long-term study that lasted 5 years concluded that individuals with celiac disease prefer and can tolerate without harmful effects a daily average consumption of 34 grams dry weight of oats (Ref. 49).

Although the total number of individuals with celiac disease who are sensitive to oats is unknown, the findings of many of the contemporary studies suggest that the proportion of individuals with celiac disease who cannot tolerate oats in daily amounts of about 50 or less grams dry weight is probably very low. One celiac expert suggests that the size of this subpopulation is likely to be less than one percent of individuals with celiac disease (Ref. 52).

Despite the evidence that the consumption of oats does not present a risk for most individuals with celiac disease, a major obstacle impeding general acceptance of oats in the diet of individuals with celiac disease is the concern about the commingling[1] of oats with wheat, rye or barley that can occur during grain production, transport, storage, or processing (Refs. 44 and 53). Due to this concern, Farrell and Kelly (Ref. 7) advise individuals with newly diagnosed celiac disease not to consume oats until their disease is in remission (e.g., intestinal tract has healed). Some celiac disease treatment or research centers in the United States report that they do not support the inclusion of oats in the diet of individuals with celiac disease, whereas other centers do, stating that oats can enhance the nutrient density and fiber content of a diet that avoids all sources of gluten and possibly improve compliance with this very restrictive diet (Refs. 54 through 56).

Thompson (Ref. 57) conducted a small, non-randomized mail survey using a questionnaire about the acceptability of several foods in diets that do not contain gluten. Thirty seven questionnaires, completed by celiac disease organizations (United States and foreign), physicians, and dietitians/nutritionists, were submitted in response to the survey. Only five (i.e., 1 foreign celiac association and 4 physicians) of the 33 respondents who answered the question about oats considered oats to be an acceptable food, and none of the four U.S. celiac disease associations that responded to the survey considered oats to be an acceptable food for individuals with celiac disease. The reasons given by respondents for their lack of acceptance of oats included concerns about the possibility that oats may cause adverse health effects in individuals with celiac disease either directly or due to the presence of gluten from another grain (e.g., wheat, rye, or barley), and about the insufficiency of long-term research that identifies the amount of oats that can be tolerated by individuals with celiac disease.

According to more recent position statements of 3 of the 4 major celiac associations in the United States that responded to the earlier survey conducted by Thompson (Ref. 57), one of these associations continues to take the position that oats are not an acceptable food for individuals with celiac disease; but, the other two of these associations are not opposed to the inclusion of oats in the diets of individuals with celiac disease, provided that the oats do not contain gluten from other grains and that the daily amount of oats consumed is limited to 1 cup cooked (Ref. 56). Both of the latter associations state that oats can add soluble fiber and nutrients to a diet that avoids all sources of gluten; but, direct individuals with celiac disease to consult with their health care providers before introducing oats into their diet. Also, both of these associations recommend that individuals with celiac disease who consume oats should have their levels of antibodies specific to celiac disease monitored periodically.

The recent *National Institutes of Health Consensus Conference Statement on Celiac Disease* (Ref. 1) does not identify oats as being one of the grains that individuals with celiac disease should avoid. Instead, this statement indicates that it appears that most individuals with celiac disease can include oats in their diet without harmful health effects, but that it may not be practical to do so because oats may contain gluten from other grains due to commingling during their processing. Similarly, the 2006 edition of the American Dietetic Association (ADA) *Nutrition Care Manual (ADA Manual)* recommends that individuals with celiac disease avoid wheat (including wheat in all of its varieties, such as spelt, and in all of its forms, such as wheat starch), rye, barley and their crossbred hybrid varieties (e.g., triticale), but does not advise individuals with celiac disease to presumptively exclude oats from their diet (Ref 58). Instead, the *ADA Manual* states: ''* * *Findings from *in vivo* research on the safety of oats suggest that most persons with celiac disease can safely consume moderate amounts of uncontaminated oats without adversely affecting the intestinal mucosa * * *.'' (Ref. 59). However, the *ADA Manual* acknowledges that ''* * *limited evidence suggests that in some persons with celiac disease, the consumption of uncontaminated oats may result in mucosal inflammation* * *.'' Further, the *ADA Manual* advises that individuals with celiac disease consult with their physicians and dietitians before deciding to consume oats and that any daily intake should be limited to about 50 grams of dry oats that ideally have been tested to ensure that they do not contain gluten from wheat, rye, or barley. The *ADA Manual* also reports that some oat millers have established comprehensive clean-out procedures and control programs to address the problem of commingling of oats with wheat, rye, and barley. In addition, in a letter submitted in response to FDA's 2005 public meeting on gluten-free (see section I.E.4 of this document for details about this meeting), ADA expressed support for FDA establishing a definition of gluten-free for oats that is tied to testing that ensures that those oats do not contain gluten from other grains, so that those oats could bear a gluten-free labeling claim (Ref. 60).

The commingling of oats with wheat, rye, barley or their crossbred hybrids or with the grains generally considered to be acceptable for individuals with celiac disease (e.g., corn and rice) can occur at any step in the farm-to-table continuum. This is due to the common practices of growing crops in rotation and in close proximity to one another as well as using the same equipment and storage bins to harvest and hold different grains (Ref. 53). Accordingly, the official U.S. standard for a given grain typically allows for the presence of a small percentage of other grains (Ref. 61).

It is believed that most oat products commercially available in the United States contain some gluten from wheat, rye, or barley as a result of commingling during the oats' growth, harvesting,

[1]The cited references use the term ''contamination,'' but other references use the term ''commingling.'' For purposes of this proposed rule, FDA has opted to use the term ''commingling,'' and considers that term to mean ''the process of mixing.''

transport, storage, or processing (Refs. 43, 44, 53, 62, and 63). In 2004, Thompson reported that in a recent study 4 samples of each of 3 brands of oat products marketed in the United States were analyzed in duplicate for gluten from wheat, rye, and barley using an enzyme-linked immunosorbent assay (ELISA)-based method (Ref. 63). Ten of the 12 samples, representing all 3 brands of oat products, were reported to contain an amount of gluten ranging from 12 to 1861 ppm, depending upon the individual sample and brand tested. Thompson concluded that none of these brands could be considered a reliable source of oats free of potentially harmful gluten from other grains.

In another study, Hernando and colleagues (Ref. 64) collected 108 samples of commercial oat products (e.g., rolled oats, oat flakes, and oat flours) from Europe, the United States and Canada. The samples were analyzed for gluten from wheat, rye, and barley using an ELISA-based method. In addition, analysis of the samples by polymerase chain reaction (PCR) was used to identify the particular grains present. Consistent with the previous findings of Thompson, the presence of gluten from other grains was found to be widespread. Seventy-nine percent of the oat samples were reported to contain gluten from wheat, rye, and/or barley at a level ranging from less than 3 to 8,000 ppm gluten (Ref. 64). Sixty-one percent of the samples contained more than 200 ppm gluten. Hernando and colleagues also reported barley to be the predominant grain present.

Although there appears to be widespread commingling of oats with other grains, it appears that this commingling is preventable. Two manufacturers who submitted written responses to FDA's 2005 public meeting on gluten-free food labeling report that the oats they market in the United States do not contain gluten from wheat, rye, and barley (Refs. 65 and 66). Examples of the types of special measures reported by one or both manufacturers to ensure that their oats do not contain gluten from wheat, rye, and barley are as follows: (1) Contracting with farmers who are experienced with growing crops to ensure their purity; (2) using only oat seed certified to be pure; (3) planting oats only in fields that have not produced wheat, rye, or barley in either 2 or 3 years; (4) establishing a 25- or 30–foot buffer zone separating their oat crops from other crops; (5) conducting periodic inspections to remove any stray wheat, rye, or barley plants growing in their fields; (6) using only dedicated or thoroughly cleaned equipment and facilities to harvest, transfer, store, and process their oats; (7) having an independent lab test samples of their freshly harvested and milled oats, using an ELISA-based method designed to detect gluten naturally occurring in wheat, rye, and barley; and (8) milling their oats in dedicated facilities that either only mill oats or only mill oats and soy.

D. FDA's Prior Statements on Gluten-Free Food Labeling

Currently, there is no FDA regulation that specifically defines the term ''gluten-free.'' In the preamble to a final rule on the declaration of ingredients on food packaging published in the **Federal Register** of January 6, 1993 (58 FR 2850 at 2864), FDA advised that the term ''gluten-free'' can be used in the labeling of foods, provided that when such claim is used, it is truthful and not misleading. Generally, and absent regulations to the contrary, FDA would regard a claim that a food is ''free'' of a substance as false or misleading if the food contains that substance. FDA also noted that the term ''gluten-free'' may be misleading when the food ordinarily does not contain gluten. Although FDA did not define the term ''gluten,'' FDA referred to the grains wheat, barley, rye, oats and millet as those ''which commonly contain gluten'' (FR 2850 at 2863).

FDA's view that the term ''gluten-free'' may be misleading when a food is inherently free of gluten is consistent with FDA regulations governing the use other ''free'' claims. FDA has issued regulations that establish requirements for a ''free'' labeling claim made about a food inherently free of calories (§ 101.60(e)(ii) (21 CFR 101.60(e)(ii)), of nutrients (e.g., sodium, § 101.61(b)(1)(iii) (21 CFR 101.61(b)(1)(iii)) and fat, § 101.62(b)(1)(iii) (21 CFR 101.62(b)(1)(iii)), and of other food components (e.g., cholesterol, § 101.62(d)(1)(ii)(E)). FDA considers ''calorie-free,'' ''sodium-free,'' ''fat-free,'' and ''cholesterol-free'' labeling claims made for a food that inherently does not contain these substances to be misleading to consumers without additional clarifying wording indicating that all foods of the same type, not just the brand of food bearing that ''free'' labeling claim, are also free of the stated substance. Consistent with how FDA has regulated other ''free'' claims, the agency would consider a gluten-free labeling claim made for a food that inherently does not contain gluten to be misleading if it is not accompanied by additional wording to clarify that all foods of the same type, not just the brand of food bearing the gluten-free claim, are also free of gluten.

As discussed elsewhere in this preamble, FDA proposes to define prohibited grain to include all species of wheat, rye, barley, and their crossbred hybrids. FDA's proposed definition of prohibited grain would exclude all other grains, including oats and millet.

E. Food Allergen Labeling and Consumer Protection Act of 2004 and Related Activities

1. Food Allergen Labeling and Consumer Protection Act of 2004

FALCPA, Title II of Public Law 108–282, was enacted on August 2, 2004. Section 206 of FALCPA directs the Secretary of Health and Human Services (HHS), in consultation with appropriate experts and stakeholders, to issue a rule to define, and permit use of, the term gluten-free on the labeling of foods. FALCPA directs the issuance of a proposed rule by no later than 2 years after the law's enactment date, and a final rule by no later than 4 years after the law's enactment date. FDA is publishing this proposed rule in response to this directive.

2. FDA's Threshold Working Group and Its Report on Approaches to Establish Thresholds

FALCPA does not require FDA to establish a threshold level for gluten. Nonetheless, an important scientific issue associated with the issuance of this proposed rule is the potential existence of a threshold level below which it is unlikely that an individual with celiac disease would experience an adverse health effect.

To address this issue, among others, FDA established an internal, interdisciplinary group (the Threshold Working Group) to review the scientific literature on the issue of a threshold level for gluten. The Threshold Working Group's draft report, *Approaches to Establish Thresholds for Major Food Allergens and for Gluten in Food* (the draft Thresholds Report) (Ref. 67), summarized the current state of scientific knowledge with respect to a dose-response relationship for gluten, and presented the following four potential approaches that FDA might consider in establishing such a threshold level, if the agency chose to do so (Ref. 67, pp. 2 and 38 through 41):

- *Analytical methods-based*—thresholds are determined by the sensitivity of the analytical method(s) used to verify compliance.
- *Safety assessment-based*—''safe'' level is calculated using the No Observed Adverse Effect Level (NOAEL)

from available human challenge studies, applying an appropriate ''uncertainty factor'' multiplier to account for knowledge gaps.

• *Risk assessment-based*—examines known or potential adverse heath effects resulting from human exposure to a hazard; quantifies the levels of risk associated with specific exposures and the degree of uncertainty inherent in the risk estimate.

• *Statutorily-derived*—uses an exemption articulated in an applicable law and extrapolates from that to other potentially similar situations.

The report also noted that any decisions on approaches to establish a threshold for gluten likely would require consideration of additional factors not addressed in the report, such as ease of compliance and enforcement, concerns of stakeholders (i.e., industry, consumers, and other interested parties), economics (e.g., cost/benefit analysis), trade issues, and legal authorities.

A notice of availability for the draft Thresholds Report was published in the **Federal Register** (70 FR 35258, June 17, 2005) and the report was made available through FDA Docket No. 2005N–0231 and the Center for Food Safety and Applied Nutrition (CFSAN) Web site (*http://www.cfsan.fda.gov/~dms/alrgn.html*). FDA requested that interested persons submit comments and any scientific data or other information relevant to the draft Thresholds Report to the docket during a 60-day comment period ending August 16, 2005. The Threshold Working Group considered the comments, data, and information submitted, and made appropriate revisions to the Thresholds Report. On May 25, 2006, FDA posted its response (Ref. 68) to the comments, data, and other information that the agency received on its draft Thresholds Report (*http://www.cfsan.fda.gov/~dms/alrgcom.html*). FDA also posted the revised Thresholds Report (Ref. 69) (*http://www.cfsan.fda.gov/~dms/alrgn2.html*). Both of these documents are dated March 2006.

3. Food Advisory Committee Meeting of July 13 through 15, 2005

In the **Federal Register** of May 23, 2005 (70 FR 29528), FDA announced that FDA's Food Advisory Committee (FAC) would be holding a public meeting on July 13 through 15, 2005, to evaluate the draft Thresholds Report. One purpose of the meeting was for the FAC to determine whether the four approaches considered in the draft Thresholds Report for establishing a threshold level for gluten were scientifically sound. FDA invited experts to address a number of specific issues related to sensitivities to gluten. In addition, FDA invited interested members of the general public to present their comments and any scientific data or other information relevant to the issues pending before the FAC.

During the public meeting, the FAC heard presentations from invited experts on the diagnosis and treatment of celiac disease, the quality of life issues faced by those who have celiac disease and their families, the relationship between gluten proteins in various grains and celiac disease, analytical methods for detecting and measuring the levels of gluten in food, the value and use of prospective and retrospective gluten tolerance studies, and a summary of existing national and international definitions of gluten-free standards for food labeling. Further, members of the general public, including those representing trade associations, industry, consumers, and other stakeholders, gave brief presentations before the FAC to share their perspectives on some of the same topics addressed by the invited experts.

Approximately 140 persons attended the FAC meeting. The speaker presentations, public comments, FAC discussions, and the FAC responses to a set of specific questions and the charge to the FAC posed by CFSAN are recorded in the transcript of the meeting, which is available through the FDA Docket No. 2005N–0231 and is posted at CFSAN's Web site (*http://www.fda.gov/ohrms/dockets/ac/cfsan05.html*). Copies of the transcript materials that specifically address the topics of celiac disease and a gluten threshold level are also available through the FDA Docket No. 2005N–0279 pertaining to this rulemaking. A summary of the FAC responses to the questions is provided in the Summary Minutes (Ref. 70).

The FAC concluded that the draft Thresholds Report ''includes a comprehensive evaluation of the currently available data and descriptions of all relevant approaches that could be used to establish [a] threshold * * *for gluten in food'' (Ref. 70, p. 1). The FAC also identified the risk-assessment approach as the strongest of the four approaches proposed in the draft Thresholds Report, assuming the availability of sufficient data (Ref. 70, p. 1).

FDA received about 20 public responses, each containing one or more comments, to the FAC meeting and to the notice of availability and request for comments on the draft Thresholds Report. (Some of these responses concerned food allergens and are not relevant to this proposal.) Approximately half of the total number of responses mentioned wheat or gluten, and the majority of the responses submitted about gluten addressed issues or provided data directly related to the report's suggested approaches to establishing a threshold level for gluten. Pertinent comments were considered by FDA in the development of this proposed rule. All written responses submitted to FDA about the FAC meeting and the draft Thresholds Report are available through FDA Docket No. 2005N–0231, and copies of those responses that specifically mentioned wheat or gluten are also available through FDA Docket No. 2005N–0279.

4. Gluten-Free Food Labeling Public Meeting of August 19, 2005

In the **Federal Register** of July 19, 2005 (70 FR 41356), FDA announced that it would be holding a public meeting on August 19, 2005, to discuss the topic of gluten-free food labeling. Interested persons were given until September 19, 2005, to comment on a list of specific questions concerning food manufacturing, analytical methods, and consumer purchasing practices and views about gluten-free foods (70 FR 41356 at 41357). In addition, FDA invited experts to address these issues at the meeting, and invited members of the general public, including individuals with celiac disease and their caregivers, to share their views about foods produced and labeled as ''gluten-free.''

More than 80 persons attended the public meeting on gluten-free food labeling. In response to the notice and public meeting, FDA received more than 2,400 responses, each containing one or more comments, about the public meeting or the list of questions cited in the notice announcing the meeting. The vast majority of these responses were from individuals with celiac disease, their caregivers, and celiac disease associations, with a much smaller number of responses being from the food industry. All written responses submitted to FDA in response to the gluten-free public meeting and the questions posed in the corresponding **Federal Register** meeting notice are available through the FDA Docket No. 2005N–0279.

Most of the consumers' comments said that they appreciate and use gluten-free labeling claims to identify packaged foods they can eat when trying to avoid gluten. Many consumers stated that a gluten-free labeling claim makes it easier to grocery shop, saving the consumers both time and the frustration

experienced when reading often lengthy and complicated ingredients lists that they stated they do not understand. Many consumers also stated that they currently purchase only or primarily packaged foods bearing a gluten-free labeling claim, and that a standardized definition of the term gluten-free for foods marketed in the United States would provide them with more assurance that foods bearing this claim are appropriate for individuals trying to avoid gluten. The comments reflected a consensus of opinion among individuals with celiac disease and the organizations, which represent them that wheat, rye, and barley should be excluded from any products labeled as gluten-free. However, opinions expressed in comments from these individuals and organizations varied with respect to whether oats should be excluded from any products labeled as gluten-free.

Industry comments indicated that currently there is no universal understanding among manufacturers of what the term gluten-free means and there is no uniform industry standard for producing foods bearing this labeling claim. Several industry comments expressed the opinion that a standardized definition for gluten-free could assist industry by promoting fair competition among packaged foods marketed as gluten-free in the United States, because all manufacturers would have to adhere to the same requirements if they label their products gluten-free.

Based upon comments that FDA received during this public meeting or that were submitted in writing to the related FDA Docket No. 2005N–0279, FDA believes that a uniform definition of the term gluten-free would prevent confusion and uncertainty among both consumers and food manufacturers about what this food labeling claim means.

II. Proposed Rule

A. Legal Basis

Section 206 of FALCPA directs the Secretary of HHS, in consultation with appropriate experts and stakeholders, to issue a proposed rule to define, and permit use of, the term ''gluten-free'' on the labeling of foods. FDA has authority to issue this proposed rule under sections 403(a)(1), 201(n), and 701(a) of the act (21 U.S.C. 343(a)(1), 321(n), and 371(a). Section 403(a)(1) of the act states that, ''A food shall be deemed to be misbranded if its labeling is false or misleading in any particular.'' In determining whether food labeling is misleading, section 201(n) explicitly provides for consideration of the extent to which the labeling fails to reveal facts ''material with respect to the consequences which may result from the use of the [food] to which the labeling * * *relates under * * *such conditions of use as are customary or usual.'' Section 701(a) of the act vests the Secretary (and by delegation, FDA) with authority to issue regulations for the efficient enforcement of the act.

As directed by FALCPA, FDA is proposing to define the term ''gluten-free'' for voluntary use in the labeling of foods. FDA is also proposing to define various terms corresponding to certain specified grains and proteins that would be prohibited from use as ingredients or sources of ingredients used to make a food bearing a ''gluten-free'' labeling claim. Further, FDA is proposing to specify how a voluntary gluten-free labeling claim must be worded for oats and for other foods that inherently do not contain any gluten. Any use of the term ''gluten-free'' in the labeling of food that does not conform to the proposed regulatory definitions and requirements would render that food misbranded.

In enacting FALCPA, Congress recognized the importance to individuals with celiac disease of avoiding gluten (FALCPA, section 202(6)(B)). To address this issue, section 206 of FALCPA directs FDA to issue a regulation to define and permit use of the term ''gluten-free.'' As discussed elsewhere in this preamble, currently there is neither a regulatory definition of the term ''gluten-free,'' nor is there agreement among manufacturers or consumers as to what this term means. In the course of consulting with experts and stakeholders, FDA has learned that different manufacturers have different and inconsistent definitions of the term ''gluten-free.'' Consumers with celiac disease and their caregivers, who rely on ''gluten-free'' labeling claims to make purchasing decisions, believe that a standardized definition of the term is needed to ensure that those consumers know what to expect when purchasing foods labeled as gluten-free. Therefore, FDA believes that establishing a definition of the term ''gluten-free'' and uniform conditions for its use in the labeling of foods is needed to ensure that individuals with celiac disease are not misled and are provided with truthful and accurate information with respect to foods so labeled.

B. Definitions and Criteria for the Use of the Term Gluten-Free in Food Labeling

1. Definitions of the Terms ''Prohibited Grains'' and ''Gluten''

To facilitate proposing a definition of the term ''gluten-free,'' FDA proposes to also define the terms ''gluten'' and ''prohibited grains.'' FDA proposes in § 101.91(a)(2) to define the term ''gluten'' to mean the proteins that naturally occur in a prohibited grain and that may cause adverse health effects in persons with celiac disease (e.g., prolamins and glutelins). FDA proposes in § 101.91(a)(1) to define the term ''prohibited grain'' to mean any of the following grains or their crossbred hybrids (e.g., triticale, which is a cross between wheat and rye): (1) Wheat, meaning any species belonging to the genus *Triticum*; (2) rye, meaning any species belonging to the genus *Secale*; and (3) barley, meaning any species belonging to the genus *Hordeum*. As discussed in section I.C of this document, the scientific literature reports general agreement among celiac disease experts that naturally occurring prolamins or glutelins in wheat, rye, barley, and their crossbred hybrids can cause serious adverse health effects in individuals with celiac disease and should be excluded from their diet.

FDA is not proposing to include oats in the definition of a prohibited grain. As discussed in section I.C.3 of this document, the unconditional exclusion of oats from the diet of individuals with celiac disease is not supported by the *National Institutes of Health Conference Development Conference Statement on Celiac Disease* (Ref. 1) or by the American Dietetic Association (Ref. 58). FDA recognizes that a small percentage of individuals with celiac disease may not be able to tolerate some of the proteins that naturally occur in oats. However, it appears that a great majority of individuals with celiac disease can tolerate a daily intake of a limited amount (e.g., 50 grams) of oats that are free of gluten from wheat, rye, barley or their crossbred hybrids. Oats are reported to add variety, taste, satiety, dietary fiber, and other essential nutrients to the diet of individuals with celiac disease; thereby making their diet more nutritious and appealing (Refs. 44, 51, 56, and 71). Inclusion of oats in the diet of individuals with celiac disease who can tolerate oats may therefore result in the improved nutritional and health status of those individuals (Refs. 55 and 71).

According to comments FDA received in response to its August 2005 public meeting on gluten-free labeling, at least two food manufacturers can produce

oats that do not contain gluten from wheat, rye, barley, or any of their cross-bred hybrids. Allowing such oats to bear a gluten-free labeling claim would make them easier to identify and perhaps would encourage other manufacturers to produce such oats. Conversely, including oats in the definition of prohibited grain could eliminate any incentive for manufacturers to produce oats free of gluten from other grains because those manufacturers would have no way of distinguishing their products in the marketplace. FDA requests comments on whether the agency should include oats in the definition of a prohibited grain.

2. Definition of the Term ''Gluten-Free''

FDA proposes in § 101.91(a)(3) to define the claim ''gluten-free'' to mean that a food bearing the claim in its labeling does not contain any of the following: (1) An ingredient that is a prohibited grain; (2) an ingredient that is derived from a prohibited grain and that has not been processed to remove gluten; (3) an ingredient that is derived from a prohibited grain and that has been processed to remove gluten, if the use of that ingredient results in the presence of 20 ppm or more gluten in the food (i.e., 20 micrograms or more gluten per gram of food); or (4) 20 ppm or more gluten.

Examples of a prohibited grain include, but are not limited to, barley, common wheat, durum wheat, einkorn wheat, emmer wheat, kamut, rye, spelt wheat, and triticale. Examples of ingredients that are derived from a prohibited grain and that have not been processed to remove gluten include, but are not limited to:

- Farina, flour made from any of the proposed prohibited grains, graham, and semolina;
- Hydrolyzed wheat protein, vital gluten, wheat bran, and wheat germ; and
- Barley malt extract or flavoring and malt vinegar.

Because these ingredients are derived from a prohibited grain and have not been processed to remove gluten, they are presumed to contain gluten.

Examples of ingredients that are or are sometimes derived from a prohibited grain and processed to remove gluten include, but are not limited to:

- Food starch—modified (modified food starch); and
- Wheat starch.

Although these ingredients have been processed to remove gluten, FDA recognizes that there may be different methods of deriving these ingredients, and that some methods may remove less gluten than others. Therefore, FDA proposes to prohibit a food that contains one of these ingredients from bearing a gluten-free labeling claim if the use of the ingredient results in the presence of 20 ppm or more gluten in the food.

A food may contain 20 ppm or more gluten even though the food does not contain an ingredient derived from a prohibited grain. For example, a food that contains an ingredient derived from oats may contain 20 ppm or more gluten if the oats were commingled with a prohibited grain during their harvest, transport, or storage. FDA believes that manufacturers who elect to use the labeling claim ''gluten-free'' should make certain that foods so labeled do not contain 20 ppm or more gluten, regardless of whether or not those foods contain an ingredient that is derived from a prohibited grain. Under proposed § 101.91(b)(1), a food that bears the claim ''gluten-free'' or similar claim in its labeling and fails to meet the conditions specified in the proposed definition of ''gluten-free'' would be deemed misbranded.

3. Use of the Term Gluten-Free in the Labeling of Foods That Inherently Do Not Contain Gluten

FDA proposes in § 101.91(b)(2) to deem misbranded any food, with the exception of a food made from oats, that does not inherently contain any gluten from a prohibited grain and that bears the claim ''gluten-free'' in its labeling, unless the food complies with the following two requirements: (1) The wording of the claim in the labeling of the food clearly indicates that all foods of the same type, not just the brand bearing this labeling claim, are gluten-free (e.g., ''milk, a gluten-free food,'' ''all milk is gluten-free'') and (2) the food does not contain 20 ppm or more gluten. Examples of foods that inherently do not contain gluten include, but are not limited to:

- Different types of milk not flavored with ingredients that contain gluten (e.g., fresh fluid whole, low fat and nonfat milks; evaporated milk; nonfat dry milk; sweetened condensed milk);
- 100 percent fruit or vegetable juices; fresh fruits and vegetables that are not coated with a wax or resin that contains gluten; and frozen or canned fruits and vegetables not made with added ingredients that contain gluten; and
- A variety of single ingredient foods, e.g., butter; eggs; lentils; legumes like dried beans and peas, peanuts, and soybeans; seeds like flax, poppy and sesame; tree nuts like almonds, pecans, and walnuts; non-gluten containing grains like corn, millet and rice; fresh fish like cod, flounder and haddock; fresh shellfish like clams, lobster, and octopus; honey; and water, including bottled waters like distilled and spring.

FDA's proposed requirement for the labeling of foods, other than foods made from oats, that inherently do not contain gluten is consistent with the general principles established at § 101.13(e)(2) (21 CFR 101.13(e)(2)) for existing FDA regulations on ''free'' labeling claims made for foods inherently free of calories, nutrients (e.g., sodium, fat), and other food substances (e.g., cholesterol). If a single brand of food inherently free of the substance that is the subject of its ''free'' labeling claim does not also include additional qualifying language, consumers may mistakenly assume that only that particular brand of the food is free of the substance and may not understand that other brands of the same type of food that do not make a ''free'' labeling claim are also free of the substance (Ref. 72). Therefore, FDA views the use of a gluten-free labeling claim for a food inherently free of gluten to be potentially misleading without the inclusion of additional qualifying language.

Although oats are inherently free of gluten as defined in this proposed rule, FDA proposes in § 101.91(b)(3) to deem misbranded a food made from oats that bears a gluten-free labeling claim if the claim refers to all such foods as being gluten-free or if it contains 20 ppm or more gluten. By ''food made from oats,'' FDA means oats, any food that contains oats, and any food that contains any ingredient derived from oats. The proposed gluten-free labeling claim restriction in § 101.91(b)(3) is based on evidence of the presence of gluten from prohibited grains in a number of commercially available brands of foods made from oats, as discussed in section I.C.3 of this document. In light of that evidence, FDA believes that a gluten-free labeling claim that suggests that all foods made from oats are gluten-free would be misleading.

The agency is interested in receiving comments and scientific information on whether a gluten-free claim on an inherently gluten-free food, other than foods made from oats, would be misleading in the absence of additional qualifying language. In addition, FDA is interested in receiving comments and scientific information on whether the proposed examples of how a claim should be worded in the labeling of a food inherently free of gluten (e.g., ''milk, a gluten-free food,'' ''all milk is gluten-free'') would effectively inform consumers that all brands of the same type of food are also free of gluten, or whether there are more appropriate ways to communicate this message to

consumers. Further, FDA requests comments on the agency's proposal to restrict the types of gluten-free labeling claims that can be made for oats.

4. Use of the Analytical Methods-Based Approach in This Proposed Rule to Set a Threshold Level of 20 ppm to Define the Term Gluten-Free

As discussed in section I.E.2 of this document, the draft Thresholds Report describes four approaches FDA could use to establish a threshold level for gluten that could be the basis for decisions on whether to use the term ''gluten-free'' on product labels (Refs. 67, pp. 2, 38 through 41, and 54 through 61). The draft Thresholds Report concludes that it currently is not possible for FDA to use the quantitative risk assessment-based approach due to the lack of sufficient data from human clinical trials and the lack of sufficient data on exposure, and that the statutorily-derived approach is not viable in the absence of applicable statutory provisions (Refs. 67, pp. 4, 60, and 61). The draft Thresholds Report concludes that two approaches are viable for FDA to establish a threshold level for gluten: (1) The safety assessment-based approach and (2) the analytical methods-based approach (Ref. 67, pp. 4 and 57 through 60). The revised Thresholds Report identifies the same four approaches and conclusions (Ref. 69, pp. 2, 4, 42 through 45, and 61 through 65).

FDA is planning to conduct a safety assessment for gluten that is consistent with the safety assessment-based approach described in the draft and revised Thresholds Reports (Ref. 67, pp. 38, 39, and 58 through 60 and Ref. 69, pp. 42, 43, and 62 through 64). FDA requests comments providing data relevant to the planned safety assessment, including in particular clinical research and studies designed to measure chronic exposure, that satisfy the data quality criteria discussed in the revised Thresholds Report. We intend to publish a notice in the **Federal Register** seeking comment on the draft safety assessment and its potential use in the final rule, and will consider public and peer-review comments in revising the safety assessment, as appropriate. In developing a final rule on gluten-free labeling, we intend to consider the safety assessment as well as comments received in response to this proposed rule and the notice concerning the safety assessment. Further, as noted in both the draft and revised Thresholds Reports, FDA's establishment of a threshold level for gluten may require consideration of other factors not addressed in that report, such as ease of compliance and enforcement, stakeholder concerns, economics, trade issues, and legal authorities (Ref. 67, p. 41 and Ref. 69, p. 45). This may be true regardless of which approach FDA uses to establish a threshold level for gluten in the final rule (e.g., an analytical methods-based approach or a safety assessment-based approach).

Pending the receipt of comments submitted in response to this rulemaking and the outcome of the planned safety assessment, FDA is currently proposing to use the analytical methods-based approach to establish a threshold level of 20 ppm gluten (i.e., a food labeled gluten-free cannot contain 20 ppm or more gluten) as one of the criteria for defining the term ''gluten-free.'' Given the current unavailability of appropriate test methods that can reliably and consistently detect gluten at levels below 20 ppm,[2] FDA tentatively concludes that gluten-free labeling on a food that contains less than 20 ppm gluten would be neither false nor misleading, so long as it conforms to other pertinent requirements of this proposed rule.

Based upon the current state of technology concerning available and appropriate analytical methods that can detect one or more gluten proteins naturally occurring in wheat, rye, and barley, FDA has tentatively determined that ELISA-based methods can be used to reliably and consistently detect gluten at a level of 20 ppm in a variety of food matrices, including both raw and cooked or baked foods (Ref. 73). ELISA-based methods detect the prolamins in wheat, rye, and barley, which can serve as a biomarker for the presence of those grains, their cross-bred hybrids, or their other naturally occurring proteins. FDA is tentatively considering using an ELISA-based method that has been validated in Europe at the 20 ppm gluten detection level and has been published in the peer-reviewed scientific literature (Ref. 74). FDA has been advised that this method is currently under review by AOAC INTERNATIONAL (Ref. 75). In addition, we are aware that an evaluation of other ELISA-based methods that detect gliadin, a gluten protein, was recently published in the peer-reviewed scientific literature (Ref. 76). FDA requests comments on the appropriateness of 20 ppm gluten as the proposed threshold level as determined using an ELISA-based method.

As new, more sensitive methods of detection are developed, use of a methods-based approach, if not tempered by consideration of other factors, could result in a threshold level that is lower than the proposed threshold level of 20 ppm gluten. For example, the manufacturer of a test kit that uses an ELISA-based method that has been validated at the 160 ppm gluten detection level (Ref. 77) is seeking validation of that method at the 5 ppm gluten detection level (Ref. 78).

Given the possibility that new, more sensitive methods of detection will be developed in the near future, FDA requests comments on what effects the adoption of a lower threshold level would have on individuals with celiac disease and on industry. FDA is interested in receiving scientific data or other information that addresses the question of whether the adoption of a lower threshold level would be of benefit to individuals with celiac disease. FDA is also interested in receiving comments and supporting data on whether the use of a lower threshold level could reduce the commercial availability in the United States of foods labeled gluten-free and whether that reduced availability could negatively impact individuals with celiac disease (e.g., by making it more difficult for them to comply with dietary restrictions, perhaps leading to increased health risks).

In addition, FDA requests comments on whether a safety assessment or risk assessment that addresses gluten threshold levels for individuals with celiac disease has been conducted by other entities. FDA also requests information on any gluten tolerance studies that have been published in the scientific literature since March 2006 when FDA posted the revised Thresholds Report.

FDA recognizes that even those foods that comply with the proposed threshold level of 20 ppm gluten nonetheless may contain some gluten up to 20 ppm. FDA questions whether the potential presence of some gluten up to 20 ppm would be a material fact that, if omitted, would make a ''gluten-free'' claim potentially misleading. FDA requests comments on whether the use of additional qualifying language (e.g., ''does not contain 20 ppm or more gluten per gram of food'') would be necessary to inform individuals with celiac disease that a food labeled as gluten-free nonetheless may contain the amount of gluten permitted under

[2]The revised Thresholds Report (Ref. 69, pp. 59 and 60) identifies specific criteria for evaluating gluten detection analytical methods that are appropriate for establishing a gluten threshold level based upon an analytical methods-based approach. In reviewing the available methods that meet all of the stated criteria (Ref. 73), FDA has tentatively concluded that currently there are no available and appropriate test methods that can reliably and consistently detect gluten in a variety of food matrices at levels below 20 ppm.

whatever threshold level is established in the final rule.

FDA is aware that at least one other regulatory body outside the United States has developed a two-tiered approach to gluten-related food labeling. Australia and New Zealand have established standards for ''gluten-free'' (meaning no detectable gluten) and ''low-gluten'' (meaning no more than 20 milligrams gluten per 100 grams of the food, which is equivalent to no more than 200 ppm gluten in the food) (Ref. 79). As discussed in section III.C.6 of this document, one regulatory option (Option Six) was to develop a 2–tiered approach to a gluten-related food labeling in the United States. However, it is unclear what the scientific basis for such an approach would be; a safety assessment could provide a basis for a threshold, as described in the draft and revised Thresholds Reports, but would not provide a basis for a two-level approach. Thus, FDA tentatively concludes that this approach is not feasible because we do not have sufficient scientific data to recommend a specified level of gluten to define the term ''low gluten.'' In the absence of such information, use of the term ''low gluten'' in the labeling of food could make that labeling potentially misleading. FDA requests comment on this tentative conclusion, including comment on a possible scientific basis for setting a level of gluten to be defined as ''low gluten.''

Also, in the absence of a regulatory definition of ''low-gluten,'' FDA is concerned that different and inconsistent definitions of that term may be developed and used by industry, and that use of the term under such circumstances could mislead consumers. Therefore, FDA is considering whether it is necessary to prohibit use of the claim ''low-gluten'' and similar claims in the labeling of foods. FDA requests comment on this potential prohibition.

C. Compliance and Enforcement of an FDA Gluten-Free Food Labeling Claim

As previously discussed, FDA has identified a method that can reliably detect the presence of 20 ppm gluten in a variety of food matrices, including both raw and cooked or baked products. However, determinations of compliance with the proposed regulation need not be based on analysis of a food. In the enforcement of FDA-regulated food labeling claims, the agency routinely uses a variety of techniques, such as label reviews, onsite inspections of food manufacturers, and analysis of food samples. FDA does not necessarily analyze a food when other information or evidence exists that would enable the agency to determine that the food is misbranded. For example, if flour derived from spelt or kamut, which are species of wheat, is declared in the ingredient list for a bread labeled gluten-free, FDA would not have to analyze the product to deem it misbranded. This is because all flours made from cereal grains contain those grains' naturally occurring proteins. Likewise, if an FDA inspector were to observe the manufacturing of such a bread with spelt or kamut flour, the agency would not have to analyze the product to deem it misbranded.

There are circumstances when FDA may seek to analyze a food to determine if it is misbranded, such as in cases when FDA investigates complaints from consumers who report experiencing adverse health effects after eating a product, and an FDA label review or onsite inspection of the manufacturing facility is insufficient to identify whether there is a problem with the food. For example, an ingredient may not have been declared on the food label or a declared ingredient may inadvertently contain an undeclared substance. In such cases, an analysis of the food may be the only way to identify the presence of the substance that is the subject of the ''free'' labeling claim.

III. Preliminary Regulatory Impact Analysis

FDA has examined the impacts of this proposed rule under Executive Order 12866, 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). We believe that this proposed rule is not a significant regulatory action under the Executive Order.

A. Need for This Regulation

FALCPA directs the Secretary of HHS to issue, in consultation with appropriate experts and stakeholders, a rule to define and permit use of the term ''gluten-free'' on the labeling of foods.

B. Proposed Regulatory Options

We considered several regulatory options or alternatives: (1) Take no action; (2) take the proposed action—i.e., do not permit firms to make gluten-free claims on foods containing (a) the prohibited grains; (b) ingredients derived from the prohibited grains that have not been processed to remove the gluten; (c) ingredients derived from the prohibited grains that have been processed to remove gluten, if the use of such ingredients results in the presence of gluten in the food at a level of 20 ppm or more; or (d) 20 ppm or more gluten from any source. We are also proposing as part of this option to restrict the wording of gluten-free claims on foods that inherently do not contain gluten; (3) take the proposed action, except enforce the prohibition when the level of gluten exceeds some specified level other than 20 ppm in situations in which the gluten that is present in the food is (a) from ingredients derived from a prohibited grain that have not been processed to remove the gluten or (b) from commingling; (4) do not permit firms to make gluten-free claims on foods containing 20 ppm or more gluten, regardless of the ingredients they use to make them, and restrict the wording of gluten-free claims on foods that inherently do not contain gluten; (5) take the proposed action, except delete the wording requirements for gluten-free claims on foods that inherently do not contain gluten; (6) take the proposed action, but also define the food labeling claim ''low gluten;'' and (7) take the proposed action, except include oats in the list of grains that we propose to prohibit in foods that firms label as gluten-free. We request comments on these options as well as suggestions for other regulatory policy options that we should consider. We will address any significant comments or suggestions in the analysis of the final rule.

C. Impacts of the Proposed Regulatory Option

The primary impacts of the regulatory alternatives that we discuss in the following analysis are costs for firms to make any necessary changes to food labels and the impact of any label changes on consumer search costs. A decrease in search costs is a benefit; an increase in search costs is a cost.

1. Option One: Take No Action

We can only define costs and benefits relative to a baseline. We usually select the option of taking no action as the baseline because it helps readers identify the costs and benefits of actions that change the status quo. By definition, the baseline itself has no costs or benefits. This does not mean that we ignore the costs and benefits of taking no action. Instead, it means that we express the costs and benefits of

taking no action in the costs and benefits of the other regulatory options.

2. Option Two: Take the Proposed Action—Do Not Permit Firms to Make Gluten-Free Claims on Foods Containing the Prohibited Grains or Ingredients That Have Been Derived From Those Grains and Have Not Been Processed to Remove the Gluten; Do Not Permit Firms to Make Gluten-Free Claims on Foods Containing Ingredients Derived From the Prohibited Grains That Have Been Processed to Remove the Gluten, if the Level of Gluten Is 20 ppm or Greater; Do Not Permit Firms to Make Gluten-Free Claims on Foods Containing 20 ppm or More Gluten, Regardless of How the Gluten Got Into the Food; and Restrict Wording of Gluten-Free Claims on Foods That Inherently Do Not Contain Gluten

a. *Overview*. We are proposing to prohibit firms from making gluten-free claims on the labels of foods that contain any of the following: (1) Ingredients that are any of the species of the grains wheat, rye, barley, or a crossbred hybrid of these grains (e.g., triticale) (these grains are collectively referred to as ''prohibited grains,'' a term we propose to define in this rule); (2) ingredients that have been derived from a prohibited grain and have not been processed to remove the gluten; (3) ingredients that have been derived from a prohibited grain and have been processed to remove the gluten, if the use of such ingredients results in the presence of gluten in the food at a level of 20 ppm or more; and (4) 20 ppm or more gluten from any source. We do not specify a particular level for the first two categories of substances because we would not need to test such products to determine the presence of gluten. Instead, we would be able to determine the presence of gluten by (1) reading the labels of the foods bearing gluten-free claims to determine if firms declared any of the prohibited grains or ingredients derived from the prohibited grains that have not been processed to remove the gluten in the ingredient list or (2) by conducting onsite inspections of manufacturing facilities to observe if firms were using any of the prohibited grains or ingredients derived from the prohibited grains that have not been processed to remove the gluten to make a food labeled gluten-free. Specifying a level of 20 ppm for the third and fourth categories of substances enables us to test food containing those substances to determine if they contained gluten. The third category of substances refers to ingredients that have been derived from a prohibited grain but have been processed to remove the gluten. Some common examples from among the many ingredients in this category are wheat starch, malt extract, and malt vinegar. Depending on the effectiveness of the procedures used, people may be able to remove all the gluten from those ingredients. Thus, we would not be able to determine if food that firms made using those ingredients contained gluten by simply reading the ingredient list. The fourth category of substances refers to gluten from any source including commingling with any of the prohibited grains. We would not be able to determine if food contained gluten due to commingling by reading the ingredient list.

Not permitting gluten-free claims on foods that firms make using the prohibited grains and ingredients that have been derived from them and have not been processed to remove the gluten would have no impact on current labeling because we already do not permit firms to make gluten-free claims on foods that contain gluten, and any product that firms make using prohibited grains and ingredients that have been derived from them and have not been processed to remove the gluten would contain gluten. Similarly, specifying 20 ppm or more gluten as the amount of gluten that would cause a food bearing a gluten-free labeling claim to be misbranded, if the gluten that is present in the food is from ingredients that have been derived from a prohibited grain and have been processed to remove the gluten or from any other source, would have no impact on current food labeling. Although to date we have not identified a maximum level of gluten that would be permissible in a food bearing a gluten-free claim, we generally would regard a claim that a food is ''free'' of a substance as false or misleading if the food actually contains that substance. As we discussed earlier in this preamble, a method exists that can reliably and consistently detect the presence of gluten at a level of 20 ppm. If we were to take enforcement action against a product with a gluten-free claim under our existing regulations and policies, we would use this test to determine whether a food bearing a gluten-free claim is misbranded. Therefore, these two elements of the proposed rule do not change the status quo and cannot generate costs or benefits.

We recognize that some firms may currently be making gluten-free claims on the labels of products that contain gluten at levels of 20 ppm or more. Any costs to these firms from changing product labels are not costs of this rule but of the existing statute that prohibits false or misleading labeling. We are also proposing to restrict how firms may word gluten-free claims that appear on inherently gluten-free food. In addition to the requirement that such food not contain 20 ppm or more gluten from any source, we also propose that if a food, other than a food made from oats, that inherently does not contain gluten bears a gluten-free labeling claim, then the wording of the claim must clearly indicate that all foods of the same type, not just the brand bearing this labeling claim, are gluten-free. Two examples of the wording of a claim that would meet both criteria are ''milk, a gluten-free food'' and ''all milk is gluten-free.'' Currently, we determine whether a gluten-free claim on an inherently gluten-free product is misleading on a case-by-case basis. Therefore, this element could generate both costs and benefits. We also propose that a food made from oats can bear a gluten-free labeling claim if the wording of the claim does not refer to all foods of the same type as gluten-free. This element could also generate both costs and benefits.

b. *Costs*. Restricting the wording of gluten-free claims on inherently gluten-free foods could generate compliance costs because it would require firms to remove or change current gluten-free claims on inherently gluten-free foods that use wording that does not meet our proposed requirements. We searched the Food Labeling and Packaging Survey 2000 (FLAPS 2000) database for foods bearing gluten-free claims and found the following types of foods: Yeast, enriched rice drink, pad Thai noodles (rice noodles and sauce), and rice pudding. In addition, we found ''wheat gluten-free'' claims on yeast and a soy protein shake. We would not classify as inherently gluten-free any of the foods that we identified in FLAPS as bearing gluten-free claims because firms could formulate or manufacture those types of foods to contain gluten. Based on this information, we estimate that this element of the proposed rule would generate minimal or no relabeling costs.

In addition, this element might generate increased search costs for some consumers by suppressing the use of gluten-free claims on inherently gluten-free food other than foods made from oats. The incentive for firms to use these claims increases with the ability of the claims to increase profits. Gluten-free claims that consumers interpret to refer to a particular brand probably increase that particular firm's profits more than gluten-free claims that consumers interpret to refer to general product types because such brand-specific claims provide consumers a reason to buy a particular brand of product while

product-type claims only provide consumers a reason to buy any product within a given product-type category. Therefore, requiring firms to use wording that refers to general product types would reduce to some degree the incentives for firms to use gluten-free claims and, therefore, would probably reduce the number of such claims appearing on inherently gluten-free food. However, some firms may still use gluten-free claims to influence consumers choosing between general product-type categories. The cost generated by this potential reduction in the use of gluten-free claims on inherently gluten-free food depends on the usefulness of such claims for consumers. Reducing the use of gluten-free claims would not generate costs for consumers who are already aware of inherently gluten-free foods because they would not need such claims to identify those foods. However, reducing the use of gluten-free claims could generate costs for consumers who are not aware that some inherently gluten-free foods are gluten-free because they might currently use such claims to help identify those foods as foods they can eat when following a diet that does not include gluten. We do not have sufficient information to estimate this potential cost.

c. *Benefits*. Restricting the wording of gluten-free claims on inherently gluten-free foods other than foods made from oats might generate benefits for some consumers by making any gluten-free claims that do appear on inherently gluten-free food more informative. These benefits would depend on the usefulness of such information for consumers. The wording restrictions would not benefit consumers who already know that inherently gluten-free foods are gluten-free either from prior knowledge or because they infer it from the existence of gluten-free claims on multiple foods within a given product category. However, the wording restrictions would benefit consumers who are unaware that certain inherently gluten-free foods are inherently free of gluten. The optimal level of informative labeling would balance the countervailing impacts of the potential reduction in the number of gluten-free claims and the increase in the information content of each gluten-free claim. We do not have sufficient information on consumers' knowledge of inherently gluten-free food or on the number of such foods that firms might choose to identify as inherently gluten-free in the future to estimate these benefits.

Restricting the wording of gluten-free claims on foods made from oats might generate benefits for some consumers by making any gluten-free claim that does appear on those foods less likely to mislead consumers by implying that those foods cannot contain gluten via commingling with the prohibited grains. We do not have sufficient information on the impact on consumers of avoiding potential confusion about the possibility that foods made from oats may contain gluten via contact with the prohibited grains or on the number of foods made from oats that firms might choose to label as gluten-free in the future to estimate these benefits.

d. *Summary*. Not permitting gluten-free claims on foods that firms make using the prohibited grains or ingredients that have been derived from them and have not been processed to remove the gluten would not generate costs or benefits. Similarly, not permitting gluten-free claims on foods that firms make using ingredients that have been derived from prohibited grains and have been processed to remove the gluten and on foods that contain gluten from any other source, if those foods contain 20 ppm or more gluten, would also not generate costs or benefits. Both of these proposed requirements are consistent with how we would currently enforce our existing statute that prohibits false or misleading labeling statements. Restricting the wording of gluten-free claims on foods that inherently do not contain gluten might require some firms to change product labels. However, we were unable to identify any such foods. Therefore, we estimate that these costs would be minimal. Restricting the wording of gluten-free claims on inherently gluten-free foods may also generate future costs and benefits by changing the incentives to use such claims and changing the information content of gluten-free claims on affected foods. We do not have sufficient information to quantify these potential costs and benefits.

3. Option Three: Take the Proposed Action, Except Do Not Permit Firms to Make Gluten-Free Claims on Foods Containing Ingredients Derived From the Prohibited Grains That Have Been Processed to Remove The Gluten, if The Level of Gluten Is Some Specified Level Other Than 20 ppm, and Do Not Permit Firms to Make Gluten-Free Claims on Foods If the Level Of Gluten Is Some Specified Level Other Than 20 ppm, Regardless of How the Gluten Got Into the Food

a. *Overview*. Under this option, we could specify a threshold level that was either higher or lower than 20 ppm gluten for deeming a food labeled gluten-free to be misbranded, when the gluten that is present in that food is from ingredients that have been derived from the prohibited grains and have been processed to remove the gluten or from any other source. However, we have chosen to analyze alternative levels higher than 20 ppm gluten because we do not know of any currently available and appropriate test methods that can reliably and consistently detect gluten at levels below 20 ppm. Specifying a level higher than the proposed level of 20 ppm gluten would expand the number of foods that would be eligible to bear gluten-free claims and would generate both costs and benefits. We do not need to specify precisely a level above the proposed level of 20 ppm in order to analyze this option. We note that if we were to choose this option, then we would need additional scientific data to analyze the costs and benefits of whatever level we chose.

Specifying a level higher than 20 ppm gluten would not generate compliance costs for industry because gluten-free claims are voluntary and no firms would need to remove existing labeling claims that are appropriate under the statute. However, it could generate search costs for some consumers. As we discussed in section I.A of this document, the symptoms of celiac disease are highly variable among affected individuals. We don't know the reasons for this variability. Some individuals with celiac disease may be unable to tolerate whatever level of gluten we might specify. Individuals who cannot tolerate whatever level of gluten we might specify might nevertheless continue to rely on gluten-free claims to identify appropriate foods and might suffer adverse health consequences from doing so. However, we assume that most consumers who use gluten-free claims to identify appropriate foods will have been diagnosed with celiac disease and will be under a physician's care for that condition. Therefore, sensitivity to whatever level of gluten we might allow would probably be detected within a short time and these individuals would probably not continue to rely on gluten-free claims to identify appropriate foods. The more likely consequence, and the consequence that we base the remainder of our analysis upon, is that consumers who are sensitive to gluten at this higher level would no longer be able to rely on gluten-free claims to identify foods that are safe for them to eat and would need to take other steps to identify these foods. This would increase the cost for these consumers to

find appropriate foods. The increased search costs might cause these consumers to conduct fewer searches for appropriate foods, which could lead them to reduce their compliance with a diet that does not include gluten and increase their risk of various adverse health effects. In addition, increased search costs for some consumers would tend to discourage firms from continuing to produce or develop new foods that contain no gluten because it could reduce their ability to inform consumers of such foods using gluten-free labeling claims, although they could continue to inform consumers about these foods in other ways. This might further reduce the compliance of these consumers with a diet that does not include gluten and generate additional adverse health effects.

Under this option, the potential benefits of specifying a level greater than 20 ppm gluten, when the gluten that is present in the food is from ingredients that have been derived from a prohibited grain and have been processed to remove the gluten or from any other source, are similar in nature but opposite in effect to the costs and would accrue to different consumers. Consumers who can tolerate whatever level we specify would value our adopting that level because it might allow them to use gluten-free claims to identify a greater range of appropriate foods. This reduction in search costs could lead these consumers to conduct additional searches for appropriate foods, which could lead to them to increase their compliance with diets that do not include gluten and lower their risk of adverse health effects. In addition, the decreased search costs for these consumers would tend to encourage firms to produce or develop foods with up to the specified level of gluten, which could increase these consumers' compliance with a diet that does not include gluten and further reduce their risk of adverse health effects.

We do not know how much some consumers and firms would value our specifying a level higher than 20 ppm gluten. The potential value for consumers who would benefit from this option is probably lower on a per-person basis than the corresponding potential loss for consumers who would be unable to tolerate the level of gluten allowed under the specified level because the incremental effect on a given individual's search costs of gluten-free claims appearing on some additional foods is smaller than the incremental effect of losing the use of gluten-free claims on all foods. However, we do not know how many consumers can and cannot tolerate particular levels of gluten. Therefore, we cannot draw any conclusions on the net benefits of specifying different levels.

This option would include the provisions restricting the wording of gluten-free claims on inherently gluten-free food. Therefore, it would also generate the costs and benefits that we associated with those provisions in our discussion of Option Two (the proposed action) previously discussed.

b. *Costs.* As we discussed in the preceding overview, this option would increase search costs for consumers who are unable to tolerate the specified level of gluten. However, as we discussed in section I of this document, accurately estimating the prevalence of celiac disease in the United States is difficult for a variety of factors. These factors also demonstrate that individuals vary for many reasons in their sensitivity to gluten. One researcher who did attempt to identify a level that all celiac patients can tolerate was Fasano (Ref. 80), who, based on data from Catassi, et al., (Ref. 81) and Collin, et al., (Ref. 82), suggested that all individuals with celiac disease may be able to tolerate between 20 and 100 ppm. (See Ref. 69 at pp. 39 and 40 for further discussion of this literature.) Some researchers address this issue in the context of wheat starch because wheat starch is a common ingredient that contains varying and sometimes very low levels of gluten (Refs. 41, 82, and 83). In general, as we discussed in both the draft and revised Thresholds Reports (Ref. 67, pp. 35 and 36 and Ref. 69, pp. 39 and 40) , the studies are inconclusive about the safety and subjective acceptability of foods that contain 20 ppm or more gluten for individuals with celiac disease. To reflect this uncertainty, we assume that 0 percent to 100 percent of consumers with celiac disease are unable or unwilling to tolerate 20 ppm or more gluten over the long term and, therefore, would be unable to continue to use gluten-free claims to identify appropriate foods under this option.

Physicians have diagnosed approximately 40,000 to 60,000 people as having celiac disease in the United States (Refs. 17 and 18). We assume that physicians have prescribed a diet that does not include gluten for all consumers they have diagnosed with celiac disease. If 0 to 100 percent of these consumers cannot tolerate 20 ppm or more gluten, and if all of these consumers currently use gluten-free claims to identify appropriate foods, then 0 to 60,000 people who currently use gluten-free claims would be unable to continue to do so.

We assume that only consumers who have been diagnosed with celiac disease, or those who buy food for such consumers, are currently using gluten-free claims to find appropriate foods. However, some consumers who have not been diagnosed as having celiac disease may also follow a diet that does not include gluten on their own initiative if they are experiencing symptoms of gluten intolerance. We consider this group to illustrate the consequences of our assumption that only those consumers who have been diagnosed with celiac disease use gluten-free claims on product labels.

As we explained in section I.B of this document, the prevalence of celiac disease in the United States, including both symptomatic and asymptomatic individuals, ranges from about 0.4 percent to about 1.0 percent (Refs. 1 and 16), although the actual prevalence may be higher or lower. Based on this information, we assume that 0.4 percent to 1.0 percent of the United States population may have celiac disease. One study found that 40 percent of children and 60 percent of adults who were newly diagnosed with celiac disease were symptomatic (Ref. 84). Therefore, we assume the overall rate of new celiac patients who are symptomatic is between 40 percent and 60 percent.

The U.S. population in August 2005 was approximately 297 million (Ref. 85). If the overall prevalence of celiac disease is between 0.4 percent and 1 percent, then approximately 1.2 million to 3.0 million people in the United States have celiac disease. If 40 percent to 60 percent of people with celiac disease have symptoms of that disease, then between 500,000 and 1.8 million people in the United States have symptoms associated with celiac disease. Earlier we noted that only 40,000 to 60,000 people in the United States have been diagnosed with celiac disease. Subtracting this number of people from the estimated number of people in the United States who have symptoms associated with celiac disease and rounding to the nearest tenth of one million implies that approximately 0.4 million to 1.8 million people have undiagnosed celiac disease and exhibit some symptoms of that disease. If some of these consumers, or those who buy food for these consumers, are currently using gluten-free claims to identify appropriate foods, then the consequences of revising the criteria for using those claims would be much greater than we have estimated based only on consumers who have been diagnosed with celiac disease.

Any consumers who currently rely on gluten-free claims to identify appropriate foods and who would be unable to continue to use those claims because they cannot tolerate the level of gluten allowed under the specified level would probably need to spend additional time identifying appropriate foods. In the comments that we received during the public meeting on gluten-free food labeling, some comments said they spent up to an extra 10 hours per week shopping, while other comments said they spent five times as much time shopping as they did before they started a diet that does not include gluten. One consumer group reported that some consumers on a diet that does not include gluten said they spent an extra 30 minutes per week shopping, while other consumers said they spent twice as much time shopping as they did before they started a diet that does not include gluten (Ref. 86). This group did not report how much time the consumers spent shopping before they started a diet that does not include gluten. However, in the analysis of a previous and unrelated rule, we estimated that the average shopping time for all grocery store purchases was 46.2 minutes per week (68 FR 51738 at 51744, August 28, 2003). This average would have included those on special diets such as diets that do not include gluten. However, most people are not on special diets. Therefore, we interpret the information from this consumer group to mean that some consumers on a diet that does not include gluten who reported spending twice as much time shopping spent about 90 minutes shopping per week. This group did not report on the smallest amount of extra time that these consumers spent shopping; but, we assume that all consumers on a diet that does not include gluten would spend at least some extra time shopping. We have chosen 10 minutes per week as a reasonable estimate of this minimum amount of extra shopping time. We assume that the results reported by the consumer group are more representative of the average consumer on a diet that does not include gluten than the results reported by these individual consumers, who might not be typical of the average consumer on a diet that does not include gluten. Based on this information, we assume that being on a diet that does not include gluten increases food shopping time by 10 to 46 minutes per week.

We do not know the difference in search times for those who can use gluten-free labels and those who cannot. The range in search costs that we reported previously probably includes consumers who make considerable use of gluten-free claims to identify foods and consumers who do not. Many consumers who can make considerable use of gluten-free claims probably still need to expend at least some additional time searching for foods relative to the average consumer because relatively few foods bear gluten-free claims. In addition, some consumers who use gluten-free claims to identify acceptable foods may also read ingredient lists to confirm the absence of gluten (Ref. 87). Therefore, the ability to use gluten-free claims probably leads to a relatively small reduction in extra shopping time for consumers on diets that do not include gluten. We do not have sufficient information to estimate the time savings associated with being able to use existing gluten-free claims; but, we have chosen a range of 10 to 50 percent of the difference between the low end and the high end of the range of total extra shopping time, or 0 minute to 18 minutes per week, as the extra shopping time that the ability to use gluten-free claims could reasonably be expected to eliminate. We request comments on this assumption.

Consumers who cannot rely on gluten-free claims and who buy foods in conventional grocery stores probably expend the most extra time shopping because they would have to rely on ingredient lists or take other approaches to identifying appropriate foods. These consumers might need to learn more about food ingredients or use references on food ingredients. In addition, some of these consumers may call or write manufacturers to ask about ingredients. Some consumers may look up information on foods on the Internet. Finally, some of these consumers may refer to reference lists of gluten-free foods that some celiac organizations publish for this purpose. Consumers who cannot rely on gluten-free claims and who buy gluten-free foods in specialty stores or from mail order firms probably have lower search costs because some of these sources may identify foods that do not contain gluten. However, gluten-free foods are typically more expensive when purchased in specialty stores or from mail order firms than when purchased in conventional grocery stores; so, the reduction in search cost is offset by increased product prices.

Based on this information, we assume that losing the ability to rely on the relatively small number of existing gluten-free labels may increase search costs by 0 to 18 minutes per week. Multiplying this range by the number of consumers who we estimated might lose the use of gluten-free labeling, 0 to 60,000, results in a potential increase in search costs of 0 to 18,000 hours per week. The average value of 1 hour of leisure time should be similar to the average value of 1 hour of working time, which was $26.05 in September 2005 for nonfarm private and State and local Government workers in the United States (Ref. 88). Therefore, we estimate the cost associated with potential increases in search costs for some consumers to be $0 to $24 million per year.

If specifying a level higher than 20 ppm gluten increases product search costs for some consumers, then it may also lead those consumers to conduct fewer searches for appropriate foods, which could reduce their compliance with diets that do not include gluten. Some consumers already have difficulty following a diet that does not include gluten. One recent study said that the literature suggests that only 17 percent to 65 percent of patients who are prescribed a diet that does not include gluten manage to adhere to that diet (Ref. 89). An earlier study found that only 2 percent of 130 patients who had been diagnosed with celiac disease managed to adhere to a diet that does not include gluten (Ref. 90). One article said that poor compliance with diets that do not include gluten was at least partially due to the inconvenience of purchasing and preparing gluten-free food and the higher prices of gluten-free foods (Ref. 46). Search costs are one measure of the inconvenience of purchasing gluten-free food and probably also play a role in the higher cost of such foods.

Some studies have found relatively high compliance rates for diets that do not include gluten that allow ingredients that may have trace amounts of gluten, such as wheat starch. This suggests that compliance with diets that do not include gluten that allow such ingredients may be higher than compliance with diets that do not include gluten that do not allow such ingredients. One article noted that 85 percent of celiac patients in Finland manage to adhere over the long-term to a diet that does not include gluten that allows wheat starch (Ref. 82). Similarly, one study that was conducted in Finland found that 88 percent of the patients in that study adhered to a diet that does not include gluten that allowed wheat starch (Ref. 89). These percentages are higher than the 2 percent to 65 percent compliance rates for diets that do not include gluten that we mentioned in the preceding paragraph, which were from articles that appear to have interpreted any gluten

intake as a failure to comply with a diet that does not include gluten. If there is a difference in compliance rates, then part of this difference may be because gluten-intolerant consumers who can tolerate foods made with ingredients that may contain trace amounts of gluten, such as wheat starch, can more easily find appropriate and acceptable foods. For example, one study found that 13 of the 17 consumers in that study preferred a product made with wheat starch containing approximately 15 ppm gluten to foods made with rice flour or cornstarch that were entirely gluten-free (Ref. 83). On the other hand, Thompson (Ref. 41) contended that there is no evidence that compliance is higher among patients following diets that do not include gluten that allow foods made with wheat starch than among those following diets that do not include gluten that do not allow foods made with wheat starch. For example, some of the differences in the compliance rates that appear in different articles may be due to differences in the usual diets of various countries or other factors that are unrelated to whether the diet includes products that contain trace amounts of gluten such as wheat starch.

Of course, factors other than search costs and product costs may affect compliance with a diet that does not include gluten. For example, one article that looked at 55 cases of persisting celiac disease caused by non-compliance with a diet that does not include gluten found that 73 percent of those patients were not aware of the continuing nature of the disease and thought they had recovered from a temporary illness, while 27 percent were aware of the continuing nature of the disease but were unable to maintain compliance without additional dietary counseling (Ref. 90). The authors suggested that the principal reason for non-compliance with a diet that does not include gluten might be the lack of morbidity associated with chronic untreated celiac disease. They noted that although a few patients had experienced lassitude, abdominal discomfort, or occasional diarrhea, the symptoms were not compelling. Another study also suggested that one potential reason for intentional non-compliance with a diet that does not include gluten is that many non-compliant patients have no symptoms and normal hematological and biochemical profiles despite notable mucosal villous atrophy and inflammation (Ref. 83).

Based on this information, we assume that if this option raised search costs for some consumers, then it could lead them to decrease their compliance with a diet that does not include gluten. However, we do not have sufficient information to estimate the incremental change in compliance rates.

If this option reduced some consumers' compliance with a diet that does not include gluten, then it could generate adverse health effects for those consumers. The adverse health effects associated with celiac disease are highly variable among affected individuals. We do not know the reasons for this variability, but it may depend on the age and immunological status of the individual; the amount, duration, or timing of the exposure to gluten; and the specific area and extent of the gastrointestinal tract involved by disease (Ref. 5). We discussed the adverse health effects associated with gluten consumption by celiac patients in section I.A of this document. Although decreased compliance with a diet that does not include gluten would probably generate some adverse health effects, the literature is not clear on the effect of changes in compliance on health outcomes. Based on this information, we conclude that any decrease in compliance with a diet that does not include gluten could generate additional cases of various adverse health effects. However, we cannot estimate the number of cases from this effect because we do not have sufficient information on the impact of this option on product search costs, the impact of product search costs on compliance rates, or the impact of changes in compliance rates on the risk of various adverse health effects.

Finally, any reduction in the usefulness of gluten-free claims for some consumers might discourage firms from continuing to produce or developing foods with a level of gluten below the specified level. Firms could use other truthful and not misleading wording on food labels to inform consumers that a product was not made with gluten-containing ingredients or contained less than the specified level of gluten. However, these other types of label statements might not be as effective as gluten-free claims. This potential reduction in the number of foods with a level of gluten below the specified level might further increase search costs for consumers who desire such foods and might further reduce their compliance with diets that do not include gluten. We do not have sufficient information to estimate these potential costs.

This option would also generate the costs that we associated with restricting the wording of gluten-free claims on inherently gluten-free food in our discussion of Option Two. We do not have sufficient information to estimate these costs.

c. *Benefits.* As we discussed in the preceding overview, specifying a level higher than 20 ppm gluten might generate benefits because it would enable firms to use gluten-free claims on additional foods. Consumers who can tolerate the specified level of gluten could use gluten-free claims to more easily identify appropriate foods.

We do not know how many existing foods contain particular levels higher than 20 ppm because no information is available on the amount of gluten in different grain-derived food ingredients or finished food (Ref. 69, p. 37). However, the gluten in many foods that contain trace amounts of gluten comes from ingredients such as wheat starch, malt extract, or malt vinegar. The level of gluten in wheat starch varies between 14 ppm and 740 ppm (i.e. 7 ppm to 370 ppm prolamin, which corresponds to 14 ppm to 740 ppm gluten) (Ref. 41). One small survey of 24 wheat-starch derived flours in Finland found levels of less than 20 ppm up to 160 ppm gluten (Ref. 82). The gluten levels in these products were distributed approximately as follows: 58 percent had 20 ppm or less, 13 percent had more than 20 ppm up to 40 ppm, 13 percent had more than 40 ppm up to 60 ppm, 0 percent had more than 60 ppm up to 80 ppm, 8 percent had more than 80 ppm up to 100 ppm, 0 percent had more than 100 ppm up to 140 ppm, and 8 percent had more than 140 ppm up to 160 ppm. One study analyzed gluten levels in 2 brands of wheat starch and found levels of approximately 15 ppm (0.75mg/100g) and 560 ppm (28mg/100g) (Ref. 83). One article noted that improved gluten detection techniques have demonstrated that some food made with wheat starch contains more gluten than the current Codex standard for gluten-free foods would allow (Ref. 91). Codex Standard 118–1981 (amended 1983) for gluten-free foods that is in effect today defines ''gluten-free'' to mean that the total nitrogen content of gluten-containing cereal grains used to make a product cannot exceed 0.05 gram nitrogen per 100 grams dry cereal grain (Ref. 92). However, some authors have attempted to estimate what this Codex restriction means in terms of ppm of gluten. One study estimates that the current Codex standard allows gluten-free products to contain up to 500 ppm (50 mg/100 g) (Ref. 93). Other studies estimate that the current Codex standard allows gluten-free products to contain up to 600 ppm gluten (60 mg/100 g) (Refs. 94 and 89). Based on this information, we assume wheat starch contains between 14 ppm and 740 ppm gluten. The level of gluten

in products made with wheat starch would be significantly lower, depending upon the amount of wheat starch used in proportion to the other ingredients to make the products. However, we do not have data on the level of gluten in products made with wheat starch. Foods made with malt extract may also contain low levels of gluten (Ref. 95). Firms produce malt extract from malt grain derived from barley. Depending on the extraction technique, malt extract may contain residual amounts of gluten. One study tested some foods containing malt extract and found gluten in some samples of chocolate powder, chocolate milk, and chocolate bars, but not in breakfast cereals (Ref. 91). Foods that firms manufacture using other ingredients, such as oats, may also contain gluten if these other ingredients are commingled with grains like wheat, rye, barley, or triticale (Refs. 63 and 64).

Some individuals with celiac disease may be able to tolerate levels of gluten higher than 20 ppm in ingredients such as wheat starch, malt extract, and malt vinegar. These consumers may be able to use current ingredient labeling to identify appropriate foods if firms list these types of ingredients on product labels and no other potential sources of gluten appear on the ingredient lists. However, these consumers would not always be able to use ingredient lists to determine whether a product contains gluten because some ingredients' common or usual names do not identify their food sources and some ingredients can be derived from grains that contain gluten or from grains that do not contain gluten. In some cases, firms may include ingredients containing trace amounts of gluten in other listed ingredients that have collective names such as flavors and colors. Other consumers may be able to tolerate the lower but not the higher levels of gluten that might occur in foods that contain these ingredients. These consumers would not be able to rely on current ingredient labeling because some foods that contain these ingredients could contain more than whatever amount of gluten higher than 20 ppm those consumers can tolerate. These consumers would need to take additional steps to identify foods that contain gluten at the levels they can tolerate. These additional steps might involve using references on gluten levels in different foods, calling manufacturers, or buying foods through specialty vendors that select appropriate foods or provide advice on acceptable foods. Using a level higher than 20 ppm gluten could decrease search costs for both groups of consumers, but the effect would be larger for consumers who cannot use the ingredient list to identify appropriate foods.

We do not know how many consumers can tolerate any particular level of gluten. In the preceding discussion of costs, we estimated that 0 to 100 percent of the 40,000 to 60,000 consumers who we estimated to be currently on a diet that does not include gluten cannot tolerate an amount of gluten higher than 20 ppm. The corresponding estimate of the percentage of consumers who can tolerate a level of gluten higher than 20 ppm also ranges from 0 percent to 100 percent, which corresponds to 0 to 60,000 consumers.

We also do not know the impact on search costs for these consumers. In the preceding cost discussion, we estimated that being on a diet that does not include gluten increases product search time by 10 to 46 minutes per week. We do not know how much of this increased time cost comes from reading ingredient labels to identify ingredients that may contain low levels of gluten or taking other steps to determine the gluten levels of foods that have these ingredients as the only sources of gluten. However, a reasonable estimate of the increased time cost is 10 to 50 percent of the difference between the low end and high end of the range of total extra shopping time, or 0 minute to 18 minutes per week after rounding. Therefore, we assume that allowing gluten-free claims to appear on foods with levels of gluten higher than 20 ppm could reduce consumers' search costs by 0 to 18 minutes per week. We request comments on this assumption. Multiplying the estimated number of consumers who have been diagnosed with celiac disease by the number of minutes results in a potential search cost savings of 0 to 18,000 hours per week. The average value of one hour of leisure time should be similar to the average value of 1 hour of working time, which was $26.05 in September 2005 (Ref. 88). Therefore, we estimate the potential benefit of reduced product search costs to be $0 to $18 million per year.

Any decrease in search costs for some consumers could lead those consumers to conduct additional searches for appropriate foods, which might increase their compliance with a diet that does not include gluten. If these consumers increased their compliance with a diet that does not include gluten, then they may reduce their risk of adverse health effects. This option might also encourage firms to develop new foods with the specified level of gluten because it would improve the ability of firms to signal to consumers through the use of gluten-free labeling claims that a given product contains less than the level of gluten. The development of new foods might also further facilitate compliance with a diet that does not include gluten for consumers who can tolerate the specified level of gluten, which could lead to additional health benefits. We do not have sufficient information to estimate these benefits.

This option would also generate the benefits that we associated with restricting the wording of gluten-free claims on inherently gluten-free food in our discussion of Option Two. We do not have sufficient information to estimate these benefits.

d. *Summary*. The element of this option that specifies a level higher than 20 ppm gluten, when the gluten that is present in the food is from ingredients that have been derived from a prohibited grain and have been processed to remove the gluten or from any other source, would allow firms to make gluten-free claims on the labels of some foods that contain less than this level of gluten and would generate both costs and benefits. The costs would accrue to consumers who cannot tolerate the specified level of gluten and the benefits would accrue to consumers who can tolerate the specified level of gluten. We do not have sufficient information to compare the impact of this option on these two groups of consumers. Using the full range of 0 percent to 100 percent of consumers diagnosed with celiac disease as potentially falling into either group gives countervailing search costs and benefits of $0 to $18 million per year. Changes in search costs could also generate countervailing health effects for these two groups of consumers. The optimal rule from a cost-benefit perspective would balance the cost of reducing the usefulness of gluten-free claims for consumers who have a relatively high degree of sensitivity to gluten with the benefit of making gluten-free claims as useful as possible for consumers who are attempting to control their intake of gluten but are relatively less sensitive to gluten. However, we do not have sufficient information to quantify these effects or to estimate the optimal level of gluten.

The element of this option that would restrict the wording of gluten-free claims on inherently gluten-free food could also generate costs and benefits. Costs would result from a potential reduction in the likelihood that firms will use gluten-free claims on inherently gluten-free food, while the benefits would result from the greater information content or the reduced potential for misleading consumers of

any such claims that do appear on these foods. We do not have sufficient information to determine the net effect of these countervailing influences.

4. Option Four: Do Not Permit Firms to Make Gluten-Free Claims on Foods Containing 20 ppm or More Gluten, Regardless of the Ingredients They Use to Make Them, and Restrict the Wording of Gluten-Free Claims on Foods That Inherently Do Not Contain Gluten

Under this option, we would allow firms to make gluten-free claims on food that they make from any type of ingredient if the food does not contain 20 ppm or more gluten. This option would generate the same costs and benefits as Option Two except that applying the 20 ppm level to food that contains one or more of the prohibited grains or that contains ingredients that have been derived from them and have not been processed to remove the gluten would represent a change from our current approach to such claims. Our current approach to claims of the form ''substance X-free'' is that a product that bears such a claim on its label cannot contain any level of substance X. Applying this approach to gluten-free claims implies that we do not allow firms to use gluten-free claims on foods they make from these substances regardless of the level of gluten in that food. Option Two maintains our current approach for these foods. Therefore, applying the level of 20 ppm to this food would generate costs and benefits that we did not discuss under Option Two.

As a practical matter, any product that firms make from one or more of the prohibited grains will contain 20 ppm or more gluten. Therefore, the impact of applying the level to food that contains one or more of the prohibited grains is the same as the impact of our current position of prohibiting gluten-free claims on the labels of food containing these grains. Therefore, this change will not generate costs or benefits relative to the baseline.

In contrast, a food that contains ingredients that have been derived from a prohibited grain and have not been processed to remove the gluten may contain less than 20 ppm gluten. Therefore, applying the level to this category of food would result in costs and benefits relative to the baseline of our current position. These costs and benefits would be in addition to the costs and benefits that we discussed under Option Two.

The cost of applying the level to food that contains ingredients that have been derived from a prohibited grain and have not been processed to remove the gluten is that we would need to test the food to determine if it can bear a gluten-free claim. Enforcement actions that require testing are significantly more costly for us than enforcement actions that only require us to read ingredient lists on food labels. However, we have not analyzed the difference in costs for enforcement actions that require testing and those that do not. In addition, we cannot estimate how many times we would need to take enforcement actions against this type of food. Therefore, we cannot estimate this additional cost.

This provision would not generate costs for consumers because consumers who cannot tolerate 20 ppm gluten are unable to rely on gluten-free claims to identify acceptable products under our current approach and would also be unable to do so under the proposed requirements of Option Two. This is because both our current approach to claims of the general form ''substance X-free'' and the approach expressed in Option Two allow firms to make gluten-free claims on products that contain less than 20 ppm gluten if the gluten that is present in the food is from a source other than an ingredient that is a prohibited grain or that has been derived from a prohibited grain and has not been processed to remove the gluten.

The benefit of applying the level of 20 ppm to food that contains ingredients that have been derived from a prohibited grain and have not been processed to remove the gluten is that firms would be able to begin using gluten-free claims on this type of food, provided that the food did not contain 20 ppm or more gluten. This would generate benefits for consumers who can tolerate up to 20 ppm gluten because they would be able to rely on gluten-free claims to identify additional products. We do not have sufficient information to estimate this benefit.

In summary, this option would have the same costs and benefits as Option Two except for the costs and benefits of applying the level of 20 ppm to food that contains ingredients that have been derived from a prohibited grain and have not been processed to remove the gluten. We do not have sufficient information to quantify these countervailing costs and benefits. Therefore, we cannot compare the net benefits of this option to the net benefits of Option Two.

5. Option Five: Take the Proposed Action, Except Delete Wording Requirements for Gluten-Free Claims on Foods That Inherently Do Not Contain Gluten

We could take the proposed action but delete the requirements relating to the wording of gluten-free claims on foods that inherently do not contain gluten. In that case, we would continue the status quo approach of determining whether such claims are misleading on a case-by-case basis. This would eliminate the costs and benefits of the proposed requirements that we discussed under Option Two. Therefore, this option would not generate any costs or benefits.

6. Option Six: Take the Proposed Action, But Also Define the Food Labeling Claim ''Low Gluten''

Under this option, we would specify requirements for a ''gluten-free'' labeling claim as directed by FALCPA and also specify requirements for a less restrictive ''low gluten'' labeling claim that firms could use on foods that contained a relatively low level of gluten at some specified level higher than 20 ppm. Firms can already use ''low gluten'' claims if those claims are truthful and not misleading. However, we currently do not have a position on the level of gluten that renders a ''low gluten'' claim truthful and not misleading. Determining an appropriate level of gluten to use in defining ''low gluten'' on a cost benefit basis would require, among other things, dose-response data on the health impacts of various levels of gluten on those with celiac disease. We do not have sufficient scientific data to recommend a specified level of gluten to define the term ''low gluten.'' Nevertheless, we address significant regulatory options in regulatory impact analyses irrespective of their feasibility.

This two-tier approach could generate higher benefits than Option Two in two ways. First, by establishing explicit criteria for using ''low gluten'' claims, we might encourage firms to use such claims. Second, by basing the use of ''low gluten'' claims on a particular level of gluten, we would standardize the meaning of ''low gluten'' claims and make them more useful for consumers. Encouraging the use of ''low gluten'' claims and standardizing the level of gluten in foods bearing such claims might generate benefits because a combination of ''gluten-free'' claims and ''low gluten'' claims would provide claims that might be useful for both more sensitive and less sensitive consumers, which would increase the

number of consumers who find such claims useful and decrease the number of consumers who might be unable to continue to use these claims to identify appropriate foods.

However, this option may also generate costs beyond those we discussed under Option Two. First, some firms may already be using ''low gluten'' claims. If we define that term relative to a particular level of gluten, then some of these firms may need to change product labels. We were unable to identify any foods bearing ''low gluten'' labels in the FLAPS database. Therefore, we estimate that any labeling costs would be minimal. Second, the presence of two claims corresponding to different levels of gluten might confuse some consumers and lead them to consume foods with more gluten than they intend to consume. Encouraging the use of ''low gluten'' claims might exacerbate this potential problem. While many consumers may be familiar with ''free'' and ''low'' content claims in the context of nutrients, we have not previously defined ''low'' claims for other food substances that some consumers may need to totally avoid. We do not have sufficient information to estimate the costs and benefits of this option.

7. Option Seven: Take Proposed Action, Except Include Oats in the List of Grains That We Propose to Prohibit in Foods That Firms Label as Gluten-Free

We could also expand the list of prohibited grains to include oats. Some consumers with celiac disease may be unable to tolerate some of the proteins that naturally occur in oats and may prefer to avoid oats in addition to avoiding the proposed prohibited grains and ingredients people make from those grains discussed in Option Two. However, other consumers with celiac disease may be able to tolerate the proteins that naturally occur in oats and, therefore, may wish to consume oats when following a diet that does not include gluten. This option could generate some relabeling costs because we currently allow firms to use gluten-free claims on foods that contain oats but do not contain gluten from commingling with a prohibited grain. These firms would need to remove the gluten-free claims from foods made from oats if we were to include oats in the list of prohibited grains. We do not know how many foods are made from oats and do not contain gluten, nor do we know the percentage of such foods that bear gluten-free claims. We searched the FLAPS 2000 database and did not find any foods that contained oats and had a gluten-free claim. Therefore, we estimate that any labeling costs would be minimal.

In addition, if we included oats in the list of prohibited grains, then we would reduce the usefulness of those claims for consumers who wish to avoid gluten but can tolerate the naturally occurring proteins in oats. The increase in search costs for these consumers could be considerable because oats are a common food ingredient that can be particularly important for celiac patients who wish to avoid wheat, rye, barley, and their crossbred hybrids. An increase in search costs for these consumers may decrease their compliance with a diet that does not include gluten and possibly increase their risk of adverse health effects.

However, this option would generate benefits for consumers who wish to avoid gluten and also wish to avoid oats because, if we include oats in the list of prohibited grains, then these consumers would be able to use gluten-free claims to identify appropriate foods. Expanding the usefulness of gluten-free claims for these consumers would reduce their search costs, possibly increase their compliance with a diet that does not include gluten, and possibly reduce their risk of adverse health effects.

As we discussed in detail at section I.C.3 of this document, the literature is divided on the percentage of consumers with celiac disease who can tolerate oats, even when steps have been taken to prevent commingling with prohibited grains such as wheat and rye. Based on this information, we assume that some consumers with celiac disease may wish to avoid oats and that the usefulness of gluten-free claims for these consumers could depend on whether or not we include oats in the list of proposed prohibited grains. However, we do not have sufficient information to estimate the number of such consumers or the net impact of including oats in the proposed prohibited list of grains.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. We are not proposing to change our current position with respect to the grains or proteins that we associate with gluten or the level of gluten that we would use to determine compliance with the requirements for using gluten-free claims. Further, we know of no foods that inherently do not contain gluten and that bear gluten-free claims that do not meet our proposed wording restrictions and that are produced by small entities. Therefore, the agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

A. Proposed Regulatory Options

We considered the following regulatory options: (1) Take no action; (2) take the proposed action—do not permit firms to make gluten-free claims on foods containing the prohibited grains or ingredients that have been derived from them and have not been processed to remove the gluten; do not permit firms to make gluten-free claims on foods containing ingredients derived from the prohibited grains that have been processed to remove the gluten, if the level of gluten is 20 ppm or greater; do not permit firms to make gluten-free claims on foods containing 20 ppm or more gluten, regardless of how the gluten got into the food (i.e. declared ingredient, undeclared ingredient, contaminant, etc.); and restrict the wording of gluten-free claims on foods that inherently do not contain any gluten; (3) take the proposed action, except do not permit firms to make gluten-free claims on foods containing ingredients derived from the prohibited grains that have been processed to remove the gluten, if the level of gluten is greater than some specified level higher than 20 ppm, and do not permit firms to make gluten-free claims on foods if the level of gluten is greater than some specified level higher than 20 ppm, regardless of how the gluten got into the food; (4) do not permit firms to make gluten-free claims on foods containing 20 ppm or more gluten, regardless of the ingredients they use to make them, and restrict the wording of gluten-free claims on foods that inherently do not contain gluten; (5) take the proposed action, except delete the wording requirements for gluten-free claims on foods that inherently do not contain gluten; (6) take the proposed action, but also define the food labeling claim ''low gluten;'' and (7) take the proposed action, except include oats in the list of grains that we propose to prohibit in foods that firms label as gluten-free.

B. Impacts of the Proposed Regulatory Options on Small Entities

1. Option One: Take No Action

Taking no action would have no impact on small entities.

2. Option Two: Take the Proposed Action—Do Not Permit Firms to Make Gluten-Free Claims on Foods Containing the Prohibited Grains or Ingredients That Have Been Derived From Those Grains and Have Not Been Processed to Remove the Gluten; Do Not Permit Firms to Make Gluten-Free Claims on Foods Containing Ingredients Derived From the Prohibited Grains That Have Been Processed to Remove the Gluten, if the Level of Gluten Is 20 ppm or Greater; Do Not Permit Firms to Make Gluten-Free Claims on Foods Containing 20 ppm or More Gluten, Regardless of How the Gluten Got Into the Food; and Restrict Wording of Gluten-Free Claims on Foods That Inherently Do Not Contain Gluten

We are not proposing to change how we currently enforce our existing statute that prohibits false or misleading labeling other than instituting new wording requirements for gluten-free claims on foods that inherently do not contain gluten. This element may generate compliance costs for small entities. However, as we discussed in the preceding regulatory impact analysis, we know of no such foods. Therefore, we estimate that this proposed rule would generate minimal or no costs for small entities. We request information on the impact of the proposed action and all other options on small entities.

3. Option Three: Take the Proposed Action, Except Do Not Permit Firms to Make Gluten-Free Claims on Foods Containing Ingredients Derived From the Prohibited Grains That Have Been Processed to Remove the Gluten, If the Level of Gluten Is Some Specified Level Other Than 20 ppm, and Do Not Permit Firms to Make Gluten-Free Claims on Foods If the Level of Gluten Is Some Specified Level Other Than 20 ppm, Regardless of How the Gluten Got Into the Food

This option would have the same minimal impact on small entities as Option Two. As we discussed in the preceding preliminary regulatory impact analysis, we could analyze levels either higher or lower than 20 ppm, but we have chosen to analyze levels higher than 20 ppm because we do not know of any currently available and appropriate test methods that can reliably and consistently detect gluten at levels below 20 ppm. Under Option Three, specifying a level higher than 20 ppm gluten would not generate additional compliance costs for small entities because gluten-free claims are voluntary and no small firms would need to remove existing labeling claims that complied with our existing position. Therefore, we estimate that this option would also generate minimal or no costs for small entities.

4. Option Four: Do Not Permit Firms to Make Gluten-Free Claims on Foods Containing 20 ppm or More Gluten, Regardless of the Ingredients They Use to Make Them, and Restrict the Wording of Gluten-Free Claims on Foods That Inherently Do Not Contain Gluten

This option would have the same minimal impact on small entities as Option Two. Under Option Four, applying the level of 20 ppm to all foods, regardless of the ingredients firms use to make them, would not generate additional compliance costs for small entities because gluten-free claims are voluntary and no small firms would need to remove existing labeling claims that they would not already have had to remove under our existing approach to regulating gluten-free food labeling. Therefore, we estimate that this option would also generate minimal or no costs for small entities.

5. Option Five: Take the Proposed Action, Except Delete Wording Requirements for Gluten-Free Claims on Foods That Inherently Do Not Contain Gluten

Taking the proposed action except deleting the wording requirements for gluten-free claims would eliminate any impact on small entities.

6. Option Six: Take the Proposed Action, but Also Define the Food Labeling Claim ''Low Gluten''

Establishing requirements for ''low gluten'' claims might generate compliance costs for small entities. As we discussed in the preceding regulatory impact analysis, we currently allow ''gluten-free'' claims that are truthful and not misleading. If we define ''low gluten'' based on a particular level of gluten, then some small firms might need to change their product labels. However, we were unable to identify any foods bearing ''low gluten'' claims in the FLAPS database. Therefore, we estimate that any labeling costs associated with this provision would be minimal. In addition, the provision dealing with gluten-free claims on foods that inherently do not contain gluten would have a minimal impact on small entities. Therefore, we estimate that this option would have minimal or no impact on small entities.

7. Option Seven: Take Proposed Action, but Include Oats in the List of Grains That We Propose to Prohibit in Foods That Firms Label as Gluten-Free

Including oats in the list of prohibited grains may generate relabeling costs for some small firms because we currently allow firms to make gluten-free claims on foods that contain oats but do not contain any of the prohibited grains or ingredients derived from those grains provided that any gluten present is less than 20 ppm. We do not know how many small firms produce foods that contain oats but do not contain any of the prohibited grains or ingredients derived from those grains and that bear gluten-free claims. We searched the FLAPS 2000 database and did not find any foods that contained oats and bore gluten-free claims. Therefore, we estimate that any costs that might accrue to small entities from this option would be minimal.

V. Unfunded Mandates

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 $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

VI. Executive Order 13132: Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to ''construe * * * Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.''[3] Here, FDA has determined that the exercise of State authority would

[3]Because we have determined that the act preempts State law because the exercise of State authority conflicts with the exercise of Federal authority under that statute, we need not construe our statutory rulemaking authority as required by section 4(b) of the Executive order.

conflict with the proposed exercise of Federal authority under the act.

FDA is the expert Federal agency charged by Congress with ensuring that food labeling is truthful and not misleading. Under section 403(a)(1) of the act, a food is deemed misbranded if its labeling is false or misleading in any particular. In determining whether labeling is misleading, FDA takes into account not only representations made or suggested by statement, word, design, device, or any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribe in the labeling thereof or under such conditions of use as are customary or usual (section 201(n) of the act).

In section 206 of FALCPA, Congress directs FDA to issue a proposed rule to define and permit use of the term ''gluten-free'' on the labeling of foods, in consultation with appropriate experts and stakeholders. As discussed elsewhere in this preamble, FDA has consulted with numerous experts and stakeholders in the development of this proposed rule. FDA has learned that different manufacturers currently have different and inconsistent definitions of the term ''gluten-free,'' and that individuals with celiac disease need a standardized definition of the term ''gluten-free'' to help them make purchasing decisions that will support their need to avoid consumption of gluten. Therefore, FDA believes that establishing a definition of the term ''gluten-free'' and uniform conditions for its use in the labeling of foods is needed to ensure that individuals with celiac disease are not misled and are provided with truthful and accurate information with respect to foods so labeled. If State authorities were permitted to impose labeling requirements that are inconsistent with those proposed in this rule, the federal objective of standardizing use of the term ''gluten-free'' in the labeling of foods to ensure that such labeling is neither false nor misleading would be frustrated.

Section 4(c) of Executive Order 13132 instructs us to restrict any Federal preemption of State law to the ''minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.'' This proposed rule would meet the preceding requirement because it would preempt state law only to the extent required to preserve Federal interests. Section 4(d) of Executive Order 13132 states that when an agency foresees the possibility of a conflict between State law and federally protected interests within the agency's area of regulatory responsibility, the agency ''shall consult, to the extent practicable, with appropriate State and local officials in an effort to avoid such a conflict.'' Section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' FDA's Division of Federal and State Relations intends to invite the States' participation in this rulemaking by providing notice via fax and e-mail transmission to State health commissioners, State agriculture commissioners, and food program directors as well as FDA field personnel of FDA's publication of this proposed rule. The notice would provide the States with further opportunity for input on the rule. It would advise the States of FDA's possible action and encourage the States and local governments to review the notice and to provide any comments to the FDA Docket Number 2005N–0279, opened in the [enter date] **Federal Register** by [enter date]. FDA is providing an opportunity for State and local officials to comment on this proposed rule. The agency intends to comply with all of the applicable requirements under Executive Order 13132 to ensure that this proposed rule is consistent with the Executive order.

FDA's Division of Federal-State Relations intends to invite the States' participation in this rulemaking by providing notice via fax and e-mail transmission to State health commissioners, State agriculture commissioners, and food program directors as well as FDA field personnel of FDA's publication of this proposed rule. The notice would provide the States with further opportunity for input on the rule. It would advise the States of FDA's possible action and encourage the States and local governments to review the proposed rule and to provide any comments to the FDA Docket No. 2005N–0279, opened in the July 19, 2005, **Federal Register**, by April 23, 2007. FDA is providing an opportunity for State and local officials to comment on this proposed rule.

VII. Environmental Impact Analysis

FDA has tentatively determined under 21 CFR 25.30(k) 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.

VIII. Paperwork Reduction Act of 1995

FDA has tentatively concluded that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

IX. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified by Docket No. 2005N–0279. If you base your comments on scientific evidence or data, please submit copies of the specific information along with your comments. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

X. 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. FDA has verified the cited Web site addresses, but is not responsible for subsequent changes to them after this document publishes in the **Federal Register**.

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List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Food and Drug Administration proposes to amend 21 CFR part 101 as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

2. Section 101.91 is added to subpart F to read as follows:

§ 101.91 Gluten-free labeling of food.

(a) *Definitions.* (1) The term ''prohibited grain'' means any one of the following grains or their crossbred hybrids (e.g., triticale, which is a cross between wheat and rye):

(i) Wheat, including any species belonging to the genus *Triticum*;

(ii) Rye, including any species belonging to the genus *Secale*; or

(iii) Barley, including any species belonging to the genus *Hordeum*.

(2) The term ''gluten'' means the proteins that naturally occur in a prohibited grain and that may cause adverse health effects in persons with celiac disease (e.g., prolamins and glutelins).

(3) The labeling claim ''gluten-free'' or similar claim (e.g., ''free of gluten,'' ''without gluten,'' ''no gluten'') means that the food bearing the claim in its labeling does not contain any of the following:

(i) An ingredient that is a prohibited grain (e.g., spelt wheat);

(ii) An ingredient that is derived from a prohibited grain and that has not been processed to remove gluten (e.g., wheat flour);

(iii) An ingredient that is derived from a prohibited grain and that has been processed to remove gluten (e.g., wheat starch), if the use of that ingredient results in the presence of 20 parts per million (ppm) or more gluten in the food (i.e., 20 micrograms or more gluten per gram of food);

(iv) 20 ppm or more gluten.

(b) *Requirements.* (1) A food that bears the claim ''gluten-free'' or similar claim in its labeling and fails to meet the conditions specified in paragraph (a)(3) of this section will be deemed misbranded.

(2) With the exception of foods made from oats, a food that does not inherently contain any gluten from a prohibited grain (e.g., milk, corn, frozen concentrated orange juice) and that bears the claim ''gluten-free'' in its labeling will be deemed misbranded unless:

(i) The claim refers to all foods of that same type (e.g., ''milk, a gluten-free food,'' ''all milk is gluten-free''); and

(ii) The food does not contain 20 ppm or more gluten.

(3) A food made from oats that bears the claim ''gluten-free'' or similar claim in its labeling will be deemed misbranded if the claim refers to all foods of the same type (e.g., ''all oats are gluten-free'') or if the food contains 20 ppm or more gluten.

(c) *Compliance.* When compliance with paragraph (b) of this section is based on an analysis of the food, FDA will use a method that can reliably detect the presence of 20 ppm gluten in a variety of food matrices, including both raw and cooked or baked products.

Dated: January 16, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–843 Filed 1–22–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

28 CFR Part 20

[Docket No. FBI 113; AG Order No. 2855–2007]

RIN 1110–AA24

Carriage of Concealed Weapons Pursuant to Public Law 108–277; the Law Enforcement Officers Safety Act of 2003

AGENCY: Federal Bureau of Investigation (FBI), Department of Justice.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Department of Justice (the Department) is amending Title 28 of the Code of Federal Regulations to authorize access to FBI-maintained criminal justice information systems for

the conduct of background checks for the purpose of issuing identification documents to retired law enforcement officers.

DATES: Written comments must be received on or before March 26, 2007.

ADDRESSES: All comments may be submitted to Assistant General Counsel Harold M. Sklar, Federal Bureau of Investigation, CJIS Division, 1000 Custer Hollow Road, Module E–3, Clarksburg, West Virginia, 26306, or by telefacsimile to (304) 625–3944. To ensure proper handling, please reference FBI Docket No. 113 on your correspondence. You may view an electronic version of this proposed rule at *www.regulations.gov*. You may also comment via electronic mail at *enexreg@leo.gov* or by using the *www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include FBI Docket No. [2855–2007] in the subject box.

FOR FURTHER INFORMATION CONTACT: Assistant General Counsel Harold M. Sklar, telephone number (304) 625–2000.

SUPPLEMENTARY INFORMATION:

Background

The Department is amending part 20 of Title 28, ''Criminal Justice Information Systems,'' to authorize criminal justice agencies to access FBI criminal history record information appearing in the National Crime Information Center (NCIC) Interstate Identification Index (III) and the Fingerprint Identification Record System (FIRS) to support implementation of Public Law 108–277.

On July 22, 2004, the Law Enforcement Officers Safety Act of 2003 (Pub. L. 108–277) became law. Public Law 108–277 amended Title 18, United States Code, to exempt ''qualified'' current and retired law enforcement officers (LEOs) from State laws prohibiting the carrying of concealed firearms (except when state law restricts the possession of concealed firearms on public property or permits private property owners to restrict the possession of concealed firearms on their property). Under the new 18 U.S.C. 926C(d), retired LEOs seeking to exercise this privilege are required to possess photographic identification issued by the criminal justice agency (CJA) from which they retired from service.

On January 31, 2005, the Attorney General issued guidance on Public Law 108–277 mandating that Department of Justice (DOJ) Criminal Justice Components issue photographic identification (ID cards) to its eligible retired LEOs that identify their status as ''retired law enforcement officers'' and provide the date of retirement. Additionally, various CJAs have asked the FBI whether they may access the III database to screen their retired LEOs prior to issuing ID cards under the Act.

Section 534 of title 28, United States Code, generally permits the dissemination of III and FIRS information to CJAs for ''official use.'' Section 534 is implemented in this regard by 28 CFR part 20. Since 1974, access to and dissemination of III information under part 20 has been largely restricted to ''criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies * * *.'' 28 CFR 20.33(a)(1).

Although the term ''criminal justice purpose'' referenced in § 20.33(a)(1) is not specifically defined in the regulations, it has traditionally been considered to include activities within the definition of ''administration of criminal justice'' in § 20.3(b): ''performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.'' Taken together, these regulations currently do not clearly support access to III and FIRS for the purpose of issuing identification documents for retired LEOs.

As a result, the FBI sought and obtained the concurrence of the Criminal Justice Information Services Advisory Policy Board (CJIS APB) (a body created pursuant to the Federal Advisory Committee Act, § 2, 5 U.S.C. App. 2) to amend the definition of ''administration of criminal justice'' to include background checks conducted for the purpose of issuing identification documents to retired LEOs pursuant to section 926C(d) of Public Law 108–277. To provide regulatory consistency, we also propose to relocate the reference in § 20.33(a)(1) to ''the screening of employees or applicants for employment hired by criminal justice agencies'' to the definition of ''administration of criminal justice'' appearing at § 20.3(b). We are also making clear in section 20.3(b) that the term ''criminal justice purpose'' includes activities defined as the ''administration of criminal justice.''

This amendment will expressly authorize access to the III and the FIRS by Federal, state, and local CJAs for the purpose of issuing identification documents to eligible retired LEOs pursuant to Public Law 108–277. Further, inasmuch as the definitions appearing in 28 CFR 20.3 apply to both 28 CFR subparts B and C, this change resolves any ambiguity about the existing authority to access state criminal justice systems (in the absence of contrary state authority) to screen CJA applicants and employees.

Applicable Administrative Procedures and Executive Orders

Executive Order 12866—Regulatory Planning and Review

The proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is a significant regulatory action under section 3(f) of Executive Order 12866.

Executive Order 13132—Federalism

This rule 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. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

The rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), has reviewed this rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule imposes minimal costs on businesses, organizations, or governmental jurisdictions (whether large or small).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a ''major rule'' as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2). This proposed rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The rule does not contain collection of information requirements. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., is not required.

List of Subjects in 28 CFR Part 20

Classified information, Crime, Intergovernmental relations, Investigations, Law enforcement, Privacy.

Accordingly, part 20 of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

1. The authority citation for part 20 continues to read as follows:

Authority: 28 U.S.C. 534; Pub. L. 92–544, 86 Stat. 1115; 42 U.S.C. 3711, et seq.; Pub. L. 99–169, 99 Stat. 1002, 1008–1011, as amended by Pub. L. 99–569, 100 Stat. 3190, 3196; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

2. Section 20.3 is amended by revising paragraph (b) to read as follows:

§ 20.3 Definitions.

As used in these regulations:

* * * * *

(b) *Administration of criminal justice* means the performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term ''criminal justice purpose'' in 20 CFR 20.33(a)(1) includes activities defined as the ''administration of criminal justice.'' The administration of criminal justice also includes

(i) Criminal identification activities and the collection, storage, and dissemination of criminal history record information;

(ii) The screening of employees or applicants for employment hired by criminal justice agencies; and

(iii) The issuance of identification documents to current and retired law enforcement officers pursuant to Public Law 108–277.

* * * * *

3. Section § 20.33 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in the III System and the FIRS may be made available:

(1) To criminal justice agencies for criminal justice purposes;

* * * * *

Dated: January 2, 2007.

Alberto R. Gonzales,

Attorney General.

[FR Doc. E7–150 Filed 1–22–07; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0033; 0790–AI10]

32 CFR Part 311

Office of the Secretary Privacy Program

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This rule proposed updates and implements policies and procedures for the Privacy Act Program in the Office of the Secretary of Defense and organizations provided administrative support by the Washington Headquarters Services.

DATES: Comments must be received by March 26, 2007.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. J. Irvin, 703–696–4940.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 311 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Certification is required.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that this rule does impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements have been submitted to OMB for review.

Executive Order 13132, ''Federalism''

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 311

Privacy.

Accordingly, 32 CFR part 311 is proposed to be revised to read as follows:

PART 311—OFFICE OF THE SECRETARY OF DEFENSE PRIVACY PROGRAM

Sec.

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 552a).

§ 311.1 Purpose.

This part updates and implement the policies and procedures outlined in 5 U.S.C. 552a, Office of Management and Budget (OMB) Circular No. A–130, DoD Directive 5400.11,[1] and DoD 5400.11–R.[2] This part provides guidance and procedures for implementing the Privacy Program in the Office of the Secretary of Defense (OSD) and organizations receiving administrative support from the Washington Headquarters Services (WHS), according to DoD Directive 5110.4.[3]

§ 311.2 Applicability.

This part:

(a) Applies to the OSD, the Chairman of the Joint Chiefs of Staff, and other activities receiving administrative support from the WHS (hereafter referred to collectively as the ''OSD Components'').

(b) Covers systems of records maintained by the OSD Components and governs the maintenance, access, change, and release of information contained in those systems of records, from which information about an individual is retrieved by a personal identifier.

§ 311.3 Definitions.

Access. Any individual's review of a record or a copy of a record or parts of a system of records.

Disclosure. The transfer of any personal information from a system of records by any means of oral, written, electronic, mechanical, or other communication, to any person, private entity, or Government Agency, other than the subject of the record, the subject's designated agent, or the subject's guardian.

Individual. A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf.

Individual access. Access to personal information pertaining to the individual, by the individual, his or her designated agent, or legal guardian.

Maintain. For the purpose of this part, includes maintenance, collection, use, or dissemination.

Matching program. A program that matches the personal records in computerized databases of two or more Federal Agencies using a computer.

Personal information. Information about an individual that is intimate or private, as distinguished from information related solely to the individual's official functions or public life.

Records. Any item, collection, or grouping of information, whatever the storage media (*e.g.*, paper or electronic), about an individual that is maintained by an OSD Component, including, but not limited to, his or her education, financial transactions, medical history, criminal or employment history, and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

System manager. An OSD Component official who is responsible for the operation and management of a system of records.

System of records. A group of records under the control of an OSD Component from which personal information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to an individual.

§ 311.4 Policy.

(a) According to DoD 5400.11–R,[4] it is DoD policy to safeguard personal information contained in any system of records maintained by any DoD Component and to permit any individual to know what existing records pertain to him or her.

(b) Each office maintaining records and information about individuals shall ensure that this data is protected from unauthorized disclosure. These offices shall permit individuals to have access to and have a copy made of all or any portion of records about them, except as provided in Chapters 3 and 5 of DoD 5400.11–R. The individuals will also have an opportunity to request that such records be amended as provided by 5 U.S.C. 552a and Chapter 3 of DoD 5400.11–R. Individuals requesting access to their records shall receive concurrent consideration under 5 U.S.C. 552 and 552a, if appropriate.

(c) The Heads of the OSD Components shall maintain any necessary record of a personal nature that is individually identifiable in a manner that complies with the law and DoD policy. Any information collected must be as accurate, relevant, timely, and complete as is reasonable to ensure fairness to the individual. Adequate safeguards must be provided to prevent misuse or unauthorized release of such information.

§ 311.5 Responsibilities.

(a) The Director, WHS, shall:

(1) Direct and administer the DoD Privacy Program for the OSD Components.

(2) Establish standards and procedures to ensure implementation of and compliance with 5 U.S.C. 552a, OMB Circular No. A–130, DoD Directive 5400.11 and DoD 5400.11–R.

(3) Ensure the Records and Declassification Division, Executive Services Directorate (ESD), WHS, implements all aspects of 5 U.S.C. 552a, except that portion about receiving and acting on public requests for personal records. As such, the Records and Declassification Division shall:

(i) Exercise oversight and administrative control of the Privacy Act Program for the OSD Components.

(ii) Provide guidance and training to the OSD Components as required by 5 U.S.C. 552a and OMB Circular A–130. Periodic training will be provided to public affairs officers and others who may be expected to deal with the news media or the public.

(iii) Collect and consolidate data from the OSD Components and submit reports to the Defense Privacy Office (DPO), as required by 5 U.S.C. 522a; OMB Circular A–130, DoD Directive 5400.11, DoD 5400.1–R, and the DPO.

(iv) Coordinate and consolidate information for reporting all record systems, as well as changes to approved systems, to the OMB, the Congress, and the **Federal Register**, as required by 5 U.S.C. 552a, OMB Circular A–130, and DoD 5400.1–R.

[1] Copies may be obtained at *http://www.dtic.mil/whs/directives/.*

[2] Copies may be obtained at *http://www.dtic.mil/whs/directives/.*

[3] Copies may be obtained at *http://www.dtic.mil/whs/directives/.*

[4] Copies may be obtained at *http://www.dtic.mil/whs/directives/.*

(v) Serve as the appellate authority for OSD Components when a requester appeals a denial for access to records under 5 U.S.C. 552a.

(vi) Serve as the appellate authority for OSD Components when a requester appeals a denial for amendment of a record or initiates legal action to correct a record.

(vii) Evaluate and decide, in coordination with the DPO, appeals resulting from denials of access or amendments to records by the OSD Components.

(4) Ensure the Freedom of Information Division, ESD, WHS, complies with all aspects of 5 U.S.C. 552a including that portion about receiving and acting on public requests for personal records. As such, the Freedom of Information Division shall:

(i) Forward requests for information or access to records to the appropriate OSD Component having primary responsibility for any pertinent system of records under 5 U.S.C. 552a or to the OSD Components under 5 U.S.C. 552.

(ii) Maintain deadlines to ensure responses are made within the time limits prescribed in 5 U.S.C. 552, DoD Instruction 5400.10 [5] and this part.

(iii) Collect fees charged and assessed for reproducing requested materials.

(iv) Refer all matters about amendments of records and general and specific exemptions under 5 U.S.C. 552a to the proper OSD Components.

(5) Coordinate with the DoD General Counsel, or the WHS General Counsel when appropriate, on OSD Components' denials of appeals for amending records, and review actions to confirm denial of access to records, as appropriate.

(b) The DoD General Council shall provide advice and assistance to the:

(1) Chief, Records and Declassification Division, in the discharge of appellate and review responsibilities.

(2) Chief, Freedom of Information Division, on all access matters.

(3) OSD Component on legal matters pertaining to 5 U.S.C. 552a.

(c) The Heads of the OSD Components shall:

(1) Designate an individual as the point of contact for Privacy Act matters; advise the Chief, Records and Declassification Division, and the Chief, Freedom of Information Division, of the names of officials so designated.

(2) Report any new record system, or changes to an existing system, to the Chief, Records and Declassification Division, at least 90 days before the intended use of the system.

(3) Review all contracts pertaining to the maintenance of records systems, by or on behalf of the OSD Component, to ensure within his or her authority that language is included that provides such systems shall be maintained consistent with 5 U.S.C. 552a.

(4) Revise procurement guidance to ensure contracts providing for the maintenance of a records system, by or on behalf of the OSD Component, includes language that such system shall be maintained in accordance with 5 U.S.C. 552a.

(5) Ensure computer and telecommunications equipment or service procurements comply with 5 U.S.C. 552.

(6) Coordinate with the Chief, Information Officer, for the OSD Component to ensure a risk analysis is conducted in compliance with DoD 5400.11–R.

(7) Coordinate with the OSD Chief, Information Officer, to ensure a Privacy Impact Assessment is conducted in compliance with DoD CIO memorandum dated October 28, 2005 [6] and DoD's implementing guidance.

(8) Ensure all DoD issuances prepared by the OSD Component that require forms or other methods to collect information about individuals are in compliance with 5 U.S.C. 552a.

(9) Establish internal administrative procedures to comply with the procedures listed in this part and DoD 5400.11–R.

(10) Coordinate with legal counsel on all proposed denials of access to records.

(11) Provide justification to the Freedom of Information Division when access to a record is denied in whole or in part.

(12) Provide the record of an initial denial or access to a record that is appealed to the Freedom of Information Division at the time of initial denial.

(13) Maintain an accurate accounting of the actions resulting in a denial for access to a record or for the correction of a record. This accounting should be maintained so it can be readily certified as the complete record of proceedings if litigation occurs in accordance with DoD 5400.11–R.

(14) Ensure all personnel who either have access to a system of records, or who are engaged in developing or overseeing the procedures for handling records in a system, are aware of their responsibilities for protecting personal information according to 5 U.S.C. 552a and DoD 5400.11–R.

(15) Forward all requests for access to records received directly from an individual to the Freedom of Information Division for appropriate suspense control and recording.

(16) Provide the Freedom of Information Division with a copy of the requested record when the request is granted.

(d) The requester shall:

(1) Submit a request for access to records pertaining to oneself in writing or in person to the OSD Component's custodian of the records. If the requester is not satisfied with the response, he or she may file another request in writing as provided in paragraph 311.1(b)(2). The requester must provide personal identification to verify identity according to Chapter 3 of DoD 5400.11–R and provide a signed notarized statement or a sworn declaration in the format specified by DoD 5400.7–R.[7]

(2) Describe the record sought and provide sufficient information to enable the material to be located (*e.g.*, identification of system of records, approximate date it was initiated, originating organization, and type of document).

(3) Comply with the procedures provided in DoD 5400.11–R for inspecting and/or obtaining copies of requested records.

(4) Submit a written request to amend a record to the office designated in the system of records notice.

§ 311.6 Procedures.

(a) Publication of notice in the **Federal Register**. (1) A notice shall be published in the **Federal Register** of any record system meeting the definition of a system of records in DoD 5400.11–R.

(2) OSD Components shall provide the Chief, Records and Declassification Division, with 90 days advance notice of any anticipated new or revised system of records. This information shall be submitted to the OMB and Congress at least 60 days before use and published in the **Federal Register** at least 30 days before being put into use according to the procedures in DoD 5400.11–R. This provides the public with an opportunity to submit written data, views, or arguments to the OSD Components for consideration before a system of records is established or modified.

(b) *Access to systems of records information.* (1) As provided by 5 U.S.C. 552a, records shall be disclosed only to the individual they pertain to and under whose individual name or identifier they are filed, unless exempted by the provisions in DoD 5400.11–R. If an

[5] Copies may be obtained at *http://www.dtic.mil/whs/directives/*.

[6] Copies may be obtained from *http://www.dod.mil/privacy/DoD_PIA_Guidance_Oct_28_2005.pdf*.

[7] Copies may be obtained at *http://www.dtic.mil/whs/directives/*.

individual is accompanied by a third party, the individual shall be required to furnish a signed access authorization which grants the third party access according to Chapter 3 of DoD 5400.11–R.

(2) Individuals may request access to their records, in person or by mail, in accordance with the following procedures:

(i) *In person.* Submit a request for an appointment in writing to WHS, ESD, Freedom of Information Division, 1155 Defense Pentagon, Washington, DC 20301–1155. The individual shall provide personal identification to the Freedom of Information Division to verify the individual's identity according to Chapter 3 of DoD 5400.11–R and provide a signed notarized statement or a sworn declaration in the format specified by DoD 5400.7–R.

(ii) *By mail.* Address requests to WHS, ESD, Freedom of Information Division, 1155 Defense Pentagon, Washington, DC 20301–1155. To verify the identity of the individual, the request shall include either a signed notarized statement or a sworn declaration in the format specified by DoD 5400.7–R.

(3) There is no requirement that an individual be given access to records that are not in a group of records that meet the definition of a system of records in 5 U.S.C. 552a.

(4) Granting access to a record containing personal information shall not be conditional upon any requirement that the individual state a reason or otherwise justify the need to gain access.

(5) No verification of identity shall be required of an individual seeking access to records that are otherwise available to the public.

(6) Individuals shall not be denied access to a record in a system of records about themselves because those records are exempted from disclosure under 5 U.S.C. 552. Individuals may only be denied access to a record in a system of records about themselves when those records are exempted from the access provisions of Chapter 5 of DoD 5400.11–R.

(7) Individuals shall not be denied access to their records for refusing to disclose their Social Security Number (SSN), unless disclosure of the SSN is required by statute, by regulation adopted before January 1, 1975, or if the record's filing identifier and only means of retrieval is by SSN.

(c) *Access to records or information compiled for law enforcement purposes.* (1) Requests are processed under DoD Directive 5400.11 and 5 U.S.C. 552 to give requesters a greater degree of access to records on themselves.

(2) Records in the custody of law enforcement activities that have been incorporated into a system of records or exempted from the access conditions of DoD Directive 5400.11 will be processed in accordance with 5 U.S.C. 552. Individuals shall not be denied access to records solely because they are in the exempt system. They will have the same access that they would receive under 5 U.S.C. 552. (Also see section A.10., Chapter 3, DoD 5400.11–R)

(3) Records exempted from access conditions will be processed in accordance with DoD Directive 5400.11 or 5 U.S.C. 552, depending upon which regulation gives the greater degree of access. (See also section A.10.1., Chapter 3, DoD 5400.11–R)

(4) Records exempted from access under Section B, Chapter 5 of DoD 5400.11–R, that are temporarily in the custody of a non-law enforcement element for adjudicative or personnel actions, shall be referred to the originating agency.

(d) *Access to illegible, incomplete, or partially exempt records.* (1) An individual shall not be denied access to a record or a copy of a record solely because the physical condition or format of the record does not make it readily available (*e.g.*, deteriorated state or on magnetic tape). The document will be prepared as an extract, or it will be recopied exactly as is.

(2) If a portion of the record contains information that is exempt from access, an extract or summary containing all releasable information in the record shall be prepared.

(3) When the physical condition of the record makes it necessary to prepare an extract for release, the extract shall be prepared so that the requester will understand it.

(4) The requester shall be informed of all deletions or changes to records.

(e) *Access to medical records.* (1) Medical records shall be disclosed to the individual and may be transmitted to a medical doctor named by the individual concerned.

(2) The individual may be charged reproduction fees for copies or records according to DoD 5400.11–R.

(f) *Amending and disputing personal information in systems of records.* (1) The Head of an OSD Component, or a designated official, shall allow individuals to request amendment to their records to the extent that such records are not accurate, relevant, timely, or complete. Requests should be as brief and as simple as possible and should contain adequate identifying information to locate the record, a description of the items to be amended, and the reason for the change. A request shall not be rejected nor required to be resubmitted unless additional information is essential to process the request. Requesters shall be required to provide verification of their identity as stated in paragraph (b)(2) of this section to ensure they are seeking to amend records about themselves.

(2) The appropriate system of records system manager shall mail a written acknowledgment of an individual's request to amend a record within 10 workdays after receipt. Such acknowledgment shall identify the request and may, if necessary, request any additional information needed to make a determination. No acknowledgment is necessary if the request can be reviewed and processed, and the individual can be notified of compliance or denial, within the 10-day period. Whenever practical, the decision shall be made within 30 working days. For requests presented in person, written acknowledgment may be provided at the time the request is presented.

(3) *Amending personal information.* The Head of an OSD Component, or designated official, shall promptly take one of the following actions on requests to amend records:

(i) If they agree with any portion or all of an individual's request, amend the records in accordance with existing statutes, regulations, or internal administrative procedures, and inform the requester of the action taken. The OSD Component shall also notify all previous holders of the record that the amendment has been made and shall explain the substance of the correction, except for disclosures of the records to officers or DoD employees, or made as required by the Freedom of Information Act, the OSD shall also notify all to whom the record was disclosed that the amendment has been made and shall explain the substance of the correction.

(ii) Notify the requester of the disapproval to amend a record and the reason for the disapproval. Notify the requester of the procedure to submit an appeal as described in paragraph (f)(5) of this section. if he or she disagrees with all or any portion of a request.

(iii) Refer requests to the appropriate Federal Agency. Advise the requester of this referral if the request for an amendment pertains to a record controlled and maintained by another Agency.

(4) *Disputing personal information.* The Head of an OSD Component or designated official shall:

(i) Determine whether the requester has adequately supported his or her claim that the record is inaccurate, irrelevant, untimely, or incomplete.

(ii) Limit the review of a record to those items of information that clearly bear on any determination to amend the records and ensure that those elements are reviewed before a determination is made.

(5) If an individual disagrees with the initial OSD Component determination, he or she may file an appeal. The request should be sent to the Chief, Records and Declassification Division, WHS, 1155 Defense Pentagon, Washington, DC 20301–1155.

(6) If, after review, the Records and Declassification Division determines the system of records should not be amended as requested, the Records and Declassification Division shall provide a copy of any statement of disagreement to the extent that disclosure accounting is maintained in accordance with Chapter 4 or DoD 5400.11–R. The Records and Declassification Division shall advise the individual:

(i) Of the reason and authority for the denial.

(ii) Of his or her right to file a statement of the reason for disagreeing with the Records and Declassification Division decision.

(iii) Of the procedures for filing a statement of disagreements.

(iv) That the statement filed shall be made available to anyone the record is disclosed to, together with a brief statement summarizing reasons for refusing to amend the records.

(7) If the Records and Declassification Division determines that the record should be amended in accordance with the individual's request, the OSD Component shall amend the record, and advise the individual of the amendment, in accordance with Chapter 4 of DoD 5400.11–R.

(8) All appeals should be processed within 30 workdays after receipt. If the Records and Declassification Division determines that a fair and equitable review cannot be made within that time, the individual shall be informed in writing of the reasons for the delay and of the approximate date the review is expected to be completed.

(g) *Disclosure of disputed information.* (1) If the Records and Declassification Division determines the record should not be amended and the individual has filed a statement of disagreement under paragraph (f)(7) of this section, the OSD Component shall annotate the disputed record so it is apparent under record disclosure that a statement has been filed. Where feasible, the notation itself shall be integral to the record. Where disclosure accounting has been made, the OSD Component shall advise previous recipients that the record has been disputed and shall provide a copy of the individual's statement of disagreement in accordance with Chapter 4 of DoD 5400.11–R.

(i) This statement shall be maintained to permit ready retrieval whenever the disputed portion of the record is disclosed.

(ii) When information that is the subject of a statement of disagreement is subsequently disclosed, the OSD Component's designated official shall note which information is disputed and provide a copy of the individual's statement.

(2) The OSD Component shall include a brief summary of its reasons for not making a correction when disclosing disputed information. Such statements shall normally be limited to the reasons given to the individual for not amending the record.

(3) Copies of the OSD Component's summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedure outlined in paragraph (c)(3) of this section.

(h) *Penalties.* (1) *Civil action.* An individual may file a civil suit against the OSD Component or its employees if the individual feels certain provisions or the Privacy Act have been violated as stated in 5 U.S.C. 552a.

(2) *Criminal action.* (i) Criminal penalties may be imposed against an OSD officer or employee for offenses listed in Section (i) of 5 U.S.C. 552a, as follows:

(A) Willful unauthorized disclosure of protected information in the records.

(B) Failure to publish a notice of the existence of a record system in the **Federal Register**.

(C) Requesting or gaining access to the individual's record under false pretenses.

(ii) An OSD officer or employee may be fined up to $5,000 for a violation as outlined in paragraph (h)(2)(i) of this section.

(i) *Litigation status sheet.* Whenever a complaint citing 5 U.S.C. 552a is filed in a U.S. District Court against the Department of Defense, an OSD Component, or any OSD employee, the responsible system manager shall promptly notify the DPO. The litigation status sheet in DoD 5400.11–R provides a standard format for this notification. (The initial litigation status sheet shall, as a minimum, provide the information required by items 1, through 6. of DoD 5400.11–R) A revised litigation status sheet shall be provided at each stage of the litigation. When a court renders a formal opinion or judgment, copies of the judgment or opinion shall be provided to the DPO with the litigation status sheet reporting that judgment or opinion.

(j) *Computer matching programs.* Chapter 11, paragraph B of DoD 5400.11–R, prescribes that all requests for participation in a matching program (either as a matching agency or a source agency) be submitted to the DPO for review and compliance. The OSD Components shall submit these requests through the Records and Declassification Division.

§ 311.7 Information requirements.

The DPO shall establish requirements and deadlines for DoD privacy reports. These reports shall be licensed in accordance with DoD Directive 8910.1.[8]

Dated: January 16, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E7–800 Filed 1–22–07; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2005–OH–0005; FRL–8272–9]

Approval and Promulgation of Implementation Plans; Ohio Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is re-proposing approval of Ohio rules concerning equivalent visible emission limits (EVELs). Ohio's rules provide criteria for establishment of EVELs, and the rules provide that EVELs established according to these criteria take effect without formal review by EPA. EPA proposed to approve these rules on December 2, 2002, at 67 FR 71515. However, that proposal did not clearly solicit comment on the timing by which actions on EVELs by the State take effect. EPA is proposing that previous State modifications to EVELs would become effective at the federal level immediately upon the effective date of any final EPA action approving these Ohio rules. Similarly, any future action by the State to establish, modify, or rescind EVELs in accordance with the criteria given in these Ohio rules would become effective at the federal level immediately upon the effective date of the State action.

[8] Copies may be obtained at *http://www.dtic.mil/whs/directives/*

DATES: Written comments on this proposed rule must arrive on or before February 22, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2005–OH–0005, by one of the following methods:

- *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, 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–2005–OH–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional 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 *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 John Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. What action is EPA taking today?

EPA is re-proposing to approve Ohio rules providing for State issuance of equivalent visible emission limits (EVELs), rules which were a part of a set of particulate matter regulations that Ohio submitted on July 18, 2000. EPA originally proposed to approve these rules on December 2, 2002, at 67 FR 71515. However, that proposal did not clearly explain EPA's views regarding the consequences of approval on historic EVELs that were previously approved into the State Implementation Plan (SIP). EPA today is explaining its views and soliciting comment on this issue.

The rules that EPA proposes to approve provide that EVELs issued by the State in accordance with the specified criteria take effect without formal review by EPA. Consequently, when the State issues an EVEL for a unit at a source, this EVEL will supersede any EVEL that may previously have been issued for that unit, regardless of whether or not the prior EVEL was part of the SIP. Similar consequences apply when the State terminates an EVEL for a unit at a source, presumably by issuing a permit or other enforceable document that re-establishes the standard opacity limits of OAC 3745–17–07 (A)(1) as the applicable opacity limits; that action will terminate the EVEL for that unit, again regardless of whether the prior EVEL was part of the SIP. EPA's understanding is that the State will periodically review whether previously issued EVELs are still warranted, as part of its management of the EVELs that apply in the State.

EPA is proposing that, as of the effective date of EPA finalizing this proposal, no EVEL shall apply unless Ohio has issued a currently effective EVEL in accordance with its Rule 3745–17–07(C), and the federally enforceable level of any such EVEL shall reflect the currently effective EVEL that the State has thus issued. Therefore, EPA is proposing to delete provisions of the Ohio SIP that contain EVELs, in particular paragraphs (c)(62) and (c)(65) of 40 CFR 52.1870.

EPA recognizes that the Ohio SIP contains other EVELs, implicitly included in SIP-approved permits or administrative orders that also contain other limits. For administrative convenience, EPA proposes not to modify the text of the SIP codification given in 40 CFR 52.1870 to discontinue these EVELs explicitly. Nevertheless, EPA proposes that when this proposed rulemaking becomes final and effective, these EVELs will automatically be discontinued and replaced by the opacity limits that Ohio has adopted more recently in accordance with the criteria given in Rule 3745–17–07(C). (The more recent permits or administrative orders may or may not have limits matching the prior SIP limits.) Similarly, EPA proposes that any future State action to establish, modify, or rescind opacity limits in accordance with the criteria in Rule 3745–17–07(C) shall immediately alter the federal opacity limit accordingly.

II. 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.

III. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 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. Accordingly, the Administrator certifies that this proposed 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). This action merely proposes to approve a state rule implementing a Federal standard, 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

This proposed 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).

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 regulatory 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 (NTTAA), 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 impractical. In reviewing SIP 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 SIP 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 Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: January 11, 2007.

Mary A. Gade,

Regional Administrator

[FR Doc. E7–923 Filed 1–22–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2006–0386; FRL–8272–6]

Approval and Promulgation of Implementation Plans; Texas; El Paso County Carbon Monoxide Redesignation to Attainment, and Approval of Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On January 20, 2006, the Texas Commission on Environmental Quality (TCEQ) submitted a State Implementation Plan (SIP) revision to request redesignation of the El Paso carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). This submittal also included a CO maintenance plan for the El Paso area and associated Motor Vehicle Emission Budgets (MVEBs). The maintenance plan was developed to ensure continued attainment of the CO NAAQS for a period of 10 years from the effective date of EPA approval of redesignation to attainment. In this action, EPA is proposing to approve the El Paso CO redesignation request and the maintenance plan with its associated MVEBs as satisfying the requirements of the Federal Clean Air Act (CAA) as amended in 1990.

DATES: Written comments must be received by February 22, 2007.

ADDRESSES: Comments may be mailed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/

courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–8542; fax number 214–665–7263; e-mail address *riley.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Issuing This Proposed Rule?

This document proposes to take action on SIP revisions pertaining to the El Paso area. We have published a direct final rule approving the State's SIP revisions in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

Dated: January 11, 2007.

Richard E. Greene,

Acting Regional Administrator, Region 6.

[FR Doc. E7–925 Filed 1–22–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7688]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

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

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Camden County, New Jersey (All Jurisdictions)				
Barton Run Tributary 3	At State Route 73	+85	+84	Township of Voorhees.
	Approximately 1,040 feet above Sunset Avenue.	None	+134	
Cooper River	Approximately 180 feet upstream of Kaighns Avenue (County Route 607).	+9	+10	City of Camden, Borough of Collingswood, Township of Cherry Hill, Borough of Gibbsboro, Township of Haddon, Borough of Haddonfield, Borough of Lawnside, Borough of Lindenwold, Township of Pennsauken, Borough of Somerdale, Borough of Tavistock, Township of Voorhees.
	Approximately 155 feet upstream of Gibbsboro Road.	None	+73	
Mason Run	Approximately 50 feet downstream of Clementon Road County Route 683.	+23	+25	Borough of Lindenwold.
	Approximately 125 feet upstream of County Route 534.	None	+35	
Millard Creek	At the confluence with Cooper River	+65	+64	Borough of Gibbsboro.
	Approximately 500 feet upstream of Gibbsboro Road (County Route 686).	None	+76	
Newton Creek	Approximately 10 feet downstream of White Horse Pike.	+9	+10	Borough of Audubon, Borough of Collingswood, Township of Haddon, Borough of Haddonfield, Borough of Oaklyn.
	Approximately 140 feet upstream of West End Avenue.	None	+47	
Nicholson Branch	At confluence with Millard Creek	+65	+67	Borough of Gibbsboro, Township of Voorhees.
	Approximately 590 feet upstream of North Lake Drive.	None	+100	
North Branch	At confluence with Cooper River	+16	+14	Township of Cherry Hill, Township of Voorhees.
Cooper River	Approximately 0.48 mile upstream of Kresson Road (County Route 671).	None	+86	
South Branch Newton Creek.	Approximately 60 feet upstream of abandoned railroad.	+9	+10	Borough of Audubon, Township of Haddon, City of Gloucester, Township of Mount Ephraim.
	Approximately 500 feet upstream of State Route 168.	None	+11	
Tributary No. 1 to Cooper River.	At confluence with Cooper River	+39	+38	Township of Cherry Hill.
	At downstream side of Burnt Mill Road	+41	+40	
Tributary No. 2	At confluence with Cooper River	+40	+38	Township of Cherry Hill.
	At downstream side of Evesham Road	+59	+60	
Tributary No. 3	At confluence with Cooper River	+43	+42	Borough of Lawnside, Borough of Somerdale, Township of Voorhees.
	Approximately 500 feet upstream of Evesham Road.	+54	+55	
Tributary No. 4	At confluence with Cooper River	+53	+52	
	At downstream side of Rural Avenue	+53	+52	
Signey Run	Approximately 1,100 feet upstream confluence with North Branch Big Timber Creek.	+15	+16	Township of Gloucester, Borough of Hi-Nella, Borough of Stratford.
	At downstream side of Warwick Road	+43	+42	
Tributary No. 1 to North Branch Cooper River.	At confluence with North Branch Cooper River.	+71	+76	Township of Voorhees.
	At downstream side of Kresson Road	+101	+100	
Tributary No. 2	At confluence with North Branch Cooper River.	+77	+82	Township of Voorhees.
	Approximately 900 feet upstream of confluence with North Branch Cooper River.	+81	+82	
Peter Brook	At confluence with Newton Creek	None	+9	Borough of Audubon Park, Borough of Oaklyn.
	At approximately 0.92 mile upstream Newton Creek.	None	+9	
North Branch Big Timber.	At downstream side of East Atlantic Avenue (County Route 727).	None	+41	Borough of Clementon.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	At approximately 1,950 feet upstream of East Atlantic Avenue (County Route 727).	None	+41	

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

ADDRESSES

Borough of Audubon
Maps are available for inspection at the Borough of Audubon, 606 West Nicholson Road, Audubon, New Jersey.
Send comments to The Honorable Anthony M. Pugliese, Mayor of the Borough of Audubon, 606 West Nicholson Road, Audubon, New Jersey 08106.

Borough of Audubon Park
Maps are available for inspection at the Borough of Audubon Park, 20 Road C, Audubon Park, New Jersey.
Send comments to The Honorable Donald M. Pennock, Mayor of the Borough of Audubon Park, 20 Road C, Audubon Park, New Jersey 08106.

City of Camden
Maps are available for inspection at the City of Camden Planning Department, 520 Market Street, Room 422, Camden, New Jersey.
Send comments to The Honorable Gwendolyn A. Faison, Mayor of the City of Camden, P.O. Box 95120, Camden, New Jersey 08101.

Township of Cherry Hill
Maps are available for inspection at the Cherry Hill Township Building, 820 Mercer Street, Cherry Hill, New Jersey.
Send comments to The Honorable Bernie Platt, Mayor of the Township of Cherry Hill, 820 Mercer Street, Cherry Hill, New Jersey 08002.

Borough of Clementon
Maps are available for inspection at the Borough of Clementon, 101 Gibbsboro Road, Clementon, New Jersey.
Send comments to The Honorable Mark E. Armbruster, Mayor of the Borough of Clementon, 101 Gibbsboro Road, Clementon, New Jersey.

Borough of Collingswood
Maps are available for inspection at the Borough of Collingswood, 678 Haddon Avenue, Collingswood, New Jersey.
Send comments to The Honorable Jim Maley, Mayor of the Borough of Collingswood, 678 Haddon Avenue, Collingswood, New Jersey 08108.

Borough of Gibbsboro
Maps are available for inspection at the Gibbsboro Borough Hall, 49 Kirkwood Drive, Gibbsboro, New Jersey.
Send comments to The Honorable Edward G. Campbell, III, Mayor of the Borough of Gibbsboro, 49 Kirkwood Drive, Gibbsboro, New Jersey 08026.

City of Gloucester
Maps are available for inspection at the City of Gloucester Municipal Building, 313 Monmouth Street, Gloucester, New Jersey.
Send comments to The Honorable Thomas J. Kilcourse, Mayor of the City of Gloucester, 313 Monmouth Street, Gloucester, New Jersey 08030.

Township of Gloucester
Maps are available for inspection at the Township of Gloucester Municipal Building, 1261 Chews Landing Road, Blackwood, New Jersey.
Send comments to The Honorable Cindy Rau-Hatton, Mayor of the Township of Gloucester, P.O. Box 8, CS #5, Blackwood, New Jersey 08012–0008.

Township of Haddon
Maps are available for inspection at the Township of Haddon Municipal Building, 135 Haddon Avenue, Westmont, New Jersey.
Send comments to The Honorable William J. Park, Jr., Mayor of the Township of Haddon, 135 Haddon Avenue, Westmont, New Jersey 08108.

Borough of Haddonfield
Maps are available for inspection at the Borough of Haddonfield, 242 Kings Highway East, Haddonfield, New Jersey.
Send comments to The Honorable Leticia Colombi, Mayor of the Borough of Haddonfield, P.O. Box 3005, Haddonfield, New Jersey 08033.

Borough of Hi-Nella
Maps are available for inspection at the Hi-Nella Borough Hall, 100 Wykagl Road, Hi-Nella, New Jersey.
Send comments to The Honorable Ellen Wolica, Mayor of the Borough of Hi-Nella, 100 Wykagl Road, Hi-Nella, New Jersey 08038.

Borough of Lawnside
Maps are available for inspection at the Borough of Lawnside Zoning Department, 4 North Douglas Avenue, Lawnside, New Jersey.
Send comments to The Honorable Mark Bryant, Mayor of the Borough of Lawnside, 4 North Douglas Avenue, Lawnside, New Jersey 08045.

Borough of Lindenwold
Maps are available for inspection at the Borough of Lindenwold Construction Office, 2001 Egg Harbor Road, Lindenwold, New Jersey.
Send comments to The Honorable Frank DeLucca, Jr., Mayor of the Borough of Lindenwold, 2001 Egg Harbor Road, Lindenwold, New Jersey 08021.

Borough of Mount Ephraim
Maps are available for inspection at the Borough of Mt. Ephraim Tax Office, 121 South Black Horse Pike, Mount Ephraim, New Jersey.
Send comments to The Honorable Michael Reader, Mayor of the Borough of Mount Ephraim, 121 South Black Horse Pike, Mount Ephraim, New Jersey 08059.

Borough of Oaklyn
Maps are available for inspection at the Borough of Oaklyn, 500 White Horse Pike, Oaklyn, New Jersey 08107.
Send comments to The Honorable Michael LaMaina, Mayor of the Borough of Oaklyn, 500 White Horse Pike, Oaklyn, New Jersey.

Township of Pennsauken
Maps are available for inspection at the Pennsauken Municipal Building, Administration Office, 5605 North Crescent Boulevard, Pennsauken, New Jersey.
Send comments to The Honorable Greg Schofield, Mayor of the Township of Pennsauken, 5605 North Crescent Boulevard, Pennsauken, New Jersey 08110.

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

Borough of Somerdale
Maps are available for inspection at the Somerdale Borough Hall, 105 Kennedy Boulevard, Somerdale, New Jersey.
Send comments to The Honorable Gary Passanante, Mayor of the Borough of Somerdale, 105 Kennedy Boulevard, Somerdale, New Jersey 08083.

Borough of Stratford
Maps are available for inspection at the Borough of Stratford, 307 Union Avenue, Stratford, New Jersey.
Send comments to The Honorable Thomas Angelucci, Mayor of the Borough of Stratford, 307 Union Avenue, Stratford, New Jersey 08084.

Borough of Tavistock
Maps are available for inspection at the Borough of Tavistock, Remington and Vernick Engineering, 232 Kings Highway, Haddonfield, New Jersey.
Send comments to The Honorable George J. Buff, III, Mayor of the Borough of Tavistock, P.O. Box 8988, Turnersville, New Jersey 08012.

Township of Voorhees
Maps are available for inspection at the Township of Voorhees, Municipal Clerk's Office, 620 Berlin Road, Voorhees, New Jersey.
Send comments to The Honorable Michael R. Mignogna, Mayor of the Township of Voorhees, 620 Berlin Road, Voorhees, New Jersey 08043.

Passaic County, New Jersey (All Jurisdictions)

Molly Ann Brook	From the downstream side of Sherwood Avenue.	+125	+124	Borough of Haledon, Borough of Prospect Park, City of Paterson.
	Approximately 825 feet upstream of the weir.	+184	+185	

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

ADDRESSES

Borough of Haledon
Maps are available for inspection at the Haledon Borough Hall, 510 Belmont Avenue, Haledon, New Jersey.
Send comments to The Honorable Ken Pengitore, Mayor of the Borough of Haledon, 510 Belmont Avenue, Haledon, New Jersey 07508.

Borough of Prospect Park
Maps are available for inspection at the Prospect Park Borough Hall, 106 Brown Avenue, Prospect Park, New Jersey.
Send comments to The Honorable Mohamed T. Kahairullah, Mayor of the Borough of Prospect Park, 106 Brown Avenue, Prospect Park, New Jersey 07508.

City of Paterson
Maps are available for inspection at the Paterson City Hall, 155 Market Street, Passaic, New Jersey.
Send comments to The Honorable Jose Torres, Mayor of the City of Paterson, 155 Market Street, Passaic, New Jersey 07505.

Somerset County, New Jersey (All Jurisdictions)

Chambers Brook #1	At confluence with North Branch Raritan River.	+79	+80	Township of Bedminster.
	Approximately 0.5 mile above the confluence with North Branch Raritan River.	+79	+80	
#2	At confluence with North Branch Raritan River.	+70	+74	Township of Branchburg.
	Approximately 0.4 mile above the confluence with North Branch Raritan River.	+73	+74	
Cory's Brook	At the confluence with Passaic River	+214	+213	Township of Warren.
	Approximately 1,800 feet upstream of Powder Horn Road.	None	+405	
Cuckels Brook	At confluence with Raritan River	+37	+39	Township of Bridgewater.
	Approximately 0.92 mile upstream of confluence with Raritan River.	+41	+42	
Green Brook	At confluence with Raritan River	+32	+33	Borough of Bound Brook.
	Approximately 200 feet downstream Conrail.	+32	+33	
Harrison Brook Branch 1.	At confluence with Harrison Brook	+222	+220	Township of Bernards.
	At Lurlin Drive	+230	+231	
Indian Grave Brook	At confluence with Passaic River	+297	+304	Township of Bernards, Borough of Bernardsville.
	Approximately 100 feet downstream of County boundary.	+611	+610	
Millstone River	At confluence with Raritan River	+39	+41	Township of Franklin, Borough of Manville.
	At confluence of Royce Brook	+40	+41	
Moggy Brook	At confluence with North Branch	None	+125	Borough of Far Hills.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.55 mile upstream of the confluence with North Branch Raritan River.	+154	+156	
Neshanic River	At the confluence with South Branch Raritan River.	+81	+82	Township of Hillsborough.
	Approximately 1.73 miles upstream of Montgomery Road.	+103	+102	
North Branch Raritan River Tributary C.	At confluence with North Branch Raritan River.	+196	+197	Borough of Bernardsville.
	Approximately 400 feet upstream of confluence with North Branch Raritan River.	+209	+210	
Peters Brook	At confluence with Raritan River	+46	+48	Township of Bridgewater.
	Approximately 900 feet downstream of North Bridge Street.	+48	+49	
Ross Brook	At confluence with Peter's Brook	+46	+48	Township of Bridgewater, Borough of Somerville.
	Approximately 45 feet downstream of Spring Street.	+47	+48	
Royce Brook	At confluence with Millstone River	+40	+41	Borough of Manville.
	Approximately 0.4 mile upstream of confluence with Millstone River.	+40	+41	
Tributary K	At confluence with Indian Grave Brook	+449	+455	Borough of Bernardsville.
	Approximately 1,670 feet upstream of Washington Corner Road.	+562	+564	

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

ADDRESSES

Township of Bedminster
Maps are available for inspection at the Bedminster Township Hall, One Miller Lane, Bedminster, New Jersey.
Send comments to The Honorable Robert Holtaway, Mayor of the Township of Bedminster, One Miller Lane, Bedminster, New Jersey 07921.

Township of Bernards
Maps available for inspection at the Township of Bernards Engineering Services Building, 277 South Maple Avenue, Basking Ridge, New Jersey.
Send comments to The Honorable John Malay, Mayor of the Township of Bernards, 1 Collyer Lane, Basking Ridge, New Jersey 07920.

Borough of Bernardsville
Maps available for inspection at the Bernardsville Municipal Building, 166 Mine Brook Road, Bernardsville, New Jersey.
Send comments to The Honorable Jay Parsons, Mayor of the Borough of Bernardsville, 166 Mine Brook Road, Bernardsville, New Jersey 07924.

Borough of Bound Brook
Maps available for inspection at the Bound Brook Borough Office, 230 Hamilton Street, Bound Brook, New Jersey.
Send comments to Mr. John J. Kennedy, Bound Brook Borough Administrator, 230 Hamilton Street, Bound Brook, New Jersey 08805.

Township of Branchburg
Maps available for inspection at the Branchburg Township Engineering Department, 1077 Route 202 North, Branchburg, New Jersey.
Send comments to The Honorable Kate Sarles, Mayor of the Township of Branchburg, 1077 Route 202 North, Branchburg, New Jersey 08876.

Township of Bridgewater
Maps available for inspection at the Bridgewater Township Code Enforcement Office, 700 Garretson Road, Bridgewater, New Jersey.
Send comments to The Honorable Patricia Flannery, Mayor of the Township of Bridgewater, 700 Garretson Road, Bridgewater, New Jersey 08807.

Borough of Far Hills
Maps available for inspection at the Far Hills Borough Municipal Building, 6 Prospect Street, Far Hills, New Jersey.
Send comments to The Honorable Carl J. Torsilieri, Mayor of the Borough of Far Hills, 6 Prospect Street, Far Hills, New Jersey 07931.

Township of Franklin
Maps available for inspection at the Franklin Township Engineering Department, 475 De Mott Lane, Somerset, New Jersey.
Send comments to Mr. Kenneth W. Daly, Franklin Township Manager, 475 De Mott Lane, Somerset, New Jersey 08873.

Township of Hillsborough
Maps available for inspection at the Hillsborough Township Municipal Complex, 379 South Branch Road, Hillsborough, New Jersey.
Send comments to The Honorable Carl Suraci, Mayor of the Township of Hillsborough, Hillsborough Township Municipal Complex, 379 South Branch Road, Hillsborough, New Jersey 08844.

Borough of Manville
Maps available for inspection at the Manville Borough Municipal Building, 325 North Main Street, Manville, New Jersey.
Send comments to The Honorable Angelo Corradino, Mayor of the Borough of Manville, 325 North Main Street, Manville, New Jersey 08835.

Borough of Somerville
Maps available for inspection at the Somerville Borough Hall, 25 West End Avenue, Somerville, New Jersey.
Send comments to The Honorable Brian G. Gallagher, 25 West End Avenue, Somerville, New Jersey 08876.

Township of Warren

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Maps available for inspection at the Warren Township Engineering Department, 46 Mountain Boulevard, Warren, New Jersey. Send comments to The Honorable Carolyn Garafola, Mayor of the Township of Warren, 46 Mountain Boulevard, Warren, New Jersey 07059.				
Clinton County, New York (All Jurisdictions)				
AuSable River	Approximately 2.2 miles upstream of Lower Road Bridge.	None	+491	Town of Ausable, Town of Black Brook.
	At the confluence with West Branch AuSable River.	+549	+550	
Fern Lake	The entire shoreline	None	+1,225	Town of Black Brook.
Salmon River	Approximately 2,750 feet upstream of Fox Farm Road.	None	+306	Town of Peru.
	Approximately 1.2 miles upstream of Conners Road.	None	+585	
Saranac River	Approximately 5,100 feet upstream of Ore Bed Road.	None	+1,090	Town of Black Brook.
	Approximately 170 feet upstream of Union Falls Road.	None	+1,414	
West Branch	At the confluence with AuSable River	+551	+550	Town of Black Brook.
AuSable River	Approximately 170 feet upstream of the confluence with AuSable River.	+552	+551	

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

ADDRESSES

Town of Ausable
Maps are available for inspection at the Ausable Town Office, 111 Ausable Street, Keeseville, New York.
Send comments to Ms. Sandra Senecal, Ausable Town Supervisor, 111 Ausable Street, Keeseville, New York 12944.

Town of Black Brook
Maps are available for inspection at the Black Brook Town Office, 18 North Main Street, Ausable Forks, New York.
Send comments to Mr. Ricky Nolan, Black Brook Town Supervisor, P.O. Box 715, Ausable Forks, New York 12912.

Town of Peru
Maps are available for inspection at the Peru Town Office, 3036 Main Street, Peru, New York.
Send comments to Mr. Donald E. Covel, Peru Town Supervisor, P.O. Box 596, Peru, New York 12792–0596.

Gaston County, North Carolina and Incorporated Areas				
Blackwood Creek	At the confluence with Crowders Creek	+669	+662	Gaston County (Unincorporated Areas), City of Gastonia.
	Approximately 0.9 mile upstream of the confluence with Crowders Creek.	+674	+673	
Muddy Fork	Approximately 700 feet downstream of the Cleveland/Gaston County boundary.	None	+823	City of Cherryville, Gaston County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the Cleveland/Gaston County boundary.	None	+851	
Tributary B	At the confluence with Tributary A	None	+719	Gaston County (Unincorporated Areas), City of Gastonia.
	Approximately 230 feet upstream of the confluence with Tributary B–1.	None	+784	

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

ADDRESSES

Gaston County (Unincorporated Areas)
Maps are available for inspection at Gaston County Administration Office, 128 West Main Street, Gastonia, North Carolina.
Send comments to Mr. Jan Winters, Gaston County Manager, 128 West Main Street, Gastonia, North Carolina 28053.

City of Cherryville
Maps are available for inspection at Cherryville City Hall, 116 South Mountain Street, Cherryville, North Carolina.
Send comments to The Honorable Bob Austell, Mayor of the City of Cherryville, 116 South Mountain Street, Cherryville, North Carolina 28021.

City of Gastonia
Maps are available for inspection at the City of Gastonia Engineering Department, 150 South York Street, Gastonia, North Carolina.
Send comments to The Honorable Jennifer Stulz, Mayor of the City of Gastonia, P.O. Box 1748, Gastonia, North Carolina 28053.

Windham County, Vermont (All Jurisdictions)				
Broad Brook	At upstream side of State Route 142	None	+229	Town of Vernon.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Connecticut River	Approximately 0.81 mile upstream of Vernon Dam.	+226	+227	Village of Bellows Falls, Town of Brattleboro, Town of Dummerston, Town of Putney, Town of Rockingham, Town of Vernon, Town of Westminster.
	Approximately 7.42 miles upstream of Bellows Falls Dam.	+306	+305	
Saxtons River	At the confluence with the Connecticut River.	None	+257	Town of Athens, Village of Bellows Falls, Town of Grafton, Town of Westminster.
	Approximately 1,950 feet upstream of the confluence of Weaver Brook.	None	+590	
West River	At the confluence with the Connecticut River.	+235	+232	Town of Brattleboro, Town of Brookline, Town of Dummerston, Town of Jamaica.
	Upstream side of Ball Mountain Dam	None	+1,020	

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

ADDRESSES

Village of Bellows Falls

Maps are available for inspection at the Bellows Falls Village Hall, 7 Square, 3rd Floor, Bellows Falls, Vermont.
Send comments to Mr. John B. Schempf, Village of Bellows Falls Municipal Manager, P.O. Box 370, Bellows Falls, Vermont 05101.

Town of Brattleboro

Maps are available for inspection at the Brattleboro Planning Services Department, 230 Main Street, Suite 202, Brattleboro, Vermont.
Send comments to Mr. Stephen A. Steidle, Chairman of the Town of Brattleboro Board of Selectmen, 230 Main Street, Suite 208, Brattleboro, Vermont 05301.

Town of Brookline

Maps are available for inspection at the Brookline Town Office, 736 Grassy Brook Road, Brookline, Vermont.
Send comments to Ms. Joyce Meehl, Chairperson for the Town of Brookline Board of Selectmen, P.O. Box 403, Newfane, Vermont 05345.

Town of Dummerston

Maps are available for inspection at the Dummerston Town Hall, 1523 Middle Road, East Dummerston, Vermont.
Send comments to Ms. Cynthia Jerome, Chairperson for the Town of Dummerston Board of Selectmen, 1523 Middle Road, East Dummerston, Vermont 05346.

Town of Putney

Maps are available for inspection at the Putney Town Hall, 127 Main Street, Putney, Vermont.
Send comments to Mr. Christopher Ryan, Putney Town Manager and Zoning Administrator, P.O. Box 233, Putney, Vermont 05346.

Town of Vernon

Maps are available for inspection at the Vernon Town Office, 567 Governor Hunt Road, Vernon, Vermont.
Send comments to Mr. Peter Deyo, Chairman of the Town of Vernon Board of Selectmen, 567 Governor Hunt Road, Vernon, Vermont 05354.

Town of Westminster

Maps are available for inspection at the Westminster Town Hall, 3651 U.S. Route 5, Westminster, Vermont.
Send comments to Mr. Paul Harlow, Chairman of the Town of Westminster Board of Selectmen, P.O. Box 147, Westminster, Vermont 05158.

Towns of Weathersfield and Windsor, Windsor County, Vermont

Connecticut River	Approximately 1.91 miles downstream of confluence of the Black River.	+306	+305	Town of Harland, Town of Springfield, Town of Weathersfield, Town of Windsor.
	Approximately 2.27 miles upstream of confluence of Lulls Brook.	+334	+335	

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

ADDRESSES

Town of Weathersfield

Maps are available for inspection at the Town of Weathersfield, Martin Memorial Hall, 5259 Route 5, Ascutney, Vermont.
Send comments to Mr. Lawrence Melen, Weathersfield Town Manager, P.O. Box 550, Ascutney, Vermont 05030–0550.

Town of Windsor

Maps available for inspection at the Windsor Town Office, 29 Union Street, Windsor, Vermont.
Send comments to Mr. Donald Howard, Windsor Town Administrator, 29 Union Street, Windsor, Vermont 05089.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: January 12, 2007.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–887 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

49 CFR Part 39

[Docket OST 2007 26829]

RIN 2105–AB87

Transportation for Individuals With Disabilities: Passenger Vessels

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to issue a new Americans with Disabilities Act (ADA) rule to ensure nondiscrimination on the basis of disability by passenger vessels. This notice of proposed rulemaking (NPRM) concerns service and policy issues. Issues concerning physical accessibility standards will be addressed at a later time, in conjunction with proposed passenger vessel accessibility guidelines drafted by the Access Board.

Comment Closing Date: Comments should be submitted by April 23, 2007. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number [OST 2007–26829] by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* To the Docket Management System; 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 and docket number [OST–2007–26829] or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided.

Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590–0001. (202) 366–9306 (voice); (202) 755–7687 (TDD); *bob.ashby@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Department of Transportation has issued rules concerning nondiscrimination on the basis of disability for almost every mode of passenger transportation, including public transportation (bus, subway, commuter rail), over-the-road buses, intercity rail, and air transportation. The only mode on which the Department has yet to propose rules is transportation by passenger vessels. With this NPRM, the Department is beginning the process of filling this remaining gap in our coverage of transportation for individuals with disabilities.

Background

When the Department issued its first Americans with Disabilities Act (ADA) rules in 1991, we explicitly asserted coverage over passenger vessels. The Department reserved action on passenger vessels in the regulatory text of this final rule, and we made the following statements on the subject in the preamble (56 FR 45599–45560; September 6, 1991):

> Ferries and passenger vessels operated by public entities are covered by the ADA, and subject at this time to DOJ Title II requirements as well as § 37.5 of this Part * * *. We anticipate further rulemaking to create appropriate requirements for passenger vessels * * *. The reason for this action is that, at the present time, the Department lacks sufficient information to determine what are reasonable accessibility requirements for various kinds of passenger vessels. We note that the DOJ has determined that passenger vessels encompassing places of public accommodation (e.g., cruise ships, floating restaurants) are subject to the general nondiscrimination and policies and practices portions of its Title III rule (Subparts B and C of 28 CFR Part 36). The Department of Transportation anticipates working with the Access Board and DOJ on further rulemaking to define requirements for passenger vessels * * *. The Department does want to make clear its view that the ADA does cover passenger vessels, including ferries, excursion vessels, sightseeing vessels, floating restaurants, cruise ships, and others. Cruise ships are a particularly interesting example of vessels subject to ADA coverage.
>
> Cruise ships are a unique mode of transportation. Cruise ships are self-contained floating communities. In addition to transporting passengers, cruise ships house, feed, and entertain passengers and thus take on aspects of public accommodations. Therefore cruise ships appear to be a hybrid of a transportation service and a public accommodation. As noted above, DOJ covers cruise ships as public accommodations under its Title III rules.
>
> In addition to being public accommodations, cruise ships clearly are within the scope of a ''specified public transportation service.'' The ADA prohibits discrimination in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce (§ 304(a)). ''Specified public transportation'' is defined by § 301(10) as ''transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.''
>
> Cruise ships easily meet the definition of ''specified public transportation.'' Cruise ships are used almost exclusively for transporting passengers and no one doubts that their operations affect commerce. Cruise ships operate according to set schedules or for charter and their services are offered to the general public. Finally, despite some seasonal variations, their services are offered on a regular and continuing basis.
>
> Virtually all cruise ships serving U.S. ports are foreign-flag vessels. International law clearly allows the U.S. to exercise jurisdiction over foreign-flag vessels while they are in U.S. ports, subject to treaty obligations. A state has complete sovereignty over its internal waters, including ports. Therefore, once a commercial ship voluntarily enters a port, it becomes subject to the jurisdiction of the coastal state. In addition, a state may condition the entry of a foreign ship into its internal waters or ports on compliance with its laws and regulations. The United States thus appears to have jurisdiction to apply ADA requirements to foreign-flag cruise ships that call in U.S. ports.

The U.S. Supreme Court recently affirmed the Department's long-held view that the ADA covers passenger vessels, specifically including foreign-flag cruise ships. In *Spector et al.* v. *Norwegian Cruise Lines*, 545 U.S. 119 (2005), the Court held that cruise ships are ''public accommodations'' that provide ''specified public transportation'' within the meaning of the ADA. The Court said that, while there may be some limitations on the coverage of the ADA to matters purely concerning the internal affairs of a foreign-flag vessel, matters concerning

the ship operators' policies and conditions relating to transportation of passengers with disabilities (*e.g.*, higher fares or surcharges for disabled passengers, waivers of medical liability, requirements for attendants) had nothing to do with a ship's internal affairs. Such matters, then, are clearly subject to ADA jurisdiction. It is issues of this kind that are the focus of this NPRM.

The Access Board has been working for some time on drafting accessibility guidelines for passenger vessels. On November 26, 2004, the Access Board published for comment a notice of availability of draft guidelines for larger passenger vessels with a capacity of over 150 passengers or overnight accommodations for over 49 passengers. Since that time, the Access Board has been reviewing comments it received and planning work on a Regulatory Assessment for vessel guidelines. On July 7, 2006, the Access Board issued a second notice of availability asking for comments on a revised draft of vessel guidelines. Following the review of comments on that notice, the Access Board, in cooperation with the Department of Transportation, would issue an NPRM and Regulatory Assessment concerning physical accessibility requirements for larger passenger vessels. As we envision it, the final rule resulting from such a future NPRM would ultimately be joined with a final rule resulting from the current proposed rule in a single, comprehensive passenger vessel ADA rule.

On November 29, 2004, the Department published an advance notice of proposed rulemaking (ANPRM) asking questions about the shape of future ADA requirements for passenger vessels (69 FR 69247). The Department received 43 comments to the ANPRM. Most of these comments concerned the Access Board's draft guidelines and physical accessibility issues relating to existing and new vessels, and some of them concerned physical accessibility issues specific to very small vessels. The Department is retaining these comments and will consider them in context of the continuing work on the Access Board's draft vessel guidelines and the future NPRM that would propose to incorporate those guidelines in DOT rules.

The only comment that concerned the issues included in this NPRM was from the International Council of Cruise Lines (ICCL), a trade association for entities in the cruise industry. ICCL recommended that rules exempt transfers of persons from larger vessels to tenders; recognize the flexibility of cabin configurations; exclude from coverage shore excursions provided by third-party-vendors, particularly in foreign countries; have eligibility criteria and direct threat provisions that allow operators to establish policies that will avoid safety risks; permit requirements for personal attendants; and permit limitations on the transportation of service animals. The Department will discuss these comments in context of the individual sections of the proposed rule.

Section-by-Section Analysis

§ 39.1 What is the purpose of this part?

This section briefly states the nondiscrimination-related purposes of the rule and specifies that nondiscrimination requirements apply to operators of foreign-flag as well as U.S. vessels.

§ 39.3 What do the terms in this rule mean?

This section proposes definitions of terms in this rule. Many of the definitions are based on parallel definitions in the Department's ADA and Air Carrier Access Act (ACAA) regulations or Department of Justice rules, adapted to the passenger vessel context. This preamble discussion focuses on terms that are specific to the passenger vessel context. Other terms would have the same meanings as they do in other DOT disability rules.

Because this NPRM does not propose physical accessibility requirements for vessels, the definition of ''accessible'' will be fleshed out with proposed standards based on Access Board guidelines in a future rulemaking. The definition of ''direct threat,'' drawn from Department of Justice regulations, concerns only threats to the health and safety *of others*. Something that may threaten only the health or safety of a passenger with a disability by definition cannot be a direct threat.

In addition to vessels, ''facilities'' include landside facilities that a vessel operator owns, leases, or controls in the U.S. (including its territories, possessions, and commonwealths). A passenger vessel operator (PVO) would be viewed as controlling a facility, even if it did not own or lease it, if the facility owner, through a contract or other arrangement, delegated authority over use of the facility to the passenger vessel operator during those times in which the vessel was at the facility. Facilities in these three categories would be covered directly by Part 39. The Department seeks comment on how responsibilities should be allocated when there are multiple PVOs who operate at a given landside facility or who only use the facility infrequently.

The Department realizes that entities other than PVOs, such as municipalities or other private businesses, may own, lease, or control landside facilities that passenger vessels use. The obligations of these entities would be controlled by Titles II and III of the ADA and, in some cases, by section 504 of the Rehabilitation Act of 1973. We envision the relationship between the facility owner/controller and the PVO to be analogous to other situations in which entities subject to different disability access rules share responsibility (*e.g.*, public entity landlord subject to Title II leases property to a private entity subject to Title III). We seek comment on whether landside facility-specific language should be added to the Department's other ADA or section 504 rules.

The NPRM does not propose making this requirement applicable to facilities located outside the U.S. However, we seek comment on whether the final rule should apply to facilities outside the U.S. if a PVO (as distinct from another foreign entity) owns, leases, or controls the facility.

The definition of ''historic vessel'' is also one that is likely to become more significant when future rulemakings add physical accessibility standards to Part 39. Following practice in other portions of the ADA, it is likely that historic vessels (*e.g.*, the USS *Constellation* in Baltimore harbor) would be exempted from some accessibility requirements. ''New,'' ''existing,'' and ''used'' passenger vessel are also terms that will be of greater importance once physical accessibility standards are in place. They are based on new and used vehicle definitions in the Department's ADA rules for surface transportation modes.

With respect to the definition of ''new passenger vessel,'' which will be used in connection with vessel standards in Subpart E when they are added to the regulation, we seek comment on transition rules. That is, at what point in the procurement, design, construction, and delivery of a vessel should requirements for new vessels attach?

''Operates'' means the provision of transportation or other service by any public or private entity on a passenger vessel. Importantly, it also includes the provision of transportation or other service by another party having a contractual or other arrangement or relationship with the entity involved. As in other parts of the Department's accessibility rules, a party can contract out its functions, but cannot contract

away its responsibilities. By ''other services,'' we mean activities that take place on a vessel other than simply going from Point A to Point B (*e.g.*, food service, recreation, entertainment, gambling). This section would also cover situations in which a vessel makes a round trip from Point A to Point A, like some dinner, excursion, and gambling vessels do.

''Passenger vessel'' is meant to be a broadly encompassing term for any boat, ship, or other craft that takes on members of the public for hire or other activities conducted as a part of the vessel operators normal operations (which could include promotional activities involving use of a vessel by members of the public for which a fare is not charged, free shuttle or ferry service). The only exception is for boats or other craft that are rented or leased to consumers and which the consumers themselves (as distinct from the passenger vessel operator and its personnel) operate. The Department seeks comment on whether there are any additional situations that the rule should cover (*e.g.*, the PVO or an organization to which the PVO makes the vessel available provides a charitable or promotional excursion for which no fee is charged). The Department also seeks comment on whether there should be exceptions or different provisions for vessels that are not primarily designed or used as passenger vessels, but may carry passengers for hire on certain occasions (*e.g.*, supply vessels, crew boats, school training or sailing vessels, research vessels carrying students).

In some cases, such as certain on-the-water gambling casinos, museums, or restaurants, an activity takes place on a structure that floats but is permanently anchored or tethered to a dock or other shore facility. On one hand, because it floats on the water, such a structure could be regarded as a vessel covered by this rule. On the other hand, because it never actually goes anywhere, it could be regarded as a facility, like an on-shore building, that is more appropriately covered by Department of Justice rules. We seek comment on this matter.

The ''passenger vessel operator'' (PVO) is a term that includes both owners and operators of a passenger vessel. A PVO may be either a public or a private entity. Sometimes, ownership of vessels can be complex, with two or more different parties involved, and yet another party responsible for the day-to-day operation of the vessel. In such situations, all the parties involved would be jointly and severally responsible for compliance with these rules.

For the most part, ''passenger with a disability'' and ''qualified individual with a disability'' have the same meaning for purposes of the proposed rule. There could be situations in which a qualified individual with a disability may not actually be a passenger, or in which someone is seeking to perform functions on behalf of a person with a disability. The ''passenger with a disability'' term includes both situations in which someone buys a ticket to travel on a vessel and situations (*e.g.*, a gambling boat) in which members of the public go on board, without a ticket, to use the services provided on the vessel, regardless of whether the vessel leaves its dock or mooring.

''Terminal'' would be defined broadly, meaning any property or facilities adjacent to the means of boarding a vessel that passengers use to get to the vessel. A terminal, in this sense, can be a large complex, a building, or a very simple facility. Importantly, terminals are covered under Part 39 only to the extent that the PVO owns or leases the terminal or exercises control over its selection, design, construction, or alteration (*e.g.*, POV[A1] selects site for construction of new facility; or PVO has choice of docking at existing accessible or inaccessible facility).

As noted in the discussion of ''facility,'' the Department seeks comment on whether Part 39 should apply to a terminal located outside the U.S. if the PVO is involved in one of these ways. If the PVO does none of these things, the terminal would not in any circumstance be covered under Part 39, though other parts of the ADA and section 504 of the Rehabilitation Act of 1973, as amended, may well apply to terminals located in the U.S. We also note that activities that a PVO itself conducts, regardless of the facility in which they are conducted, would be expected to be available to persons with disabilities.

In other transportation contexts, there has been considerable discussion of whether the long-standing definition of ''wheelchair'' remains adequate, in light of the development and use of mobility devices that may not fit within the definition. We seek comment on this question in the context of passenger vessels. Should there be a definition that specifically acknowledges mobility devices that may not literally be ''wheelchairs,'' or should a more inclusive term be developed?

§ 39.5 To whom do the provisions of this part apply?

The Department proposes that the provisions of this part apply to all passenger vessels, regardless of size. There are two major exceptions to this general coverage. First, while all U.S.-flagged vessels would be covered, coverage of foreign-flag vessels would be limited to those that pick up or discharge passengers in the U.S.

For example, suppose a foreign-flag cruise PVO operates two ships. One of them sails only among ports in Europe. Another picks up passengers in Miami and cruises to several Caribbean ports. The latter would be covered and the former would not. The Department seeks comment on a situation that may occur, in which tickets are sold to U.S. passengers for a combined trip that includes transportation to a non-U.S. port where they board a ship. For example, suppose Grand Fenwick Cruise Lines sells a package to U.S. passengers including air fare from New York to the Bahamas, where passengers board the S.S. *Grand Duchess Gloriana* for a Caribbean cruise; should the ship transportation be covered for purposes of Part 39 nondiscrimination rules?

The second exception concerns the future vessel accessibility standards. The NPRM reserves paragraph (c), which would state the scope of the applicability of these standards. The Department notes that the July 2006 draft Access Board vessel [A2] would limit their application vessels permitted to carry over 150 passengers or over 49 overnight passenger capacity categories, as well as tenders with a capacity of 59 or more and all ferries. The Department currently anticipates following the Access Board's final guidelines, when they are issued, with respect to coverage. The Department also seeks comment on whether there should be any vessel size or capacity limits on any of the specific nondiscrimination provisions that are proposed in this NPRM with respect to subjects other than vessel accessibility standards.

§ 39.7 What other authorities concerning nondiscrimination on the basis of disability apply to owners and operators of passenger vessels?

This section simply points out that recipients of Federal financial assistance (*e.g.*, some public ferry operators) are, in addition to Part 39, subject to section 504 of the Rehabilitation Act and DOT implementing rules. Department of Justice (DOJ) ADA regulations, as applicable, also cover PVOs.

§ 39.9 What may a PVO of a foreign-flag vessel do if it believes that a provision of a foreign nation's law prohibits compliance with a provision of this part?

§ 39.11 How may a PVO obtain approval to use an equivalent facilitation?

These sections provide means by which PVOs may obtain DOT authorization to do something different from what these regulations would require. Section 39.9, which parallels language in the Department's proposed Air Carrier Access Act (ACAA) rules for foreign carriers, provides a waiver mechanism for situations in which a PVO for a foreign-flag vessel believes that a binding legal requirement of a foreign nation (or of an international agreement) precludes compliance with a requirement of Part 39. This provision concerns binding legal requirements, not guidance or codes of suggested practices. It concerns situations in which such a binding legal requirement actually precludes compliance with a Part 39 provision (*e.g.*, Part 39 says ''You must do X,'' while a binding foreign legal requirement says ''You must not do X''), as opposed to a situation where foreign law authorizes a practice that differs from a Part 39 requirement (*e.g.*, Part 39 says ''You must do Y,'' while a foreign law says ''You may do Z''). In a situation where the Department grants a waiver, the Department would look to the PVO for a reasonable alternative means of achieving the purpose of the waived provision.

To avoid placing PVOs in a situation in which they potentially were required to comply with contradictory legal requirements, the NPRM proposes that PVOs seeking a waiver would have 90 days from the publication of the final rule to file a waiver request. If the PVO filed a complete waiver request within that period, it could continue to implement policies that it believes are consistent with the foreign law in question pending the Department's decision on the waiver request.

Section 39.11, on the other hand, concerns a potentially wider range of situations in which a PVO applies to the Department for authorization to provide a different means of compliance with a requirement of the DOT rules than the rules themselves specify. Equivalent facilitations can apply to the details of physical accessibility standards, when they become part of the rule, but could also apply to policy and administrative matters covered by the rule. It is important to note that to be considered an equivalent facilitation, the different means of compliance must provide equal or greater accessibility than that required by the regulatory text.

§ 39.13 When must PVOs comply with the provisions of this part?

As a general matter, PVOs would have to begin to comply with the provisions of this rule as soon as the rule becomes effective. There is no evident reason why PVOs should need a lengthy phase-in period to comply with requirements pertaining to denials of transportation on the basis of disability, extra or special charges, personal or safety assistants, advance notice, waivers of liability, etc. The Department would hope and expect that most PVOs are already acting in ways that are in compliance with these nondiscrimination policy and administrative practice requirements. If not, then this NPRM should put PVOs on notice that changes in their policies may be necessary in the near future.

There are some provisions of the proposed rule concerning which it would be reasonable for PVOs to have a longer phase-in period, however. Specific sections on such matters as modifications to terminals and other landside facilities and training for personnel have proposed compliance dates intended to give PVOs a reasonable time to meet requirements. The Department seeks comment on these proposed compliance dates, as well as on whether there are other provisions on which PVOs would need additional time to comply.

§ 39.21 What is the general nondiscrimination requirement of this part?

The provisions of this section are parallel to the general nondiscrimination requirements in the Department's other disability-related rules. We would call attention particularly to paragraph (b), which would require modification of PVOs' otherwise acceptable general policies where doing so is necessary to accommodate the needs of a particular individual or category of individuals with a disability. Such modification is required unless it would be unduly burdensome or require a fundamental alteration in the nature of the PVO's services, programs, or activities.

§ 39.23 What are the requirements concerning contractors to owners and operators of passenger vessels?

As noted above, contractors and other persons whom the PVO uses to provide services to passengers ''stand in the shoes'' of the PVO with respect to the requirements of this rule. The PVO must ensure, through provisions in the contracts or other agreements with such third parties, that the third parties comply with applicable requirements. We seek comment on whether, if at all, contractors outside the United States should be covered by this requirement. All new contracts and other agreements must have this assurance language. The Department seeks comment on whether the rule should require the addition of assurance language to existing contracts and agreements, and, if so, what the compliance period for such additions should be. Since PVOs cannot contract away their responsibilities, PVOs remain responsible for the third parties' actions. This would be true, in the Department's view, even with respect to actions of third parties where the PVO's agreements with the third parties did not yet include assurance language.

§ 39.25 May PVOs limit the numbers of passengers with a disability on a passenger vessel?

The Department views any policy limiting the number on passengers with a disability on a vessel as discriminatory on its face. With respect to the concern expressed by ICCL about large groups of passengers with a disability traveling together, we believe that the provision of § 39.35 permitting PVOs to ask for advance notice in this situation (*e.g.*, so as to be able to make the needed reconfigurations of the flexible space in overnight accommodations that ICCL's comment mentions) should be helpful.

§ 39.27 May PVOs refuse to provide transportation or use of a passenger vessel on the basis of disability?

The Department views any policy or action prohibiting a person with a disability from being transported on or otherwise using a passenger vessel as discriminatory on its face. If a PVO says to a person, literally or in effect, ''you are a person with a disability, therefore stay off my vessel,'' the PVO would violate this rule. The Department recognizes that some disabilities may make other passengers uncomfortable. That is not a justifiable reason to deny access to the vessel to persons with these disabilities (see paragraph (b)). Only if there is a genuine safety issue, meeting the stringent direct threat criteria outlined in paragraph (c), would the PVO be justified in excluding a person because the person has a disability. Even in that case, the PVO would have to provide a written explanation to the person within 10 days of the denial (paragraph (d)).

The Department recognizes that, particularly prior to the adoption of physical accessibility standards, some

vessels will not have accommodations that will permit persons with some disabilities to travel on or to obtain some services on the vessels.

For example, an older vessel might not have any overnight cabins of a size that could accommodate a person using a power wheelchair, or might have a dining area that is on a deck which can be accessed only by using steps. The Department would not, in such a situation, regard a PVO's statement to a passenger about the lack of adequate physical accommodations as equivalent to a policy denying access on the basis of disability.

§ 39.29 May PVOs limit access to transportation on or use of a vessel on the basis that a passenger has a communicable disease or other medical condition?

§ 39.31 May PVOs require a passenger with a disability to provide a medical certificate?

These related provisions are intended to limit PVOs' discretion to impose requirements or restrictions on passengers on medical grounds. Most disabilities are not medical conditions: A person is not ill because he or she cannot see, hear, or walk, and applying a medical model to many disabilities is inappropriate. On the other hand, people with a variety of medical conditions (*e.g.*, heart disease) may have at least temporary disabilities. If there is reasonable doubt that a passenger with a medical condition can complete a given trip or use a vessel without requiring extraordinary medical assistance, then this rule would permit the PVO to require a medical certificate from the individual. In applying this requirement, the Department believes it is reasonable for the PVO to take into account the length of the passenger's stay aboard the vessel.

With respect to communicable diseases, the PVO cannot deny or restrict transportation on or use of a passenger vessel on the basis that the passenger has a communicable disease, unless the PVO makes a direct threat determination. In the communicable disease area, the Department believes that PVOs should consider two factors. One is the severity of the consequences of a disease; the other is whether the disease can readily be communicated by casual contact. Only if a disease has severe consequences to the health of other persons and is readily communicable by casual contact could a PVO legitimately determine that there is a direct threat. For example, HIV/AIDS has severe consequences, but is not readily communicable by casual contact. The common cold is readily communicable by casual contact but typically does not have severe health consequences. Consequently, having a cold or having AIDS would not be a basis on which a PVO could limit a person's transportation on or use of a vessel. Probably the best recent example of a disease that meets both criteria is Severe Acute Respiratory Syndrome (SARS), and, in the future, a readily human-to-human transmissible avian flu pandemic might well qualify. PVOs could legitimately take into account determinations by public health authorities about the travel of persons with a certain disease (*e.g.*, if the Centers for Disease Control or World Health Organization issued a finding that persons with a certain disease or symptoms should not travel).

In any case in which a medical certificate may be required or a limitation on a passenger's travel be imposed, the limitation should be the minimum needed to deal with the medical issue or direct threat to the health of others. For example, the PVO would not be authorized to deny transportation to an individual if a less drastic alternative, such as the use of a personal assistant or the passenger's use of medical measures that would mitigate the transmission of an illness is available.

If a PVO refuses transportation to a passenger with a disability on grounds related to a medical condition, the NPRM proposes that the PVO would have to permit the passenger to travel or use the vessel at any time within a year at the same price as the original trip or, at the passenger's discretion, provide a refund. The Department seeks comment on whether and how to apply this concept to situations in which an equivalent trip is not available within a year (*e.g.*, Grand Fenwick Cruise Lines makes only one trip to Tierra del Fuego every three years, or the S.S. Grand Duchess Gloriana's trips are all fully booked for the next year). The Department also seeks comment on how, if at all, the availability of trip insurance to the individual passenger should be related to this proposed provision.

§ 39.33 May PVOs require a passenger with a disability to provide advance notice that he or she is traveling on or using a passenger vessel?

§ 39.35 May PVOs require a passenger with a disability to provide advance notice in order to obtain certain services in connection with transportation on or use of a passenger vessel?

In these related sections, the Department is saying, first, that it is never appropriate for a PVO to require a person to provide advance notice that he or she is coming, just because he or she has a disability. The PVO's nondiscriminatory policies and practices should be in place, ready to deal with whoever shows up. On the other hand, there may be specific accommodations for which provision of advance notice is needed. One that seems reasonable is when a large number of people with a disability plan to travel as a group. The NPRM uses the ACAA standard of a group of 10 or more disabled passengers traveling as a group. We seek comment on whether this concept should be refined to recognize the possibility that some groups of disabled passengers traveling together may not need any special accommodations. In such a case, is the advance notice provision advisable?

A second instance where advance notice could be helpful concerns a request for an accessible overnight cabin. The Department's proposal on this subject is intended to grapple with the reported problem of nondisabled travelers reserving an accessible cabin because it is roomier, thus denying its availability to a disabled passenger who may subsequently seek the accommodation. Under the proposal, everyone reserving an accessible cabin would be informed that, if a passenger with a disability made a reservation at least 72 hours before the vessel's scheduled departure and requested an accessible cabin, any nondisabled person who had previously reserved the cabin would be moved to another cabin, if one were available. The NPRM would not require any passenger to be bumped from a voyage as a result, only reassigned to a different cabin. Obviously, the operation of this provision would depend on self-identification by the passenger with a disability of his or her need for the accessible cabin.

The Department seeks comment on whether the rule should specify in more detail the kinds of disabilities that would trigger this provision (*e.g.*, should the provision be limited to persons with mobility impairments?) or whether the PVO should be permitted,

or required, to seek documentation of a disability from a passenger seeking to reserve such an accommodation. We also seek suggestions for any alternative means of addressing this issue. We recognize that, especially on some cruise ships, it is commonplace for travelers to reserve cabins months in advance. It is also commonplace for whole voyages to be sold out months in advance. We seek comment, thus, on whether a passenger with a disability who requested an accessible cabin 72 hours before departure could appropriately bump a nondisabled passenger from a cabin reserved months ahead of time. Similarly, we seek comment on whether a deadline for requesting an accessible cabin should be 72 hours or another fixed time before departure or, alternatively, based on when passengers in general reserve their cabins. (If the latter, for example, an accessible cabin might have to be requested before half of all cabins are reserved.) Additionally, we seek comment on whether, as we do in the ADA rule for over-the-road buses, we should provide that any cut-off date for reservations in general should also be applied to requests for an accessible cabin.

The Department recognizes that, pending the development of passenger vessel physical accessibility standards, even new vessels are not required to have a particular number of accessible cabins. This provision would apply to the accessible cabins that now exist, as well as any others that may become available in the future. We also recognize that there could be situations in which an accessible room would not be available to a passenger with a disability because another passenger with a disability had already reserved the room. Other than treating such situations as a ''first-come first-served'' manner, do commenters have any suggestions for resolving such a situation?

The Department also seeks comment on whether 72 hours would be a reasonable amount of advance notice in these situations and on whether there are other services for which an advance notice requirement would be reasonable.

There could be situations in which a similar principle could arguably apply to other shipboard activities. For example, some cruise ships may assign seats for dinner. If a passenger with a disability was unable, because of barriers in the dining area, to get readily to his or her assigned seat, could it be viewed as a reasonable modification of the PVO's seating policy to shift dining table assignments of other passengers to provide accessibility to a dining table? If so, taking into account any disruption of the operator's seating plans or of the other passengers' seating arrangements, would a request for an accessible table have to be made a specified number of hours before departure? The Department seeks comment on this or similar issues involving on-board activities.

§ 39.37 May PVOs require a passenger with a disability to travel with a personal or safety assistant?

The Department regards requiring a passenger with a disability to travel with another person, just because that person has a disability, as discriminatory on its face. Such a requirement is not only an affront to the independence and dignity of the passenger, but may sometimes make travel cost-prohibitive. On the other hand, there can be situations in which traveling with another person as a safety assistant is essential for safety purposes. Paragraph (b) spells out three situations in which it would be justifiable to impose a requirement for a safety assistant. These situations are drawn from the similar provision of the Department's ACAA rule, and the Department seeks comment on any other situations in vessel contexts where such a requirement could be justified.

As ICCL's comment noted, because some passenger voyages are much longer than airplane flights, there may be situations in which a personal assistant is necessary (the ACAA rule never permits a requirement for personal assistants, as distinct from persons needed to assist with an emergency evacuation, in air travel). Consequently, the Department proposes that if a passenger with a disability needs a personal assistant to help perform key personal tasks, such as eating, toileting, and dressing, and the passenger's use of the vessel will be lengthy enough so that the passenger will need to perform these tasks, the PVO may require the passenger with a disability to have a personal assistant. For shorter voyages akin in length to airplane flights, the PVO could not impose such a requirement. However, for a longer voyage (*e.g.*, a multi-day cruise), the PVO could do so.

The Department recognizes that there can be situations in which a passenger and a PVO disagree about whether a safety or personal assistant is necessary. In these situations, the proposed rule contemplates that the PVO would have the last word, and could require the attendant over the passenger's objections. However, in such a situation, the rule would require the PVO to put its money where its mouth is, and not charge for the transportation or use of the vessel by the assistant who the passenger was involuntarily required to bring along. As under the ACAA rule (where a similar provision has been in effect since 1990 without causing significant disruptions), the PVO could designate a member of its own staff or a passenger volunteer as the assistant, in order to deter any potential abuse by a passenger who would, for example, unreasonably object to the use of an assistant in order to secure free transportation for a friend or family member.

§ 39.39 May PVOs impose special charges on passengers with a disability for providing services and accommodations required by this rule?

Price discrimination is forbidden. PVOs may not charge higher fares to passengers with disabilities than to other passengers. PVOs cannot impose surcharges on passengers with disabilities, or any sort of extra or special charges for facilities, equipment, accommodations, or services that must be provided to passengers because they have a disability. This prohibition would apply not only to formal charges made by the PVO itself, but to informal charges that PVO personnel might seek to impose or pressure passengers with a disability to pay. For example, if a vessel cannot be boarded by a wheelchair user without assistance (*e.g.*, because the boarding ramp slope is too steep), it would not be appropriate for vessel personnel who provide boarding assistance to ask, pressure, or imply that the wheelchair users should provide a tip for the assistance.

One of the important implications of the prohibition on price discrimination concerns situations in which an accommodation for a person with a disability is available only in a more expensive type or class of service than the passenger requests. For example, suppose a passenger with a disability tries to make a reservation for an inside cabin. However, the only accessible cabins on the vessel are in the more expensive outside cabins with windows. The PVO would have to provide the accessible cabin to the passenger with a disability at the price of the less expensive accommodation he or she had requested. This is consistent with ADA practice in other contexts, such as booking of hotel rooms or sleeping compartments on Amtrak trains.

§ 39.41 May PVOs impose restrictions on passengers with a disability that they do not impose on other passengers?

§ 39.43 May PVOs require passengers with a disability to sign waivers or releases?

The NPRM would forbid restrictions on passengers with a disability that are not imposed on other passengers, including requirements to sign waivers or releases either for themselves or their assistive devices. The kinds of restrictions these sections address are restrictions created by PVO policy. The Department is aware that, particularly pending the adoption of passenger vessel physical accessibility standards, portions of existing vessels may well be inaccessible to some passengers with a disability. Inaccessibility of this kind would not violate these sections, but an administrative rule declaring certain portions of a vessel off limits to a passenger with a disability would, if that rule did not apply equally to all passengers.

§ 39.51 What information must PVOs provide to passengers with a disability?

The Department recognizes that vessels and facilities will not be equally accessible; that some vessels, ports, services, and facilities may not be usable by persons with some disabilities. This section would require PVOs to inform people with disabilities, accurately and in detail, about what they can expect. What features of a vessel are accessible and what are not? What limitations, if any, are there concerning the ability of a vessel to accommodate persons with a particular disability? At what ports could passengers with a disability expect to be able to get on and off the ship, and by what means? If third parties are making tours and excursions available to passengers, to what extent are these tours accessible to persons with a particular disability? With this information, potential passengers with a disability can make an informed choice about whether seeking transportation on a particular vessel is worth their while.

§ 39.53 Must information and reservation services of PVOs be accessible to individuals with hearing or vision impairments?

This section would apply to information and reservation services made available to consumers in the United States, regardless of the nationality of a PVO or where the personnel or equipment providing the services are themselves based. The first proposed requirement is for TTY service for persons with hearing impairments. The Department is aware that some deaf and hard-of-hearing persons now may use other technologies in preference to TTYs (*e.g.*, videophones, instant messaging), and we seek comment on how, if at all, this development should be reflected in a final rule.

On-line booking services, as well as web sites providing information about passenger vessel availability, schedules, and services, are very important in today's marketplace. Consequently, the Department views it as very important for on-line resources to be available to persons with disabilities. We would view a web site meeting section 508 or World Wide Web Consortium standards as being accessible for this purpose. The regulatory text does not make a specific proposal on this subject, but we seek comment on whether the final rule based on this NPRM, or a future rule incorporating vessel accessibility standards, should include such a requirement. We also seek comment on the costs of requiring Web site accessibility in the passenger vessel industry, the appropriate standards for accessible sites, and the timing and phase-in period appropriate for such a requirement.

§ 39.55 Must PVOs make copies of this rule available to passengers?

The NPRM would propose that PVOs maintain a copy of the rule on each vessel and at each U.S. terminal. The purpose of doing so would be to make the rule readily available for reference in case a question occurred about whether a PVO was acting consistently with its requirements.

§ 39.57 What is the general requirement for PVOs' communications with passengers?

This section states the general effective communication requirement for PVOs.

§ 39.61 What requirements must PVOs meet concerning the accessibility of terminals and other landside facilities?

This section applies to landside facilities that the PVO owns, leases, or controls in the U.S. If the PVO does not own, lease, or control a facility, then the requirements of this section do not apply to it (there may well be situations in which case a public entity or another private entity would own or control the facility, in which the other entity would have its own ADA and/or 504 obligations). In the case of a foreign facility, where ADA or section 504 rules would not apply in their own right, facility accessibility would then become a matter of the law of the country in which the facility is located. As noted in the discussion of the definition of ''facility,'' the Department seeks comment on whether a PVO covered by this rule should have accessibility obligations for a foreign facility that the PVO itself, as distinct from a separate foreign entity, owns, controls or leases.

The rule would make a familiar three-part breakdown of accessibility responsibilities for covered facilities. New facilities must meet accessibility standards from the beginning. In the case of an alteration, the altered portion of the existing facility would have to be brought up to the same accessibility standards applicable to new facilities. For existing facilities not otherwise being altered, the PVO would have to ensure that the facility is able to be used by a passenger with a disability to access the PVO's vessel. This could be achieved through a variety of means.

We note that there may be many situations in which a PVO shares accessibility responsibilities with another party. For example, a PVO may lease a portion of a port facility that is owned by a private or public entity. The PVO has responsibilities under this part; the other entity has responsibilities in its own right under Title II or III or the ADA or under section 504. In these cases, it would be up to the parties involved to allocate the responsibilities among themselves, so that they jointly ensure that accessibility requirements are met for the facility.

We also recognize that there can be instances in which a vessel berths at a floating dock, rather than literally at a landside facility. We would propose to treat such a floating dock in the same way as a landside facility for accessibility purposes, but we seek comment on whether any different treatment would be appropriate.

The Department seeks comment on whether it would be advisable to add specific provisions similar to §§ 37.41, 37.43, and 37.45 in the Department's existing ADA rule for the new construction and alteration of passenger vessel facilities, including provisions for alterations affecting areas containing a primary function that are subject to additional requirements for path of travel.

§ 39.63 What accommodations are required at terminals and other landside facilities for individuals with hearing or vision impairments?

This section specifies the effective communications that would have to be provided at terminals and other landside facilities to ensure that persons with sensory impairments would be able to receive the information otherwise available to the public,

concerning such subjects as ticketing, fares, and schedules. There would be a one-year phase-in period for this requirement, which would apply to existing as well as new facilities.

Subpart E—Accessibility of Vessels

This subpart would be reserved. It is a place-holder for the subsequent inclusion of passenger physical accessibility standards based on future Access Board guidelines. We note that, in connection with any rule incorporating the guidelines as DOT standards, DOT would designate an agency as the ''administrative authority'' to make certain determinations. We anticipate that the Department would designate the U.S. Coast Guard, with that agency's consent, as the administrative authority for many of these provisions, for foreign-flag as well as U.S. vessels. It is not necessary for this NPRM to propose this designation, since it logically would be part of a future NPRM proposing to adopt Access Board guidelines as DOT regulatory standards.

There are, however, some facility accessibility issues that may not be covered by future Access Board guidelines. For example, we seek comment on whether a provision should be added for accessibility of televisions and telephones on vessels, similar to what DOT has proposed for air carriers pursuant to the Air Carrier Access Act (see 71 FR 9285 (February 23, 2006)). The Access Board's guidelines will not address televisions and telephones in passenger rooms since they are not fixed elements.

It is our understanding that cruise ships typically provide televisions in passenger rooms and lounges. The Television Decoder Circuitry Act requires televisions with screens 13 inches or greater to contain built-in circuitry that receives and decodes closed captions. Cruise ships also typically provide telephones in passenger rooms. The Hearing Aid Compatibility Act and FCC rules require certain telephones to have volume controls and to be compatible with hearing aid technology. We seek information on whether cruise ships are currently providing televisions that are capable of receiving and decoding closed captions, and hearing aid compatible telephones with volume controls.

The Department does not intend to impose requirements in this area in the final rule resulting from this NPRM. Rather, we are seeking comment on this subject in order to determine whether, in a future NPRM that would propose adoption of the Access Board's final passenger vessel guidelines, to propose adding requirements concerning telephones and televisions as a DOT modification to the guidelines.

§ 39.81 What assistance must PVOs provide to passengers with a disability in getting to and from a passenger vessel?

This section does not deal with boarding a vessel, as such. Rather, it deals with how people get to the point of boarding a vessel, in terms of land transfers (*e.g.*, a bus between the airport and the terminal) and in actually moving through the terminal and boarding process up to the point of getting onto the vessel. PVOs would be responsible for making sure that these services were accessible to people with disabilities. The Department seeks comment on the extent, if any, to which such a requirement should apply to services provided outside the U.S. (*e.g.*, Grand Fenwick Cruise Lines itself provides, or contracts with a local bus company to provide, land transportation between the dock and points of interest in Barbados).

§ 39.83 What are PVOs' obligations for assisting passengers with a disability in getting on and off a passenger vessel?

The optimal solution for boarding a vessel involves a passenger with a disability being able to board independently (*e.g.*, via a level-entry ramp). The Department realizes that there will be many situations where this optimal solution does not exist. In these situations, the PVO is responsible for providing assistance that enables a passenger with a disability to get on or off the vessel. We note that a number of comments to the ANPRM represented that these services are already being provided in many instances, so we believe it is fair to suggest that this requirement would not create significant added burdens for PVOs. We also note that this provision pertains to normal boarding and disembarkation from a vessel: obviously, in the case of an ''abandon ship'' or other emergency situation, crew will use any means necessary to ensure that all passengers can safely evacuate.

On some occasions, it may be the custom on cruise ships or other vessels with overnight accommodations to temporarily store luggage in passageways in preparation for disembarkation at the end of a voyage. This may have the effect of preventing passengers with disabilities from using otherwise accessible routes. The Department seeks comment on the extent of this problem and what requirements in a final rule, if any, should be devised to address it.

The Department also seeks comment on whether a provision should be added that would require the use of accessible boarding systems, as described in § V412 of the Access Board's draft guidelines, for vessels with a certain passenger capacity at terminals that have a certain threshold level of annual embarkations, similar to the provision in DOT's Air Carrier Access rule. See 14 CFR 382.40(a). If so, what vessel passenger capacity and threshold level of annual embarkations should be used for requiring accessible boarding systems? Also, if a provision is added requiring accessible boarding systems at certain terminals, would it be advisable to require the PVO negotiate an agreement with the terminal operator to ensure the provision of accessible boarding systems, similar to the provision in DOT's Air Carrier Access Act and section 504 rules concerning boarding devices for commuter aircraft? See 14 CFR 382.40(b) and (c). Such an approach might also require amendment of the DOT 504 rule, 49 CFR Part 27.

§ 39.85 What services must PVOs provide to passengers with a disability on board a passenger vessel?

§ 39.87 What services are PVOs not required to provide to passengers with a disability on board a passenger vessel?

These sections concern services that PVOs would, or need not, provide to passengers with a disability. The services in question include movement about the vessel, but only with respect to portions of the vessel that are not accessible to passengers with a disability acting independently. To the extent that a PVO makes accessibility improvements to a vessel, the PVO can probably reduce its obligation to provide this service. When food is provided to passengers, PVO personnel would help passengers with a disability to a limited degree, including opening packages and identifying food, or explaining choices. Assistance in actual eating or other personal functions (*e.g.*, toileting or provision of medical equipment or supplies or assistive devices, beyond what is provided to all passengers) would not be required. Effective communication of on-board information would be required.

§ 39.89 What requirements apply to on-board safety briefings, information, and drills?

This section specifies that safety-related information must be communicated effectively to passengers with disabilities. This can include the

use of alternative formats and other auxiliary aids, where needed. Safety videos would have to be captioned or have an interpreter inset, in order to make the information available to persons with impaired hearing. Passengers with disabilities must be enabled to participate in evacuation and other safety drills, and information about evacuation and safety procedures would have to be kept in locations that passengers with disabilities can access and use. The Department seeks comment on whether any special accommodations would be needed to assist persons with cognitive disabilities.

§ 39.91 Must PVOs permit passengers with a disability to travel with service animals?

Many persons with disabilities rely on service animals to travel and conduct daily functions. This section specifies that PVOs would be required to permit service animals to accompany a passenger with a disability on board a vessel.

ICCL raised a number of service animal-related comments in its ANPRM response. We agree that foreign countries may limit entry of service animals; this should not affect the carriage of service animals on the vessel, however, since there is no requirement that the animal leave a cruise ship. Limitations on the ability of a service animal to leave the ship at a foreign port would be among the information that a cruise ship would provide to potential customers inquiring about an upcoming cruise. We also agree that PVOs would not be required to supply food for the animal. We seek comment on whether it is necessary to require PVOs to permit passengers with a disability to bring their own supplies of food for the service animal on board, without charge by the PVO. We also seek comment on whether PVOs should make refrigeration services available for service animal food.

ICCL commented that service animals typically share the cabin of the passengers who use them. The Department does not see an objection to this practice, though we seek comment on whether service animal users have had any problems in this regard.

We would view a limitation on the number of service animals that can be brought on a given voyage as tantamount to a number limit on passengers with a disability (i.e., as a number limit, which the proposed rule would prohibit). It is not self-evident that having a number of service animals on board a ship at a given time would be disruptive to ship operations, and vague concerns about adverse effects on the quality of the cruise experience for other passengers do not trump the nondiscrimination imperative of the ADA.

The Department is not proposing, at this time, to adopt ACAA service animal guidance for other transportation contexts, though the general principles behind this guidance apply across the board to all transportation and public accommodations applications of the ADA. The Department anticipates that, following the publication of a final rule on passenger vessels, it would work with stakeholders to develop more detailed guidance on this subject for passenger vessels. One issue the Department would likely address in such guidance is the extent to which PVOs could inquire as to the status of an animal as a service animal (*e.g.*, to prevent potential abuse from persons wanting to bring pets on board the vessel in ways inconsistent with the PVO's policy on pets).

One issue that arises, especially in the context of longer voyages, concerns service animal relief areas. The Department seeks comment what requirements, if any, should be included in a final rule concerning the provision of such areas. Should a final rule specify the number and location of such areas? We are glad to see from the ICCL comment that cruise operators typically provide relief areas.

ICCL, of course, represents the cruise industry, which frequently operates larger ships than other PVOs. The Department seeks comment on whether, with respect to any of the issues discussed in this section, there should be differing requirements for smaller vessels.

§ 39.93 What mobility aids and other assistive devices may passengers with a disability bring onto a passenger vessel?

§ 39.95 May PVOs limit their liability for the loss of or damage to mobility aids and other assistive devices?

These sections say simply that passengers should be permitted to bring and use their own mobility aids and other assistive devices on board a vessel. Once the devices are there, if the PVO is responsible for loss or damage, the PVO must compensate the owner, at the level of the original purchase price of the device. This measure of the level of compensation is derived from the Department's ACAA rule. We also seek comment on alternative methods of measuring the appropriate level of compensation, such as the depreciated present value of the device or the current replacement cost for the device.

§ 39.101 What are the requirements for providing Complaints Resolution Officials?

§ 39.103 What actions do CROs take on complaints?

The role of the Complaints Resolution Official (CRO) was first developed in the Department's 1990 ACAA regulations, and it has proved very helpful in the airline service context. As applied in the passenger vessel context, the CRO would be the PVO's expert in disability matters, knowledgeable about both the Department's regulations and the PVO's procedures, and able to assist passengers with disabilities and other PVO personnel in resolving issues. We believe that the CRO model can potentially be adapted very well to passenger vessels, with the intent of solving problems at the PVO level before they become matters for complaints to the Department or for litigation. These proposed provisions are modeled closely on the ACAA CRO provisions, and the Department seeks comment on what changes, if any, should be made in adapting this model to passenger vessels.

As in the airline context, the Department does not intend to mandate that CRO duties necessarily be full-time for a given employee. PVOs could, for example, train a number of different vessel and landside personnel to act as CROs, who might perform these functions as a collateral duty.

PVOs are likely to find it necessary to ensure that not only CROs, but also other personnel who interact with passengers, are trained sufficiently to be knowledgeable about the requirements of these rules and proficient in performing tasks related to passengers with disabilities. If they are not, it is likely that mistakes will be made that would potentially lead to noncompliance. The Department seeks comment on what, if any, training requirements should be included in a final rule.

One model that the Department could consider would resemble the training requirements in the ACAA rule. This model would involve training to proficiency concerning the requirements of this rule; the PVO's procedures with respect to the provision of transportation or use of a passenger vessel to passengers with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability; the use of the equipment used by the PVO and appropriate assistance procedures that safeguard the safety and dignity of passengers. Training on the ACAA model would also address such matters

as awareness and appropriate responses to passengers with a disability, including persons with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of individuals with a disability. Training on this model would cover contractor personnel as well as direct employees of PVOs. The Department seeks comment on whether such a requirement is advisable. We also seek comment on alternative training models that might be appropriate.

The Department also seeks comment on what the costs of training are likely to be. With respect to training, the Department does not currently have data concerning the number of PVO personnel who would have to be trained or the costs per person of such training. We seek data from the industry or other sources on this matter. We point out that, in the regulatory evaluation for the Department's 2004 NPRM to expand ACAA coverage to foreign air carriers, the Department projected annual training costs of around $9.5 million, for an industry that probably has an affected work force of that may be of roughly comparable size.

If there is such a training requirement, the Department seeks comment on what time frames or deadlines we should establish for completing the training. We also seek comment on what, if any, reporting or record retention requirements there should be concerning training. The Department does not, at this time, contemplate drafting a training curriculum or certifying the training of PVO personnel.

§ 39.105 How must PVOs respond to written complaints?

§ 39.107 Where may passengers file complaints?

These provisions are also based on current ACAA procedures, and we again seek comment on how they may best be adapted to the passenger vessel context. We also seek comment on whether this rule should include a reporting requirement, analogous to that of the ACAA rule (see 14 CFR 382.70). The purpose of such a requirement would be to help the Department identify types of issues that may need additional attention or particular PVOs that may be having problems in a particular area in which the Department could focus compliance efforts. Should such a requirement be limited to PVOs operating vessels over a certain size (*e.g.*, 50 passenger capacity)? Is a requirement similar to that of the ACAA a good idea in the vessel context, or is there a different or simpler approach we could take toward complaint reporting?

The final rule would include detailed information on addresses, phone numbers, etc. where complaints could be filed at DOT or DOJ. Obviously, a passenger dissatisfied with the PVO's resolution of a complaint could file a complaint with DOT or DOJ.

§ 39.109 What enforcement action may be taken under this part?

One important difference between the ACAA and the ADA is that, under the former, the Department has its own civil penalty enforcement authority and procedures. The Department does not have its own civil penalty authority under Titles II and III of the ADA, though the Department can conduct investigations and compliance reviews, collect data, find facts, come to conclusions, and refer matters to the Department of Justice for further action. DOJ can, of course, conduct enforcement proceedings on its own initiative.

Some PVOs receive Federal financial assistance, such as ferry operators who receive Federal Transit Administration (FTA) funding. Complaints concerning violations of this part by FTA-assisted ferry operators could be made to the FTA under the Department's ADA and 504 rules, and FTA could take enforcement action as provided in those rules.

Regulatory Analyses and Notices

The Department believes that this NPRM proposes a significant rule for Executive Order 12866 and DOT Regulatory Policies and Procedures purposes. While the NPRM does not impose significant costs, it addresses issues that are of considerable policy interest and would create requirements for entities that have not previously been subject to regulation. In a future rulemaking, the Department anticipates proposing, in conjunction with the Access Board, physical accessibility standards for vessels. This future rulemaking is expected to involve a more detailed regulatory evaluation with respect to the costs and benefits of its proposals, and it is also likely to be a significant rulemaking.

This NPRM focuses on prohibiting unnecessary practices that have discriminatory effects, such as extra charges and denials of transportation. Observing such prohibitions will not have significant cost impacts on PVOs. According to ANPRM comments, many PVOs already provide boarding assistance and other services to passengers with disabilities, so it is reasonable to assume that the passenger assistance provisions of the NPRM would not have large incremental costs. We seek comment and data on these matters, however. As a general matter, we seek comment on whether any fuller regulatory evaluation or analysis concerning the cost of the proposed provisions or other matters should be developed in connection with the final rule.

In the passenger vessel context as in other areas, the purpose of the ADA is to ensure nondiscrimination on the basis of disability and accessibility of travel on vessels for people with disabilities. Consequently, the most important benefits of this proposed rule are the largely non-quantifiable benefits of increased access and mobility for passengers with disabilities. These proposals would eliminate most policies of PVOs that would prevent or inhibit travel by persons with disabilities. The benefits that would accrue from removal of these barriers cannot be quantified, but could well include increased employment, business, recreational, and educational opportunities for travelers with disabilities, and quality of life enhancements associated with travel opportunities both within the U.S. and to foreign points.

Many persons with mobility impairments would be able to use passenger vessel services for the first time, and take advantage of an expanded range of travel opportunities. Even persons with disabilities who did not immediately choose to use a passenger vessel would know that barriers to such travel had been removed, and there is a psychological benefit to knowing one can travel if one wishes (what economists sometimes refer to as the ''option value'' of a regulatory provision).

Other beneficiaries of the proposed rule would include the travel companions, family, and friends of passengers with disabilities, since persons with disabilities would have greater and more varied travel opportunities. In addition, to the extent that changes in PVO practice make use of vessels easier for everyone, there would be indirect benefits for the general traveling public.

Because making passenger vessel transportation and services more readily available to passengers with disabilities and others traveling with them is likely to increase overall usage of vessels to some degree, it is likely that there will be some economic benefits to PVOs from compliance with the proposed rule. The Department seeks data that would assist in quantifying these potential benefits.

For the reasons stated above, the Department believes that compliance with the provisions proposed in this NPRM would have very low costs. That is, avoiding discriminatory policies and providing improved information to passengers with disabilities would not impose substantial costs on regulated parties generally. Therefore, the Department certifies that this NPRM, if adopted, would not have substantial economic effects on a significant number of small entities.

Nevertheless, the Department seeks comment on small entity-related issues, including whether there should be provisions that mitigate any burdens on small entities resulting from the proposed requirements. This information would include data on numbers of companies and vessels (domestic and foreign-flag) that would be affected. In addition, the Department seeks comment on what standard should be used for analyzing small entity impacts with respect to passenger vessel transportation. Small Business Administration (SBA) size standards in 13 CFR Part 121 establish a 500-employee standard (i.e., any entity with fewer employees would be regarded as a small business for SBA purposes). Is there any reason for using a different standard for purposes of this rulemaking (e.g., a PVO which does not operate any boats above a certain size)?

While there are some state and local entities (i.e. operators of state or municipal ferry systems) that would be covered by this proposed rule, most regulated parties would be private sector entities. As noted above, we do not expect significant economic impacts on any regulated parties from the proposed rule. Consequently, we have concluded that there are not sufficient Federalism impacts to warrant the preparation of a Federalism assessment. As a civil rights rule, this proposal is not subject to review with respect to unfunded mandates.

Issued this 5th day of January 2007, at Washington, DC.

Mary E. Peters,

Secretary of Transportation.

List of Subjects for 49 CFR Part 39

Individuals with disabilities, Mass transportation, Passenger vessels.

For the reasons set forth in the preamble, the Department of Transportation proposes to add a new 49 CFR Part 39, to read as follows:

PART 39—TRANSPORTATION FOR INDIVIDUALS WITH DISABILITIES: PASSENGER VESSELS

Subpart A—General

Subpart B—Nondiscrimination and Access to Services

Subpart C—Information for Passengers

Subpart D—Accessibility of Landside Facilities

Subpart E—Accessibility of Vessels [Reserved]

Subpart F—Assistance and Services to Passengers With Disabilities

Subpart G—Complaints and Enforcement Procedures

Authority: 42 U.S.C. 12101 through 12213; 49 U.S.C. 322.

Subpart A—General

§ 39.1 What is the purpose of this part?

The purpose of this part is to carry out the Americans with Disabilities Act with respect to passenger vessels. This rule prohibits owners and operators of passenger vessels, including U.S. and foreign-flag vessels, from discriminating against passengers on the basis of disability; requires vessels and related facilities to be accessible; and requires owners and operators of vessels to take steps to accommodate passengers with a disability.

§ 39.3 What do the terms in this rule mean?

In this regulation, the terms listed in this section have the following meanings:

''Accessible'' means, with respect to vessels and facilities, complying with the applicable accessibility requirements of this part.

''Alteration'' means a change to a passenger vessel or facility that affects or could affect the usability of the vessel, facility, or a portion thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls, bulkheads, and partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to propulsion, mechanical or electrical systems are not alterations unless they affect the usability of the passenger vessel or facility.

''The Act'' or ''ADA'' means the Americans with Disabilities Act of 1990 (Pub. L. 101–336, 104 Stat. 327, 42 U.S.C. 12101–12213 and 47 U.S.C. 225 and 611), as it may be amended from time to time.

''Assistive device'' means any piece of equipment that assists a passenger with a disability to cope with the effects of his or her disability. Such devices are intended to assist a passenger with a disability to hear, see, communicate, maneuver, or perform other functions of daily life, and may include medical devices and medications.

''Auxiliary aids and services'' includes:

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone headset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, closed and open captioning, text telephones (also known as telephone devices for the deaf, or TDDs), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; or

(4) Other similar services or actions.

''Coast Guard'' means the United States Coast Guard, an agency of the Department of Homeland Security.

''Commerce'' means travel, trade, transportation, or communication among the several states, between any foreign country or any territory and possession and any state, or between points in the same state but through another state or foreign country.

''Designated public transportation'' means transportation provided by a public entity by passenger vessel that provides the general public with general or special service, including charter service, on a regular and continuing basis.

''Department'' or ''DOT'' means the United States Department of Transportation, including the Office of the Secretary of Transportation, the Federal Transit Administration, the Federal Highway Administration, and the Maritime Administration.

''Direct threat'' means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

''Disability'' means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1) (The phrase ''physical or mental impairment'' means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine;

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(iii) The term ''physical or mental impairment'' includes, but is not limited to, such contagious or noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease, tuberculosis, drug addiction and alcoholism.

(iv) The phrase ''physical or mental impairment'' does not include homosexuality or bisexuality.

(2) The phrase ''major life activities'' means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) The phrase ''has a record of such an impairment'' means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase ''is regarded as having such an impairment'' means—

(i) Has a physical or mental impairment that does not substantially limit major life activities, but which is treated by a public or private entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public or private entity as having such an impairment.

(5) The term ''disability'' does not include—

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania;

(iii) Psychoactive substance abuse disorders resulting from the current illegal use of drugs.

''Existing vessel'' means a passenger vessel in existence at the time of the effective date of Subpart E of this part.

''Facility'' means terminals and any of landside facilities related to the use of passenger vessels in the United States (including its territories, possessions, and commonwealths) that a vessel owner or operator owns, leases, or controls (e.g., terminals, boarding ramps, walks, parking lots, ticketing areas, baggage drop-off and retrieval sites) normally used by passengers or other members of the public.

''Historic vessel'' means a craft, ship, or boat of historic significance that is made available to the public to tour. Such vessels are usually permanently moored to a facility, but may take the public on excursions in some cases.

''Individual with a disability'' means a person who has a disability, but does not include an individual who is currently engaging in the illegal use of drugs, when a public or private entity acts on the basis of such use.

''Operates'' includes, with respect to passenger vessel service, the provision of transportation or other service by a public or private entity itself or by a person under a contractual or other

arrangement or relationship with the entity.

''Passenger for hire'' means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

''Passenger vessel'' means any ship, boat, or other craft used as a conveyance on water, regardless of its means of propulsion, which accepts passengers for hire in connection with other revenue-generating activities. The term includes, but is not limited to, cruise ships, (whether U.S.- or foreign-flag); ferries; dinner, excursion, or sightseeing boats; boats chartered for fishing or other private recreational activities; and floating facilities used for gambling (whether tethered to a dock or mobile). The term does not include boats or other craft rented or leased to and operated solely by consumers.

''Passenger vessel owner or operator (PVO)'' means any public or private entity that owns or operates a passenger vessel. When the party that owns a passenger vessel is a different party from the party that operates the vessel, both are responsible for complying with the requirements of this part. The term includes entities that are primarily engaged in the business of transporting people (e.g., a cruise ship or excursion vessel) and entities that are not primarily engaged in transporting people (e.g., an amusement park operator which operates a passenger vessel to transport visitors from a parking area to the main part of the park or a hotel located on an island that operates a passenger vessel to shuttle guests from the mainland to the island).

''Private entity'' means any entity other than a public entity.

''Public entity'' means:

(1) Any state or local government;

(2) Any department, agency, special purpose district, or other instrumentality of one or more state or local governments (including an entity established to provide public ferry service).

''Purchase or lease,'' with respect to passenger vessels, means the time at which an entity is legally obligated to obtain a vessel, such as the time of contract execution.

''Qualified individual with a disability'' means an individual with a disability—

(1) Who, as a passenger (referred to as a ''passenger with a disability''),

(i) With respect to obtaining a ticket for transportation on passenger vessel offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain such a ticket;

(ii) With respect to obtaining transportation on or use of a passenger vessel, or other services or accommodations required by this part,

(A) Buys or otherwise validly obtains, or makes a good faith effort to obtain, a ticket for transportation on a passenger vessel and presents himself or herself at the vessel for the purpose of traveling on the voyage to which the ticket pertains; or

(B) With respect to use of a passenger vessel for which members of the public are not required to obtain tickets, presents himself or herself at the vessel for the purpose of using the vessel for the purpose for which it is made available to the public; and

(C) Meets reasonable, nondiscriminatory requirements applicable to all passengers; or

(2) Who, with respect to accompanying or meeting a traveler, using ground transportation, using facilities, or obtaining information about schedules, fares, reservations, or policies, takes those actions necessary to use facilities or services offered by the PVO to the general public, with reasonable accommodations, as needed, provided by the PVO.

''Secretary'' means the Secretary of Transportation or his/her designee.

''Section 504'' means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394, 29 U.S.C. 794), as amended.

''Service animal'' means any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, alerting persons with seizure disorders to the onset of a seizure, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

''Solicitation'' means the closing date for the submission of bids or offers in a procurement.

''Specified public transportation'' means transportation by passenger vessel provided by a private entity to the general public, with general or special service (including charter service) on a regular and continuing basis.

''Terminal'' means, with respect to passenger vessel transportation, the portion of a property located appurtenant to a dock, entry ramp, or other means of boarding a passenger vessel, including areas of interface with land transportation, passenger shelters, designated waiting areas, restrooms, concession areas, ticketing areas, and baggage drop-off and retrieval sites,to the extent that the PVO owns or leases the facility or exercises control over the selection, design, construction, or alteration of the property.

''United States'' or ''U.S.'' means the United States of America, including its territories, commonwealths, and possessions.

''Wheelchair'' means a mobility aid belonging to any class of wheeled devices, usable indoors, designed or adapted for and used by individuals with disabilities, whether operated manually or powered. A ''common wheelchair'' is such a device which does not exceed 30 inches in width and 48 inches in length measured two inches above the ground, and does not weigh more than 600 pounds when occupied.

''You'' means the owner or operator of a passenger vessel, unless the context requires a different meaning.

§ 39.5 To whom do the provisions of this part apply?

(a) Except as provided in paragraph (b) or (c) of this section, this part applies to you if you are the owner or operator of any passenger vessel, and you are:

(1) A public entity that provides designated public transportation;

(2) A private entity primarily engaged in the business of transporting people whose operations affect commerce that provides specified public transportation; or

(3) A private entity that owns, operates, or leases a place of public accommodation, and you are not primarily engaged in the business of transporting people.

(b) If you are the PVO of a foreign-flag passenger vessel, this part applies to you only if your vessel picks up passengers at a port in the United States, its territories, possessions, or commonwealths.

(c) [Reserved]

§ 39.7 What other authorities concerning nondiscrimination on the basis of disability apply to owners and operators of passenger vessels?

(a) If you receive Federal financial assistance from the Department of Transportation, compliance with applicable requirements of this part is a condition of compliance with section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance.

(b) You are also subject to ADA regulations of the Department of Justice (28 CFR Parts 35 or 36, as applicable). The provisions of this part shall be interpreted in a manner that will make them consistent with applicable

Department of Justice regulations. In any case of apparent inconsistency, the provisions of this part shall prevail.

§ 39.9 What may the owner or operator of a foreign-flag vessel do if it believes a provision of a foreign nation's law prohibits compliance with a provision of this part?

(a) If you are the PVO of a foreign-flag vessel, and you believe that a binding legal requirement of a foreign nation precludes you from complying with a provision of this part, you may request a waiver of the provision of this part.

(b) You must send such a waiver request to the Department.

(c) Your waiver request must include the following elements:

(1) A copy, in the English language, of the foreign law involved;

(2) A description of how the binding legal requirement of a foreign nation applies and how it precludes compliance with a provision of this part;

(3) A description of the alternative means you will use, if the waiver is granted, to effectively achieve the objective of the provision of this part subject to the waiver or, if applicable, a justification of why it would be impossible to achieve this objective in any way.

(d) If you submit such a waiver request in the 90-day period between the publication of this rule in the **Federal Register** and the effective date of this part, you may continue to apply the foreign legal requirement pending the Department's response to your waiver request.

(e) The Department may grant the waiver request if it determines that the binding legal requirement of a foreign nation applies, that it does preclude compliance with a provision of this part, and that the PVO has provided an effective alternative means of achieving the objective of the provision of this part subject to the waiver or clear and convincing evidence that it would be impossible to achieve this objective in any way.

§ 39.11 How may a PVO obtain approval to use an equivalent facilitation?

(a) Nothing in this part prevents the use of designs, products, or technologies as alternatives to those prescribed in this part, or alternative ways of providing accommodations and services to passengers with disabilities, provided they result in substantially equivalent or greater accessibility and usability.

(b) If, as a PVO or the manufacturer of a product or accessibility feature to be used in a passenger vessel, you wish to provide an equivalent facilitation in lieu of complying with a provision of this part, you may request approval to do so from the Department.

(c) You must use the following process to request approval of an equivalent facilitation:

(1) You must provide the following information with your request:

(i) Entity name, address, contact person, and telephone;

(ii) Specific provision(s) of this part or 49 CFR Part 38 concerning which the entity is seeking a determination of equivalent facilitation.

(iii) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vessel provided this part.

(2) Before you submit your request for equivalent facilitation, you must provide opportunities for public participation:

(i) You must consult in person, in writing, or by other appropriate means, with individuals with disabilities and groups representing them, as well as conduct outreach to passengers, particularly those with disabilities. This consultation must take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to the Department and members of the public.

(ii) You must make your proposed request available for public review and comment before the request is made final or transmitted to DOT. In making the request available for public review, you must ensure that it is available, upon request, in accessible formats.

(3) A determination whether to approve or disapprove your request, in whole or in part, will be made by the Department on a case-by-case basis. Determinations are made by the General Counsel, with the concurrence of the Assistant Secretary for Transportation Policy.

(i) An approval may be conditioned on specified actions that you agree to take.

(ii) The Department normally considers approving an equivalent facilitation only with respect to the specific situation concerning which the request is made. However, the Department may approve a request for equivalent facilitation with respect to a product or accessibility feature that the Department determines can provide an equivalent facilitation in a class of situations.

(4)(i) You must not cite an approval of a request for equivalent facilitation as indicating that a product or method constitutes equivalent facilitation in situations, or classes of situations, other than those to which the determination specifically pertains.

(ii) You must not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government or the Department of Transportation.

§ 39.13 When must PVOs comply with the provisions of this part?

You are required to comply with the requirements of this part beginning [insert effective date of the final rule], except as otherwise provided in individual sections of this part.

Subpart B—Nondiscrimination and Access to Services

§ 39.21 What is the general nondiscrimination requirement of this part?

(a) As a PVO, you must not do any of the following things, either directly or through a contractual, licensing, or other arrangement:

(1) You must not discriminate against any qualified individual with a disability, by reason of such disability, with respect to the individual's use of the vessel;

(2) You must not require a qualified individual with a disability to accept special services that the individual does not request;

(3) You must not exclude a qualified individual with a disability from or deny the person the benefit of any vessel transportation or related services that are available to other persons. This is true even if there are separate or different services available for individuals with a disability, except when specifically permitted by another section of this part; and

(4) You must not take any action against an individual (*e.g.*, refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the ADA.

(b) You must make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to your services, unless you can demonstrate that doing so would fundamentally alter the nature of the service, program, or activity, or would result in undue administrative or financial burdens.

§ 39.23 What are the requirements concerning contractors to owners and operators of passenger vessels?

(a) If, as a PVO, you enter into a contractual or other arrangement or relationship with any other party to provide services to or affecting

passengers, you must ensure that the other party meets the requirements of this part that would apply to you if you provided the service yourself.

(b) As a PVO, you must include an assurance of compliance with this part in your contracts with any contractors who provide to the public services that are subject to the requirements of this part. Noncompliance with this assurance is a material breach of the contract on the contractor's part.

(1) This assurance must commit the contractor to compliance with all applicable provisions of this part in activities performed on behalf of the PVO.

(2) The assurance must also commit the contractor to implementing directives issued by your Complaints Resolution Officials (CROs) under § 39.103.

(c) As a PVO, you must also include such an assurance of compliance in your contracts or agreements of appointment with U.S. travel agents. You are not required to include such an assurance in contracts with foreign travel agents.

(d) You remain responsible for your contractors' compliance with this part and with the assurances in your contracts with them.

(e) It is not a defense to an enforcement action under this part that your noncompliance resulted from action or inaction by a contractor.

§ 39.25 May PVOs limit the number of passengers with a disability on a passenger vessel?

As a PVO, you must not limit the number of passengers with a disability on your vessel.

§ 39.27 May PVOs refuse to provide transportation or use of a vessel on the basis of disability?

(a) As a PVO, you must not refuse to provide transportation or use of a vessel to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.

(b) You must not refuse to provide transportation or use of a vessel to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) You may refuse to provide transportation or use of a vessel to any passenger on the basis of safety only as provided in this paragraph:

(1) You can determine that there is a disability-related safety basis for refusing to provide transportation or use of a vessel to a passenger with a disability if you are able to demonstrate that the passenger poses a direct threat (see definition in § 39.3). In determining whether an individual poses a direct threat, you must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

(i) the nature, duration, and severity of the risk;

(ii) the probability that the potential harm to the health and safety of others will actually occur; and

(iii) whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(2) If you determine that the passenger does pose a direct threat, you must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others. For example, you must not refuse transportation or use of the vessel to the passenger if you can protect the health and safety of others by means short of a refusal (e.g., by implementing measures recommended by a physician in connection with a medical certificate under § 39.31 to prevent the transmission of a disease).

(d) If you refuse to provide transportation or use of a vessel to a passenger on a basis relating to the individual's disability, you must provide to the person a written statement of the reason for the refusal. This statement must include the specific basis for your opinion that the refusal meets the standards of paragraph (c) of this section or is otherwise specifically permitted by this part. You must provide this written statement to the person within 10 calendar days of the refusal of transportation or use of the vessel.

§ 39.29 May PVOs limit access to transportation or use of a vessel on the basis that a passenger has a communicable disease or other medical condition?

(a) You must not do any of the following things on the basis that a passenger has a communicable disease or infection, unless you determine that the passenger's condition poses a direct threat:

(1) Refuse to provide transportation or use of a vessel to the passenger;

(2) Delay the passenger's transportation or use of the vessel (e.g., require the passenger to take a later trip);

(3) Impose on the passenger any condition, restriction, or requirement not imposed on other passengers; or

(4) Require the passenger to provide a medical certificate.

(b) In assessing whether the passenger's condition poses a direct threat, you must consider the following factors:

(1) Whether U.S. or international public health authorities (e.g., the Centers for Disease Control, Public Health Service, World Health Organization) have determined that persons with a particular condition should not be permitted to travel;

(2) Whether an individual has a condition that is both readily transmissible by casual contact in the context of traveling on or using a passenger vessel and has serious health consequences;

(3) Whether applying the provisions of § 39.27 (c)(1) through (2) would otherwise lead to the conclusion that the person poses a direct threat to the health or safety of others.

(c) If your action under this section results in the postponement of a passenger's transportation or use of the vessel, you must permit the passenger to travel or use the vessel at a later time (up to one year from the date of the postponed trip or use of the vessel) at the cost that would have applied to the passenger's originally scheduled trip or use of the vessel without penalty or, at the passenger's discretion, provide a refund for any unused transportation or use of the vessel.

(d) If you take any action under this section that restricts a passenger's transportation or use of the vessel, you must, on the passenger's request, provide a written explanation within 10 days of the request.

§ 39.31 May PVOs require a passenger with a disability to provide a medical certificate?

(a) Except as provided in this section, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation.

(b)(1) You may require a medical certificate for a passenger with a disability—

(i) Who needs medical oxygen during his or her transportation or use of the vessel; or

(ii) Whose medical condition is such that there is reasonable doubt that the individual can complete the transportation or use of the vessel safely, without requiring extraordinary medical assistance.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing the transportation or use of the vessel safely, without requiring extraordinary medical assistance.

(c)(1) You may also require a medical certificate for a passenger if he or she

has a communicable disease or condition that poses a direct threat to the health or safety of others.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the disease or infection would not, under the present conditions in the particular passenger's case, be communicable to other persons during the normal course of the passenger's transportation or use of the vessel. The medical certificate must state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the normal course of the passenger's transportation on or use of the vessel. It must be dated within 10 days of the date of the trip or use of the vessel for which it is presented.

§ 39.33 May PVOs require a passenger with a disability to provide advance notice that he or she is traveling on or using a passenger vessel?

As a PVO, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on or using a passenger vessel.

§ 39.35 May PVOs require a passenger with a disability to provide advance notice in order to obtain certain specific services in connection with transportation on or use of a passenger vessel?

(a) Except as provided in paragraph (b) of this section, as a PVO you must not require a passenger with a disability to provide advance notice in order to obtain services or accommodations required by this part.

(b) (1) If 10 or more passengers with a disability seek to travel as a group, you may require 72 hours advance notice for the group's travel.

(2) If a passenger needs an accessible overnight cabin, you may require 72 hours advance notice for the accommodation. In order to ensure that such accommodations remain available for passengers with a disability, you must inform other passengers who reserve accessible cabins that, if a person with a disability requests the accommodation by 72 hours before the vessel's scheduled departure, you will move the other person to a different cabin.

(c) If the passenger with a disability provides the advance notice you require, consistent with this section, for a service, then you must provide the requested service or accommodation.

(d) Your reservation and other administrative systems must ensure that when passengers provide the advance notice that you require, consistent with this section, for services and accommodations, the notice is communicated, clearly and on time, to the people responsible for providing the requested service or accommodation.

(e) If a passenger does not meet advance notice or check-in requirements you establish consistent with this section, you must still provide the service or accommodation if you can do so by making reasonable efforts, without delaying the trip.

§ 39.37 May PVOs require a passenger with a disability to travel with a personal or safety assistant?

(a) Except as provided in paragraph (b) of this section, you must not require that a passenger with a disability travel with another person as a condition of being provided transportation on or use of a passenger vessel.

(b) You may require a passenger with a disability in one of the following categories to travel with a safety assistant as a condition of being provided transportation or use of a passenger vessel, if you determine that a safety assistant is essential for safety:

(1) A passenger who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from vessel personnel.

(2) A passenger with a mobility impairment so severe that the person is unable to assist in his or her own evacuation from the vessel in an emergency;

(3) A passenger who has both severe hearing and severe vision impairments, if the person cannot establish some means of communication with vessel personnel for purposes of safety information and instructions.

(c) You may require a passenger with a disability to have a personal assistant if the passenger is unable to perform personal tasks (e.g., eating, dressing, toileting) without such an assistant, and the duration of the transportation or use of the vessel is long enough that the passenger must perform one or more of these tasks while on the vessel.

(d) If you determine that a person meeting the criteria of paragraph (b) or (c) of this section must travel with a safety or personal assistant, contrary to the individual's self-assessment that he or she is capable of traveling independently, you must not charge for the transportation of the safety assistant. You may also designate a member of your staff or a passenger volunteer to perform the personal or safety assistant role in such a case, rather than carrying at no charge a person designated by the passenger. In a case in which a passenger voluntarily chooses to travel with a personal assistant or a safety assistant that you do not require, you may charge for the transportation of that person.

§ 39.39 May PVOs impose special charges on passengers with a disability for providing services and accommodations required by this rule?

(a) As a PVO, you must not charge higher fares, surcharges, or other fees to passengers with a disability that are not imposed on other passengers for transportation or use of the vessel.

(b) If the accommodations on a vessel that are accessible to passengers with a disability are in a type or class of service or part of a vessel that are more expensive than the type or class of service or past of[A3] a vessel that the passenger requests, you must provide the accessible accommodation at the price of the type or class of service or facility that the passenger requests.

(c) You must not impose special or extra charges for providing facilities, equipment, accommodations, or services that this rule requires to be provided to passengers with a disability.

§ 39.41 May PVOs impose other restrictions on passengers with a disability that they do not impose on other passengers?

(a) As a PVO, you must not subject passengers with a disability to restrictions that do not apply to other passengers, except as otherwise explicitly permitted in this part.

(b) Restrictions you must not impose on passengers with a disability include, but are not limited to, the following:

(1) Restricting passengers' movement within the vessel or a terminal;

(2) Requiring passengers to remain in a holding area or other location in order to receive transportation, services, or accommodations;

(3) Requiring passengers to wear badges or other special identification; or

(4) Requiring ambulatory passengers, including but not limited to blind or visually impaired passengers, to use a wheelchair in order to receive assistance required by this part or otherwise offered to the passenger.

§ 39.43 May PVOs require passengers with a disability to sign waivers or releases?

(a) As a PVO, you must not require passengers with a disability to sign any release or waiver of liability in order to receive transportation or use of a vessel or to receive services or accommodations for a disability.

(b) You must not require passengers with a disability to sign waivers of liability for damage to or loss of wheelchairs or other assistive devices.

Subpart C—Information for Passengers

§ 39.51 What information must PVOs provide to passengers with a disability?

As a PVO, you must provide the following information to passengers who self-identify as having a disability or who request disability-related information, or persons making inquiries on the behalf of such persons. The information you provide must, to the maximum extent feasible, be specific to the vessel a person is seeking to travel on or use.

(a) The availability of accessible facilities on the vessel; including, but not limited to, means of boarding the vessel, lavatories, staterooms, decks, dining, and recreational facilities;

(b) Any limitations on the ability of the vessel to accommodate passengers with a disability;

(c) Any limitations on the accessibility of boarding and disembarking at ports at which the vessel will call and services or tours ancillary to the transportation provided by the vessel concerning which the PVO makes arrangements available to passengers.

§ 39.53 Must information and reservation services of PVOs be accessible to individuals with hearing or vision impairments?

This section applies to information and reservation services made available to persons in the United States.

(a) If, as a PVO, you provide telephone reservation or information service to the public, you must make this service available to individuals who are deaf or hard-of-hearing through use of a text telephone (TTY).

(1) You must make TTY service available during the same hours as telephone service for the general public.

(2) Your response time to TTY calls must be equivalent to your response time for your telephone service to the general public.

(3) You must meet this requirement by [date one year from the effective date of the final rule].

(b) If, as a PVO, you provide written (i.e., hard copy) information to the public, you must ensure that this information is able to be communicated effectively, on request, to persons with vision impairments. You must provide this information in the same languages(s) in which it is available to the general public.

§ 39.55 Must PVOs make copies of this rule available to passengers?

As a PVO, you must keep a current copy of this part on each vessel and each U.S. port or terminal you serve and make it available to passengers on request.

§ 39.57 What is the general requirement for PVOs' communications with passengers?

PVOs must ensure the effective communication to passengers with disabilities of all information provided to passengers, through the use of auxiliary aids where needed.

Subpart D—Accessibility of Landside Facilities

§ 39.61 What requirements must PVOs meet concerning the accessibility of terminals and other landside facilities?

As a PVO, you must comply with the following requirements with respect to all terminal and other landside facilities you own, lease, or control in the United States (including its territories, possessions, and commonwealths):

(a) With respect to new facilities, you must do the following:

(1) You must ensure that terminal facilities are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. You are deemed to comply with this obligation if the facilities meet requirements of 49 CFR Part 37, § 37.9, and the standards referenced in that section.

(2) You must ensure that there is an accessible path between the terminal or other passenger waiting area and the boarding ramp or device used for the vessel. An accessible route is one meeting the requirements of the standards referenced in 49 CFR Part 37, § 37.9.

(b) When a facility is altered, the altered portion must meet the same standards that would apply to a new facility.

(c) With respect to an existing facility, you must ensure that passengers with a disability can use the facility to gain access to your vessel. You may meet this obligation through any combination of facility accessibility, equipment, the assistance of personnel, or other appropriate means consistent with the safety and dignity of passengers with a disability. With respect to making structural modifications in existing facilities, you have the same obligations as any other public or private entity under the applicable provisions of DOT ADA regulations.

(d) Where you share responsibility for ensuring accessibility of a facility with another entity, you and the other entity are jointly and severally responsible for meeting applicable accessibility requirements.

§ 39.63 What accommodations are required at terminals and other landside facilities for individuals with hearing or vision impairments?

(a) As a PVO, the information you provide to the general public at terminals and other landside facilities must be effectively communicated to individuals with impaired vision and deaf and hard-of-hearing individuals. To the extent that this information is not available to these individuals through signage and/or verbal public address announcements, your personnel must promptly provide the information to such individuals on their request, in languages in which the information is provided to the general public.

(b) The types of information you must make available include, but are not limited to, information concerning ticketing, fares, schedules and delays, and the checking and claiming of luggage.

(c) You must meet the requirements of this section by [date one year from effective date of the final rule].

Subpart E—Accessibility of Vessels [Reserved]

Subpart F—Assistance and Services to Passengers With Disabilities

§ 39.81 What assistance must PVOs provide to passengers with a disability in getting to and from a passenger vessel?

(a) As a PVO, if you provide, contract for, or otherwise arrange for transportation to and from a passenger vessel (e.g., a bus transfer from an airport to a vessel terminal), you must ensure that the transfer service is accessible to and usable by individuals with disabilities, as required by this part.

(b) You must also provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance (or a vehicle drop-off point adjacent to the entrance) and the place where people get on or off the passenger vessel. This requirement includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim. It also includes a brief stop upon request at an accessible restroom or nearby takeout food vendor.

§ 39.83 What are PVOs' obligations for assisting passengers with a disability in getting on and off a passenger vessel?

(a) If a passenger with a disability can readily get on or off a passenger vessel without assistance, you are not required to provide such assistance to the passenger. You must not require such a passenger with a disability to accept

assistance from you in getting on or off the vessel.

(b) With respect to a passenger with a disability who is not able to get on or off a passenger vessel without assistance, you must promptly provide assistance that ensures that the passenger can get on or off the vessel.

(c) When you have to provide assistance to a passenger with a disability in getting on or off a passenger vessel, you may use any available means to which the passenger consents (e.g., lifts, ramps, boarding chairs, assistance by tour personnel). However, you must never use hand-carrying (i.e., directly picking up the passenger's body in the arms of one or more personnel) to effect a level change the passenger needs to get on or off the vessel, even if the passenger consents.

§ 39.85 What services must PVOs provide to passengers with a disability on board a passenger vessel?

As a PVO, you must provide services on board the vessel as requested by or on behalf of passengers with a disability, or when offered by PVO personnel and accepted by passengers with a disability, as follows:

(a) Assistance in moving about the vessel, with respect to any spaces that are not readily accessible and usable to the passenger.

(b) If food is provided to passengers on the vessel, assistance in preparation for eating, such as opening packages and identifying food;

(c) Effective communication with passengers who have vision impairments or who are deaf or hard-of-hearing, so that these passengers have timely access to information the PVO provides to other passengers (e.g., weather, on-board services, delays).

§ 39.87 What services are PVOs not required to provide to passengers with a disability on board a passenger vessel?

As a PVO, you are not required to provide extensive special assistance to passengers with a disability. For purposes of this section, extensive special assistance includes the following activities:

(a) Assistance in actual eating;

(b) Assistance within a restroom or assistance elsewhere on the vessel with elimination functions; and

(c) Provision of medical equipment or services, or assistive devices, except to the extent provided to all passengers.

§ 39.89 What requirements apply to on-board safety briefings, information, and drills?

As a PVO, you must comply with the following requirements with respect to safety briefings, information, or drills provided to passengers:

(a) You must provide the briefings or other safety-related information through means that effectively communicate their content to persons with vision or hearing impairments. This includes providing written materials in alternative formats that persons with vision impairments can use.

(b) You must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that you impose such a requirement on all passengers. You must not take any action adverse to a qualified individual with a disability on the basis that the person has not ''accepted'' the briefing.

(c) As a PVO, if you present on-board safety briefings to passengers on video screens, you must ensure that the safety-video presentation is accessible to passengers with impaired hearing (e.g., through use of open captioning or placement of a sign language interpreter in the video).

(1) You may use an equivalent non-video alternative to this requirement only if neither open captioning nor a sign language interpreter inset can be placed in the video presentation without so interfering with it as to render it ineffective or it would not be large enough to be readable.

(2) You may implement the requirements of this section by substituting captioned or interpreted video materials for uncaptioned/uninterpreted video materials as the uncaptioned/uninterpreted materials are replaced in the normal course of the carrier's operations.

(d) You must provide whatever assistance is necessary to enable passengers with disabilities to participate fully in safety or emergency evacuation drills provided to all passengers.

(e) You must maintain evacuation programs, information, and equipment in locations that passengers can readily access and use.

§ 39.91 Must PVOs permit passengers with a disability to travel with service animals?

(a) As a PVO, you must permit service animals to accompany passengers with a disability.

(b) You must permit the service animal to accompany the passenger in all locations that passengers can use on a vessel.

(c) You must accept the following as evidence that an animal is a service animal: identification cards, other written documentation, presence of harnesses, tags, and/or the credible verbal assurances of a passenger with a disability using the animal.

(d) If you decide not to accept an animal as a service animal, you must explain the reason for your decision to the passenger and document it in writing. A copy of the explanation must be provided to the passenger within 10 calendar days of the incident.

§ 39.93 What mobility aids and other assistive devices may passengers with a disability bring onto a passenger vessel?

(a) As a PVO, you must permit passengers with a disability to bring the following kinds of items onto a passenger vessel, consistent with Coast Guard requirements concerning security, safety, and hazardous materials:

(1) Wheelchairs and other mobility devices, including, but not limited to, manual wheelchairs and battery-powered wheelchairs;

(2) Other mobility aids, such as canes (including those used by persons with impaired vision), crutches, and walkers;

(3) Other assistive devices (e.g., vision-enhancing devices, personal ventilators, portable oxygen concentrators, and respirators that use non-spillable batteries);

(4) Personal oxygen supplies.

(b) You must permit passengers with a disability to use their mobility aids and assistive devices on board the vessel in all locations passengers access.

(c) You are not required to permit passengers with a disability to bring these items into lifeboats or other survival craft, in the context of an emergency evacuation of the vessel.

§ 39.95 May PVOs limit their liability for loss of or damage to mobility aids or other assistive devices?

Consistent with any applicable requirements of international law, you must not apply any liability limits with respect to loss of or damage to wheelchairs or other assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device shall be the original purchase price of the device.

Subpart G—Complaints and Enforcement Procedures

§ 39.101 What are the requirements for providing Complaints Resolution Officials?

(a) As a PVO, you must designate one or more Complaints Resolution Officials (CROs).

(b) You must make a CRO available on each vessel and each terminal you serve. You must make CRO service available in the language(s) in which you make your

other services available to the general public.

(c) You may make the CRO available in person or via telephone, at no cost to the passenger. If a telephone link to the CRO is used, TTY service must be available so that persons with hearing impairments may readily communicate with the CRO.

(d) You must make passengers with a disability aware of the availability of a CRO and how to contact the CRO in the following circumstances:

(1) In any situation in which any person complains or raises a concern with your personnel about discrimination, accommodations, or services with respect to passengers with a disability, and your personnel do not immediately resolve the issue to the customer's satisfaction or provide a requested accommodation, your personnel must immediately inform the passenger of the right to contact a CRO and the location and/or phone number of the CRO available on the vessel or at the terminal. Your personnel must provide this information to the passenger in a format he or she can use.

(2) Your reservation agents, contractors, and web sites must provide information equivalent to that required by paragraph (d)(1) of this section to passengers with a disability using those services.

(e) Each CRO must be thoroughly familiar with the requirements of this part and the carrier's procedures with respect to passengers with a disability. The CRO is intended to be the PVO's ''expert'' in compliance with the requirements of this part.

(f) You must ensure that each of your CROs has the authority to make dispositive resolution of complaints on behalf of the PVO. This means that the CRO must have the power to overrule the decision of any other personnel, except that the CRO is not required to be given authority to countermand a decision of the master of a vessel with respect to safety matters.

§ 39.103 What actions do CROs take on complaints?

When a complaint is made directly to a CRO (e.g., orally, by phone, TTY) the CRO must promptly take dispositive action as follows:

(a) If the complaint is made to a CRO before the action or proposed action of PVO personnel has resulted in a violation of a provision of this part, the CRO must take, or direct other PVO personnel to take, whatever action is necessary to ensure compliance with this part.

(b) If an alleged violation of a provision of this part has already occurred, and the CRO agrees that a violation has occurred, the CRO must provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the PVO proposes to take in response to the violation.

(c) If the CRO determines that the PVO's action does not violate a provision of this part, the CRO must provide to the complainant a written statement including a summary of the facts and the reasons, under this part, for the determination.

(d) The statements required to be provided under this section must inform the complainant of his or her right complain to the Department of Transportation and/or Department of Justice. The CRO must provide the statement in person to the complainant in person if possible; otherwise, it must be transmitted to the complainant within 10 calendar days of the complaint.

§ 39.105 How must PVOs respond to written complaints?

(a) As a PVO, you must respond to written complaints received by any means (e.g., letter, fax, e-mail, electronic instant message) concerning matters covered by this part.

(b) A passenger making a written complaint, must state whether he or she had contacted a CRO in the matter, provide the name of the CRO and the date of the contact, if available, and enclose any written response received from the CRO.

(c) As a PVO, you are not required to respond to a complaint postmarked or transmitted more than 45 days after the date of the incident, except for complaints referred to you by the Department of Transportation.

(d) As a PVO, you must make a dispositive written response to a written disability complaint within 30 days of its receipt. The response must specifically admit or deny that a violation of this part has occurred.

(1) If you admit that a violation has occurred, you must provide to the complainant a written statement setting forth a summary of the facts and the steps, if any, you will take in response to the violation.

(2) If you deny that a violation has occurred, your response must include a summary of the facts and your reasons, under this part, for the determination.

(3) Your response must also inform the complainant of his or her right to pursue DOT and/or DOJ enforcement action under this part.

§ 39.107 Where may passengers file complaints?

(a) Any person believing that a PVO has violated any provision of this part may contact the following office for assistance: U.S. Department of Transportation, Departmental Office of Civil Rights, 400 Seventh Street, SW, Washington, DC 20590.

(b) Any person believing that a PVO has violated any provision of this part may also file a complaint with the Disability Rights Section, Civil Rights Division, Department of Justice.

(c) Any person believing that a PVO that receives Federal financial assistance has violated any provision of this part may also file a complaint with the civil rights office of the concerned DOT operating administration.

(d) Requests for assistance and complaints must be filed no later than 180 days after the incident, or after the end of a continuing violation, to ensure that they can be investigated.

§ 39.109 What enforcement action may be taken under this part?

(a) The Department of Transportation may investigate complaints and conduct reviews or other inquiries into the compliance of PVOs with this part.

(b) The Department may issue and make public findings and recommendations concerning any matter relating to the compliance of PVOs with this part.

(c) The Department may refer any matter concerning the compliance of PVOs with this part to the Department of Justice for enforcement action.

(d) The Department of Justice may conduct investigations and take enforcement action concerning compliance with the provisions of this part on its own initiative at any time.

(e) With respect to a PVO that receives DOT financial assistance, the Department may take enforcement action as provided in 49 CFR Parts 27 and 37.

[FR Doc. E7–362 Filed 1–22–07; 8:45 am]

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Notices

Federal Register
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Tuesday, January 23, 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

Food Safety and Inspection Service

[Docket No. FSIS–2006–0043]

Notice of Request for a Revision of an Information Collection (Pathogen Reduction/Hazard Analysis and Critical Control Point)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces that the Food Safety and Inspection Service (FSIS) intends to request a revision of an approved information collection on Pathogen Reduction and Hazard Analysis and Critical Control Point (HACCP) Systems.

DATES: Comments on this notice must be received on or before March 26, 2007.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- *Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- *Electronic mail: fsis.regulationscomments@fsis.usda.gov.*
- *Federal eRulemaking Portal:* This Web page provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulation.gov* and in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select FDMS Docket Number FSIS–2006–0043 to submit or view public comments and to view supporting and related materials available electronically.

All submissions received by mail or electronic mail must include the Agency name and docket number. All comments submitted in response to this document, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments will also be posted on the Agency's Web page at *http://www.fsis.usda.gov/regulations_&_policies/regulations_directives_&_notices/index.asp.*

FOR ADDITIONAL INFORMATION: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th 7Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Pathogen Reduction/HACCP Systems.

OMB Number: 0583–0103.

Expiration Date: 6/30/2007.

Type of Request: Revision of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes provide that FSIS is to protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting a revision to an approved information collection addressing paperwork and recordkeeping requirements regarding Pathogen Reduction and HACCP systems. The Agency is revising the Pathogen Reduction/HACCP systems information collection based on its most recent plant data, which support a finding of fewer total burden hours than there is in the currently approved information collection.

FSIS has established requirements applicable to meat and poultry establishments designed to reduce the occurrence and numbers of pathogenic microorganisms on meat and poultry products, reduce the incidence of foodborne illness associated with the consumption of those products, and provide a new framework for modernization of the meat and poultry inspection system. The regulations (1) require that each establishment develop and implement written sanitation standard operating procedures (Sanitation SOPs); (2) require regular microbial testing for generic *E. coli* by slaughter establishments to verify the adequacy of the establishment's process controls for the prevention and removal of fecal contamination and associated bacteria; (3) establish pathogen reduction performance standards for *Salmonella* that slaughter establishments and establishments producing raw ground products must meet; and (4) require that all meat and poultry establishments develop and implement a system of preventive controls designed to improve the safety of their products, known as HACCP.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of .116 hours to comply with the Pathogen Reduction and HACCP systems information collection.

Respondents: Meat and poultry establishments.

Estimated No. of Respondents: 7,721.

Estimated No. of Annual Responses per Respondent: 7,244.

Estimated Total Annual Burden on Respondents: 6,505,024 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5627, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS web page located at *http://www.fsis.usda.gov/regulations/2007_Notices_Index/index.asp*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on January 17, 2007.

Barbara J. Masters,

Administrator.

[FR Doc. E7–949 Filed 1–22–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting, Posting, and Deposting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces several actions related to posting of stockyards; when required we physically post a sign providing public notice that the stockyard is subject to provisions of the Packers and Stockyards Act. We propose to post 10 stockyards. We have received information that these stockyards meet the definition of a stockyard under the Packers and Stockyards Act and, therefore, need to be posted. Posted stockyards are subject to the provisions of the Packers and Stockyards Act. In addition, we have posted 12 stockyards that were previously announced as proposed postings. We determined that the stockyards meet the definition of a stockyard under the Packers and Stockyards Act and, therefore, have been posted. Three other facilities, for which notices of proposed posting were announced, were not posted because they no longer meet the definition of a stockyard. These facilities were either abandoned or underwent a change so they no longer function as a stockyard. We are also deposting two stockyards. These facilities can no longer be used as stockyards and, therefore, are no longer required to be posted.

DATES: For the proposed posting of stockyards, we will consider comments that we receive by February 7, 2007.

For the deposted stockyards, the deposting is effective on January 23, 2007.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *E-Mail:* Send comments via electronic mail to *comments.gipsa@usda.gov.*
- *Mail:* Send hardcopy written comments to H. Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Fax: Send comments by facsimile transmission to:* (202) 690–2755.
- *Hand Delivery or Courier: Deliver comments to:* H. Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921, (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term ''stockyard'' as follows:

> * * * any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

Section 302 (b) of the P&S Act requires the Secretary to determine which stockyards meet this definition, and to notify the owner of the stockyard and the public of that determination by posting a notice in each designated stockyard. After giving notice to the stockyard owner and to the public, the stockyard will be subject to the provisions of Title III of the P&S Act (7 U.S.C. 201–203 and 205–217a) until the Secretary deposts the stockyard by public notice.

This document notifies the stockyard owners and the public that the following 10 stockyards meet the definition of a stockyard and that we propose to designate these stockyards as posted stockyards.

Facility number	Stockyard name and location
AL–193	Tim White d.b.a. 4/W Horse Sales, Huntsville, Alabama.
AL–194	Coffee County Stockyard, LLC, New Brockton, Alabama.
AR–178	B–B Livestock Auction & Sales, Inc., Beebe, Arkansas.
AR–179	Buddy Guyot d.b.a. Beebe Livestock Auction, Beebe, Arkansas.
GA–230	Frank Ray Harris d.b.a. Harris Goat 'N Sheep Auction, Taylorsville, Georgia.
KY–180	Southern Kentucky Livestock Market, Inc., Rockfield, Kentucky.

Facility number	Stockyard name and location
KY–181	Wigwam Livestock Market, Inc., Horse Cave, Kentucky.
MO–287	Springfield Livestock Marketing Center, LLC, Springfield, Missouri.
PA–162	John H. Wetmore, Honesdale, Pennsylvania.
SD–171	SFRL, Inc., d.b.a. Sioux Falls Regional Livestock, Worthing, South Dakota.

This document also notifies the public that the following stockyards meet the definition of a stockyard and that we have posted the stockyards. We published notices proposing to post these 12 stockyards on August 25, 2003, July 6, 2004, July 25, 2005, and April 5, 2006 (68 FR 51005, 69 FR 40597–40598, 70 FR 42532–42533, and 71 FR 17071–17072, respectively). We received no comments in response to these proposed posting notices. To post a stockyard, we assign the stockyard a facility number, notify the owner of the stockyard facility, and send notices to the owner of the stockyard to post on display in public areas of the stockyard. The date of posting is the date on which the posting notices are physically displayed.

Facility number	Stockyard name and location	Date of posting
FL–139	Arcadia Stockyard, Arcadia, Florida	May 3, 2006.
GA–228	Triple R Ranch, Lavonia, Georgia	June 27, 2006.
GA–229	Red Barn Livestock Auction, Inc., Sylvester, Georgia	August 22, 2006.
LA–147	Hays Brothers Livestock Market, LLC, Arcadia, Louisiana	May 11, 2006
MO–286	Miller County Regional Stockyards, Eldon, Missouri	May 23, 2006.
NC–177	Cliffside Horse Auction, Mooresboro, North Carolina	October 6, 2006.
NY–174	Woods Auction Service, Cincinnatus, New York	May 4, 2006.
PA–160	Beach's Dairy Auction, Martinsburg, Pennsylvania	May 30, 2006.
PA–161	Jonas Lee Fisher & Jacob B. Fisher d.b.a. Fisher's Quality Dairy Sales, Ronks, Pennsylvania.	October 19, 2006.
TX–348	Grimes County Stockyards, LLC, Navasota, Texas	May 8, 2006.
WI–148	Milwaukee Stockyards, LLC, Reeseville, Wisconsin	July 24, 2006.
WI–149	Horst Stables, LLC, Thorp, Wisconsin	July 15, 2006.

This document also notifies the public that the following facilities, which previously met the definition of a stockyard, were not posted. We published notices proposing to post these three stockyards on July 25, 2005, and April 5, 2006 (70 FR 42532–42533 and 71 FR 17071–17072, respectively). The facilities were not posted because they no longer meet the definition of a stockyard. The facilities were either abandoned or underwent a change so that they no longer function as a stockyard.

Facility number	Stockyard name and location
AR–177	Morrilton Horse Sale, Morrilton, Arkansas.
GA–227	Friendship Farm Livestock Auction, Bartow, Georgia.
IN–168	Hardinsburg Horse Sales, Hardinsburg, Indiana.

Additionally, this document notifies the public that the following two stockyards no longer meet the definition of a stockyard and that we are deposting them. We depost stockyards when the facility can no longer be used as a stockyard. Some of the reasons a facility can no longer be used as a stockyard include: the market agency has moved and the posted facility is abandoned, the facility has been torn down or otherwise destroyed, such as by fire, the facility is dilapidated beyond repair, or the facility has been converted and its function changed.

Facility number	Stockyard name and location	Date posted
ID–118	Rexburg Livestock Company, Rexburg, Idaho	April 3, 1950.
WA–112	Marysville Livestock Auction, Inc., Marysville, Washington	February 27, 1962.

Effective Date

These depostings are effective upon publication in the **Federal Register** because they relieve a restriction and, therefore, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure.

Authority: 7 U.S.C. 202.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 07–257 Filed 1–22–07; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Data Sharing Activity

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Notice and request for public comment.

SUMMARY: The Bureau of Economic Analysis (BEA) proposes to provide to the Bureau of the Census (Census Bureau) data collected from several surveys that it conducts on U.S. direct investment abroad, foreign direct investment in the United States, and U.S. international services transactions for statistical purposes exclusively. In accordance with the requirement of Section 524(d) of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), we are providing the opportunity for public comment on this data-sharing action.

The data provided to the Census Bureau will be used for two purposes:

(1) Data from BEA surveys of U.S direct investment abroad and foreign direct investment in the United States will be linked with data from the Survey of Industrial Research and Development conducted by the Census Bureau under a joint partnership agreement with the National Science Foundation (NSF). The linked data will be used to produce aggregate tabulations for the NSF, which will provide an integrated data set on

R&D performance and funding with domestic and foreign ownership detail. BEA will use the linked data to augment its existing R&D-related data, identify data quality issues arising from reporting differences in BEA and Census Bureau surveys, and improve its survey sample frames. The Census Bureau will identify unmatched companies on BEA files that conduct R&D activities and add them to the R&D survey to improve the survey's sample. The NSF will be provided non-confidential aggregate data (public use) and reports that have cleared BEA and Census Bureau disclosure review. Disclosure review is a process conducted to verify that the data to be released do not reveal any confidential information.

(2) BEA will also provide data to the Census Bureau in order to link records from its surveys of U.S. international services transactions, U.S. direct investment abroad, and foreign direct investment in the United States with information from the Census Bureau's Business Register and with data from the 2002 Economic Census. This linked information will be used by the BEA to evaluate the feasibility of developing state-level estimates of service exports.

DATES: Written comments must be submitted on or before March 26, 2007.

ADDRESSES: Please direct all written comments on this proposed program to the Director, Bureau of Economic Analysis (BE–1), Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this proposed program should be directed to Ned G. Howenstine, Chief, Research Branch, International Investment Division, Bureau of Economic Analysis (BE–50), Washington, DC 20230, by phone (202) 606–9845 or by fax (202) 606–5318.

SUPPLEMENTARY INFORMATION:

Background

CIPSEA (Pub. L. 107–347, Title V) and the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 United States Code (U.S.C.) 3101-3108) allow BEA and the Census Bureau to share certain business data for exclusively statistical purposes. Section 524(d) of the CIPSEA requires a **Federal Register** notice announcing the intent to share data (allowing 60 days for public comment). Section 524(d) also requires us to provide information about the terms of the agreement for data sharing. For purposes of this notice, BEA has decided to group these terms by three categories. The categories are:

- Shared data.
- Statistical purposes for the shared data.
- Data access and confidentiality.

Shared Data

BEA proposes to provide the Census Bureau with data from its surveys of U.S. direct investment abroad, foreign direct investment in the United States, and U.S. international services transactions. The agreement also calls for the Census Bureau to share data collected from the Survey of Industrial Research and Development, the 2002 Economic Census, and its Business Register with BEA. The Census Bureau will issue a separate notice addressing this issue. The shared BEA and Census Bureau data will be used for statistical purposes only.

Statistical Purposes for the Shared Data

Data collected in BEA's surveys of direct investment are used to develop estimates of the financing and operations of U.S. parent companies, their foreign affiliates, and U.S. affiliates of foreign companies, and estimates of transactions and positions between parents and affiliates. Data collected in BEA's surveys of U.S. international services transactions are used to develop estimates of services transactions between U.S. persons (in a broad legal sense, including companies) and foreign persons. These estimates are published in the *Survey of Current Business,* BEA's monthly journal; in other BEA publications; and on BEA's Web site at *http://www.bea.gov/.* All data are collected under sections 3101–3108, of Title 22, U.S.C.

The data sets created by linking these data with the data from the above-designated Census Bureau surveys and Business Register will be used for several exclusively statistical purposes by both agencies, such as for evaluating the feasibility of developing state-level estimates of U.S. services exports, and producing aggregate tabulations of data for the NSF that augment and improve information on international aspects of R&D performance, funding, and related economic activity.

Data Access and Confidentiality

Title 22, U.S.C. 3104 protects the confidentiality of the data to be provided by BEA to the Census Bureau. The data may be seen only by persons sworn to uphold the confidentiality of the information. Access to the shared data will be restricted to specifically authorized personnel and will be provided for statistical purposes only. Any results of this research are subject to BEA disclosure protection. All Census Bureau employees with access to these data will become BEA Special Sworn Employees—meaning that they, under penalty of law, must uphold the data's confidentiality. Selected NSF employees will provide BEA with expertise on various aspects of R&D performance and funding of companies that provide data to BEA. These NSF consultants assisting with the work at the BEA also will become BEA Special Sworn Employees. No confidential data will be provided to the NSF.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. E7–938 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–892)

Carbazole Violet Pigment 23 from the People's Republic of China: Notice of Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review

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

EFFECTIVE DATE: January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Terre Keaton, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4007 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2006, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the first antidumping duty administrative review of carbazole violet pigment 23 (CVP–23) from the People's Republic of China (PRC), covering the period June 24, 2004, through November 30, 2005. *See Carbazole Violet Pigment 23 from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 71 FR 65073 (November 7, 2006). The final results for this administrative review are currently due no later than March 7, 2007.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of an administrative review within 120 days after the date on which

the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results by a maximum of 180 days.

The Department requires additional time to consider complex issues raised by interested parties, particularly with respect to surrogate values. Thus, it is not practicable to complete this review within the original time limit. Therefore, the Department is extending the time limit for completion of the final results by 60 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due not later than May 7, 2007, the next business day after 180 days from publication of the preliminary results.

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

Dated: January 17, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–929 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–888

Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On September 29, 2006, the Department of Commerce (the Department) published in the **Federal Register** a notice of initiation of the antidumping duty administrative review on floor–standing, metal–top ironing tables and certain parts thereof (ironing tables) from the People's Republic of China (PRC). The period of review (POR) is August 1, 2005, through July 31, 2006. This review is now being rescinded for Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. (Foshan Shunde) because the only requesting party withdrew its request in a timely manner.

EFFECTIVE DATE: January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Kristina Horgan or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 2004, the Department published in the **Federal Register** an antidumping duty order on ironing tables from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor–Standing, Metal–Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 47868 (August 6, 2004) (Ironing Tables Order). On August 1, 2006, the Department published a *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 71 FR 43441.

On August 2, 2006, Foshan Shunde, requested, in accordance with 19 CFR 351.213(b)(2), an administrative review of the antidumping duty order on ironing tables from the PRC. On August 29, 2006, Since Hardware (Guangzhou) Co., Ltd. (Since Hardware) requested, in accordance with 19 CFR 351.213(b)(2), an administrative review of the antidumping duty order on ironing tables from the PRC. On August 31, 2006, Home Products International Inc., petitioner, also requested, in accordance with 19 CFR 351.213(b)(1), an administrative review of the antidumping duty order on ironing tables from the PRC for Since Hardware for the POR. On September 29, 2006, the Department initiated an administrative review of the two companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006).

On December 21, 2006, Foshan Shunde filed a letter withdrawing its request. Foshan Shunde was the only party to request a review of entries of subject merchandise exported by Foshan Shunde.

Rescission of Review

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Foshan Shunde timely filed a request withdrawing its request for an administrative review within the 90-day deadline, in accordance with 19 CFR 351.213(d)(1). Because Foshan Shunde was the only party to request an administrative review, we are partially rescinding this review of the antidumping duty order on ironing tables from the PRC covering the period August 1, 2005, through July 31, 2006, with respect to Foshan Shunde.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the company for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of this notice.

Notification of Interested Parties

This notice 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) 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 that is subject to sanction.

This notice is issued and published in accordance with sections 751 and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 12, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–868 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–552–801

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Rescission of Antidumping Duty New Shipper Review

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

SUMMARY: On September 28, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** (71 FR 56953) a notice announcing the initiation of a new shipper review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam (''Vietnam'') for East Sea Seafoods Joint Venture Co., Ltd. (''East Sea Seafoods''). The period of review (''POR'') is August 1, 2005, to July 31, 2006. This review is now being rescinded because East Sea Seafoods withdrew its request in a timely manner.

EFFECTIVE DATE: January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 4003, Washington, D.C. 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2003, the Department published in the **Federal Register** an antidumping duty order covering certain frozen fish fillets from Vietnam. *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003). On August 31, 2006, East Sea Seafoods, requested, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(d), that the Department a conduct a new shipper review of this antidumping duty order covering the period August 1, 2005, through July 31, 2006.

On September 22, 2006, the Department initiated a new shipper review of East Sea Seafoods. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review*, 71 FR 56953 (September 28, 2006). On November 13, 2006, East Sea Seafoods filed a letter withdrawing its request for a new shipper review.

Rescission of Review

19 CFR 351.214(f)(1) states that if a party that requested a new shipper review withdraws the request within 60 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. East Sea Seafoods withdrew its new shipper review request within the 60–day deadline, in accordance with 19 CFR 351.214(f)(1). Accordingly, we are rescinding this new shipper review of the antidumping duty order on certain frozen fish fillets from Vietnam for East Sea Seafoods covering the period August 1, 2005, through July 31, 2006.

Notification of Interested Parties

This notice 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') 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 that is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: January 12, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–867 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–351–838, A–331–802, A–533–840, A–549–822, A–570–893, A–552–802

Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam; Amended Orders

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

EFFECTIVE DATE: January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929 (Brazil), David Goldberger at (202) 482–4136 (Ecuador), Elizabeth Eastwood at (202) 482–3874 (India), Irina Itkin at (202) 482–0656 (Thailand), Christopher Riker at (202) 482–3441 (People's Republic of China), and Alex Villanueva at (202) 482–3208 (Socialist Republic of Vietnam); AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Background

On February 1, 2005, the Department of Commerce (the Department) published in the **Federal Register** its notices on amended final determinations of sales at less than fair value and antidumping duty orders of certain frozen warmwater shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil*, 70 FR 5143 (Feb. 1, 2005); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador*, 70 FR 5156 (Feb. 1, 2005); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147 (Feb. 1, 2005); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand*, 70 FR 5145 (Feb. 1, 2005); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (Feb. 1, 2005); and *Notice of Amended Final Determination of Sales at Less*

Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam, 70 FR 5152 (Feb. 1, 2005) (*Amended Shrimp Finals/Orders*). In the *Amended Shrimp Finals/Orders*, the Department noted that the scope of the antidumping duty orders had been amended to exclude canned warmwater shrimp and prawns to reflect the International Trade Commission's finding that a domestic industry in the United States is not materially injured or threatened with material injury by reason of imports of canned warmwater shrimp and prawns from the countries in question.

Subsequent to the issuance of the shrimp orders, we noticed that the first sentence of the first paragraph of the scope language of each order might suggest that the warmwater shrimp subject to the order includes warmwater shrimp in non–frozen form. Therefore, we are amending the scope language of the orders by moving the word ''frozen'' to be before ''warmwater shrimp and prawns'' in the first sentence of the first paragraph of the scope of each order to clarify that only frozen warmwater shrimp and prawns are subject to the order. As a result, the first paragraph of the scope of each order reads as follows:

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild–caught (*ocean harvested*) or farm–raised (*produced by aquaculture*), head–on or head–off, shell–on or peeled, tail–on or tail–off, deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

We are thus amending the antidumping duty orders of certain frozen warmwater shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam, as noted above.

These amended orders are issued and published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: January 16, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–931 Filed 1–22–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–825, A–533–810, A–588–833, A–469–805)

Stainless Steel Bar from Brazil, India, Japan, and Spain: Continuation of Antidumping Duty Orders

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

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of dumping and of material injury to an industry in the United States within a reasonably foreseeable time, the Department is publishing notice of the continuation of these antidumping duty orders.

EFFECTIVE DATE: January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Kristin Case or Minoo Hatten, Office 5, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3174 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2006, the Department initiated the second sunset reviews of the antidumping duty orders on stainless steel bar (SSB) from Brazil, India, Japan, and Spain pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See *Initiation of Five–Year (''Sunset'') Reviews*, 71 FR 10476 (March 1, 2006).

As a result of our review, we found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and we notified the ITC of the magnitude of the margins likely to prevail were the orders to be revoked. See *Stainless Steel Bar from Brazil, India, Japan, and Spain; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 38372 (July 6, 2006). On December 4, 2006, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on SSB from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See *Stainless Steel Bar From Brazil, India, Japan, and Spain*, 72 FR 1243 (January 10, 2007), and ITC Publication 3895 (January 2007) entitled *Stainless Steel Bar from Brazil, India, Japan, and Spain: Investigation Nos. 731–TA–678, 679, 681 and 682 (Second Review)*.

Scope of the Orders

Imports covered by these orders are shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold–finished SSBs that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes, and sections.

The SSB subject to these orders is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Determination

As a result of the determinations by the Department and ITC that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c) of the Act, the Department intends to initiate the next five–year reviews of these orders not later than January 2012.

This notice is in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: January 16, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–862 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–580–844

Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from the Republic of Korea

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

EFFECTIVE DATE: January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova or Katherine Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1280 or 202–482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 2006, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 2004 - 2005 administrative review of the antidumping duty order on steel concrete reinforcing bars from the Republic of Korea. *See Steel Concrete Reinforcing Bar From The Republic of Korea: Notice of Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review*, 71 FR 59440 (October 10, 2006). The final results for this administrative review are currently due no later than February 7, 2007.

Extension of Time Limits for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of the review of an antidumping duty order within 120 days after the date on which the preliminary results are published in the **Federal Register**. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days from the date of publication of the preliminary results.

The Department finds that it is not practicable to complete the final results of this review within the original time limit. Due to the complexity of the issue raised by the petitioners in its case brief regarding the respondents' reporting of yield strength, a model–match characteristic, the Department requires additional time to properly analyze this issue. Therefore, we are fully extending the deadline for the final results of this review until no later than April 9, 2007, the next business day after 180 days from publication of the preliminary results, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1), 751(a)(3)(A), and 777(i)(1) of the Act.

Dated: January 17, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–930 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–894

Certain Tissue Paper Products from the People's Republic of China: Extension of Time Limit for Preliminary Results of the First Administrative Review

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

EFFECTIVE DATE: January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Kristina Horgan or Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8173, or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 2006, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain tissue paper from the People's Republic of China (PRC) for the period September 21, 2004, to February 28, 2006. *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 25145 (April 28, 2006).

On October 24, 2006, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), the Department extended the deadline for the preliminary results of review until February 16, 2007. *See Certain Tissue Paper Products from the People's Republic of China: Extension of Time Limit for Preliminary Results of the First Administrative Review*, 71 FR 62249 (October 24, 2006).

On November 6, 2006, the Department reopened the record of the instant review to allow interested parties to submit new factual information. See ''Letter To All Interested Parties from James C. Doyle RE: First Administrative Review of Certain Tissue Paper Products from the People's Republic of China,'' dated November 6, 2006. On December 22, 2006, the petitioner submitted a revised, final bracketed version of its timely filed November 13, 2006 submission, which contained comments regarding the Sansico Group's claim of no shipments.[1] On January 3, 2007, the Sansico Group timely filed comments addressing the petitioner's December 22, 2006, submission.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(1) require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the order for which the administrative review was requested, and the final results of the review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 245-day

[1] The Sansico Group claimed it had no shipments of subject merchandise during the POR in a submission dated May 22, 2006.

period to 365 days and the 120-day period to 180 days.

We determine that it is not practicable to complete this administrative review by February 16, 2007. The Department requires additional time to review the recent comments regarding the Sansico Group's claim of no shipments in the instant review. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limit for the completion of these preliminary results by an additional 43 days to April 2, 2007, which is the first business day after the additional 43-day extension. The final results, in turn, will be due 120 days after the date of issuance of the preliminary results, unless extended.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 12, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–869 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Textile and Apparel Products from Vietnam: Import Monitoring Program; Request for Comments

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

ACTION: Request for Public Comment – Import Monitoring of Textile and Apparel Products from Vietnam.

SUMMARY: As a follow–up to its December 4, 2006 request for public comment, the Department of Commerce (the Department) is providing an additional opportunity for the public to comment on the development and implementation of a monitoring program covering imports of textile and apparel products from Vietnam. This monitoring program will remain in place for the duration of this Administration. To help the Department implement the program and, at the same time, be advised of the concerns of all interested stakeholders, the Department is inviting the public to provide further input on the monitoring program and identify issues or considerations that submitters believe are deserving of the Department's attention as the program proceeds. Responses to comments already received by the Department as part of its December 4, 2006 request are also welcome.

DATES: To be most useful, the Department requests that comments be submitted by close of business, January 31, 2007. However, the Department will continue to welcome and solicit additional views and input from all parties on an ongoing basis.

ADDRESSES: Comments may be submitted in writing or electronically. Persons wishing to comment in writing should file, by the date specified above, a signed original and four copies of each set of comments. Written comments should be addressed to David M. Spooner, Assistant Secretary for Import Administration, Room 1870, Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230. Electronic comments should be submitted to *vietnam–texapp-monitor–FRcomments@mail.doc.gov*. Comments should be limited to 25 pages or less.

All comments will be available for public inspection at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department will not accept nor consider comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. In addition, all comments will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: http://ia.ita.doc.gov. To the extent possible, all comments will be posted within 48 hours. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e–mail address: *webmaster–support@ita.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Kelly Parkhill at (202) 482–3791.

SUPPLEMENTARY INFORMATION: The Department is instituting an import monitoring program for textile and apparel products from Vietnam. The Department currently monitors imports of textile and apparel products from Vietnam and all other textile and apparel producing countries as part of the regular monitoring and reporting conducted by Import Administration's Office of Textiles and Apparel. This program, which is not meant to inhibit legitimate trade, will supplement those monitoring activities already undertaken by that office and help ensure compliance with the trade remedy laws.

Implementation of the program began on January 11, 2007 when Vietnam became a Member of the World Trade Organization (WTO) and will cease at the end of the current Administration. Five product groups – trousers, shirts, underwear, swimwear and sweaters – have been identified as being of special sensitivity for monitoring purposes and specific products from these broad categories will constitute the initial focus of Import Administration's monitoring efforts. Outreach to interested parties, including domestic textile and apparel producers, workers, retailers, importers and the Government of Vietnam, will continue throughout the monitoring process and products may be added or removed from monitoring as appropriate.

OUTREACH PROCESS: As noted, the outreach process will be ongoing and continue throughout the life of the program. All parties are welcome to meet with or otherwise provide input to the Department There will be no restrictions on access to the Department or preconditions for comment on the monitoring program. In addition, the Department will establish an electronic hotline – *vietnam–texapp-monitor–hotline@mail.doc.gov* – to make it easier for parties to provide input, raise questions or submit suggestions to the Department about the program. The Department fully anticipates that input from this outreach process will lead to improvements in the monitoring program, as the need arises.

The Department intends to hold a public hearing on the program in Washington, D.C. within the next three months. A separate notice in the **Federal Register** announcing the hearing and providing guidance on participation will be issued no later than 30 days in advance of the hearing. The Department is also considering the possibility of holding a series of field hearings. If held, the Department intends to ensure that the locations of these hearings will be convenient to the broad array of parties that have expressed interest in the monitoring program including domestic textile and apparel producers, workers, retailers and importers. The Department is also examining ways in which access to the hearing(s) may be extended to those unable to attend in person.

The Department also intends to develop an email notification system to provide parties notice of upcoming developments. Those interested in being included in the email notification system should provide the Department with their email address. Email addresses may be submitted in writing

or through the email hotline – *vietnam–texapp-monitor–hotline@mail.doc.gov*.

PRODUCT COVERAGE: The Department intends to monitor five product groups – trousers, shirts, underwear, swimwear and sweaters. However, the Department recognizes that these five product groups are too broad for effective monitoring. Within these five groups, the Department intends to focus on those traditional three–digit textile and apparel categories of greatest significance based on trade trends, composition of the U.S. industry and input from parties, as appropriate. In addition to gathering aggregate value data for each of the monitored three–digit categories, the Department intends to gather volume, value and average unit value data for selected products within those categories that will be collected and examined on a 10–digit Harmonized Tariff System (HTS) code basis. All data will be updated monthly and made available to the public on the Import Administration's Office of Textile and Apparel website – *http://www.otexa.ita.doc.gov/*.

Product coverage is not intended by the Department necessarily to be static. Changes in product coverage may occur in response to input received from interested parties, changes in the trade, or as the Department broadens its understanding of the composition and structure of the domestic textile and apparel industry. Further, as the Department's extends its knowledge of the domestic industry and the products it produces, as part of its monitoring, biannual evaluation and like product analysis, it intends to continue its interaction with stakeholders to allow for full comment and input. As part of this process, products may be added or removed from monitoring, as appropriate.

PRODUCTION TEMPLATES: Production templates will be developed on an as–needed basis, as merited by the Department's analysis of the monitored imports, and their impact on, and relation to, the domestic industry. In developing these templates, the Department intends to gather input from parties knowledgeable about the production process. Proxy countries, appropriate for the product being examined, will not be selected until that time.

BIANNUAL EVALUATION: The Department intends to conduct its formal evaluation of the information gathered under the monitoring program on a biannual basis. Interim reviews are not expected to be conducted unless warranted by unforeseen developments.

As explained above, public import data gathered by the Department as part of its monitoring program will be posted on the Import Administration website and updated monthly. Data will be reviewed at the 10–digit HTS level and shifts in product mix and seasonality will be considered when evaluating price and volume trends, as appropriate. In addition to analyzing import data as part of this review process, the Department will consider domestic industry information including production, employment and other indicators of industry health, to the extent relevant to the biannual evaluation process.

SELF–INITIATION: Any self–initiation of an antidumping investigation arising from this program will be fully consistent with U.S. law as set forth in the statute and the Department's regulations, and with the applicable WTO rules.

CRITICAL CIRCUMSTANCES: Any application of critical circumstances in the context of a self–initiated investigation will be fully consistent with U.S. law, and with the applicable WTO rules. Should the Department find critical circumstances, suspension of liquidation would apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: 1) 90 days before the date on which suspension of liquidation is first ordered; or 2) the date on which notice of the initiation of the investigation is published in the **Federal Register** (section 733(e)(2) of the Tariff Act of 1930, as amended).

NEW REPORTING REQUIREMENTS: There are no new paperwork or reporting requirements as a result of the Department's monitoring program. Furthermore, all responses to the Department's **Federal Register** notice requests for information, including this request, are strictly voluntary.

Dated: January 17, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–928 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 061213336–6336–01]

Announcing the Development of New Hash Algorithm(s) for the Revision of Federal Information Processing Standard (FIPS) 180–2, Secure Hash Standard

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: A process to develop and standardize one or more new hash algorithms to augment and revise FIPS 180–2, Secure Hash Standard, is being initiated by the National Institute of Standards and Technology (NIST). As a first step in this process, NIST is publishing draft minimum acceptability requirements, submission requirements, and evaluation criteria for candidate algorithms to solicit public comment. It is intended that the revised hash function standard will specify one or more additional unclassified, publicly disclosed hash algorithms that are available royalty-free worldwide, and are capable of protecting sensitive government information well into the foreseeable future.

The purpose of this notice is to solicit comments on the draft minimum acceptability requirements, submission requirements, and evaluation criteria of candidate algorithms from the public, the cryptographic community, academic/research communities, manufacturers, voluntary standards organizations, and Federal, state, and local government organizations so that their needs can be considered in the process of developing the augmented and revised hash function standard.

DATES: Comments must be received on or before April 27, 2007.

ADDRESSES: Written comments should be sent to Mr. William Burr, Attn: Hash Algorithm Requirements and Evaluation Criteria, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930.

Electronic comments should be sent to *hash-function@nist.gov* with a subject line of ''Hash Algorithm Requirements and Evaluation Criteria''.

Comments received in response to this notice will be made part of the public record and will be available for inspection on the Web site: *http://www.nist.gov/hash-function.*

[1] In this announcement, the term ''has function'' and ''hash algorithm'' are used interchangeably.

FOR FURTHER INFORMATION CONTACT: For general information, contact: Shu-jen Chang, National Institute of Standards and Technology, Stop 8930, Gaithersburg, MD 20899–8930; telephone 301–975–2940 or via fax at 301–975–8670.

Technical inquiries regarding the proposed draft acceptability requirements, submission requirements, and evaluation criteria should be sent electronically to *hash-function@nist.gov,* or addressed to William Burr, National Institute of Standards and Technology, Stop 8930, Gaithersburg, MD 20899–8930; telephone 301–975–2914 or via fax at 301–975–8670 (Attn: Hash Algorithm Requirements and Evaluation Criteria). Answers to germane questions will be posted at *http://www.nist.gov/hash-function.* Questions and answers that are not pertinent to this announcement may not be posted.

NIST will endeavor to answer all questions in a timely manner.

SUPPLEMENTARY INFORMATION: A hash function takes binary data, called the message, and produces a condensed representation, called the message digest. A cryptographic hash function is a hash function that is designed to achieve certain security properties. The Federal Information Processing Standard 180–2, Secure Hash Standard specifies algorithms for computing four cryptographic hash functions—SHA–1, SHA–256, SHA–384, and SHA–512. FIPS 180–2 was issued in August, 2002, superseding FIPS 180–1.

In recent years, several of the non-NIST approved cryptographic hash functions have been successfully attacked, and serious attacks have been published against SHA–1. In response, NIST held two public workshops on cryptographic hash functions, on Oct. 31–Nov. 1, 2005 and Aug. 24–25, 2006, to assess the status of its approved hash functions and to solicit public input on its cryptographic hash function policy and standard. As a result of these workshops, NIST has decided to develop one or more additional hash functions through a public competition, similar to the development process for the Advanced Encryption Standard (AES).

To begin the competition process, NIST has drafted the following minimum acceptability requirements, submission requirements, and evaluation criteria for candidate algorithms. NIST seeks comments on these draft minimum acceptability requirements, submission requirements, and evaluation criteria, as well as suggestions for other criteria and for the relative importance of each individual criterion in the evaluation process. Since neither the submission requirements nor the evaluation criteria have been finalized, and may evolve over time as a result of the public comments that NIST receives, candidate algorithms should NOT be submitted at this time.

Authority: This work is being initiated pursuant to NIST's responsibilities under the Federal Information Security Management Act (FISMA) of 2002, Public Law 107–347.

A. Proposed Draft Minimum Acceptability Requirements for Candidate Algorithms

The draft minimum acceptability requirements for candidate hash algorithms are:

A.1 The algorithm must be publicly disclosed and available on a worldwide, non-exclusive, royalty-free basis.

A.2 The algorithm must be implementable in a wide range of hardware and software platforms.

A.3 The algorithm must support 224, 256, 384, and 512-bit message digests, and must support a maximum message length of at least 264 bits.

B. Proposed Draft Submission Requirements

In order to provide for an orderly, fair, and timely evaluation of candidate algorithms, submission requirements will specify the procedures and supporting documentation necessary to submit a candidate algorithm. The submission package must include the following:

B.1 A complete written specification of the algorithm, including any applicable mathematical equations, tables, and parameters that are needed to implement the algorithm. The documentation must include design rationale; an explanation for all the important design decisions; any security argument that is applicable, such as a security reduction proof; and a preliminary analysis, such as possible attack scenarios for collision-finding, second-preimage-finding, or any cryptographic attacks that have been considered and their results.

In addition, the documentation should suggest one or more parameters of the algorithm that can be modified, or suggest other modification techniques, to enhance the security of the design. A supporting rationale should also be provided. For example, for SHA–1 the number of rounds is a natural parameter to modify to increase the security of the design.

B.2 An ANSI C source language reference implementation and an optimized implementation. The optimized code will be used to compare software performance and memory requirements to the implementations of other submitted algorithms.

B.3 A statement of the estimated computational efficiency and memory requirements in hardware and software across a variety of platforms, including 8-, 32-, and 64-bit platforms.

B.4 A hashing example that maps a specified message into its message digest.

B.5 A statement of issued or pending patents that the submitter believes may be infringed by implementations of this algorithm.

B.6 A statement of advantages and limitations of the submitted algorithm. If the submitter believes that the algorithm has certain advantageous features, then these should be listed and described, along with supporting rationale.

Should NIST later decide to add such features to the evaluation criteria, submitters of candidate algorithms may be asked to provide additional information with respect to these new criteria.

(End of draft submission requirements)

C. Proposed Draft Evaluation Criteria of Candidate Algorithms

Candidate algorithms that meet the minimum acceptability requirements and the submission requirements will be compared, based on the following factors:

- Security,
- Computational efficiency,
- Memory requirements,
- Hardware and software suitability,
- Simplicity,
- Flexibility, and
- Licensing requirements.

With the exception of self-explanatory items in the above list, these evaluation criteria are described below.

C.1 Security

Algorithms will be judged on the following factors:

- The actual security provided by the algorithm as compared to other submitted algorithms (of the same hash length), including (but not limited to) first and second preimage resistance, collision resistance, and resistance to generic attacks (e.g., length extension).
- The extent to which the algorithm output is indistinguishable from a random oracle.
- The soundness of the mathematical basis for the algorithm's security.
- Other security factors raised by the public during the evaluation process, including any attacks which demonstrate that the actual security of the algorithm is less than the strength claimed by the submitter.

Claimed attacks will be evaluated for practicality.

C.2 Cost

C.2.1 Computational efficiency: The evaluation of computational efficiency will be applicable to both hardware and software implementations.

Computational efficiency essentially refers to the throughput of an implementation. NIST will use the optimized software of each submission (discussed in B.2 above) on a variety of platforms and analyze their computation efficiency for a variety of message lengths. The data in the submission packages and any public comments on computational efficiency will also be taken into consideration.

C.2.2 Memory requirements: The memory required for hardware and software implementations of the candidate algorithm will be considered during the evaluation process.

Memory requirements will include such factors as gate counts for hardware implementations, and code size and RAM requirements for software implementations.

NIST will use the optimized software of each submission (discussed in B.2 above) on a variety of platforms and test their memory requirements for a variety of message lengths. The data in the submission packages and any public comments on memory requirements will also be taken into consideration.

C.3 Algorithm and Implementation Characteristics

C.3.1 Flexibility: Candidate algorithms with greater flexibility that meet the needs of more users are preferable. Some examples of ''flexibility'' include (but are not limited to) the following:

i. The algorithm is parameterizable, e.g. can accommodate additional rounds.

ii. Implementations of the algorithm can be parallelized to achieve higher performance efficiency.

iii. The algorithm can be implemented securely and efficiently in a wide variety of platforms, including constrained environments such as smart cards.

C.3.2 Simplicity: A candidate algorithm will be judged according to relative simplicity of design.

Dated: January 16, 2007.

James E. Hill,

Acting Deputy Director.

[FR Doc. E7–927 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 070108002–7002–01; I.D. 122706A]

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition to List Copper and Quillback Rockfishes in Puget Sound (Washington) as Threatened Species under the Endangered Species Act

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

ACTION: Notice of finding.

SUMMARY: We, NMFS, have received a petition to list copper rockfish (*Sebastes caurinus*) and quillback rockfish (*S. maliger*) in Puget Sound (Washington) as threatened or endangered species under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific or commercial information indicating that the petitioned actions may be warranted.

ADDRESSES: Copies of the petition and related materials are available on the Internet at *http://www.nwr.noaa.gov/Other-Marine-Species/PS-Marine-Fishes.cfm*, or upon request from the Chief, Protected Resources Division, NMFS, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Dr. Scott Rumsey, NMFS, Northwest Region, (503) 872–2791; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On September 18, 2006, we received a petition from Mr. Sam Wright (Olympia, Washington) to list the Puget Sound Distinct Population Segments (DPSs) of copper and quillback rockfish as endangered or threatened species under the ESA. Copies of this petition are available from NMFS (see **ADDRESSES**, above).

ESA Statutory and Policy Provisions

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to list species under the ESA (16 U.S.C. 1533(b)(3)(A)). Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Our ESA implementing regulations define Asubstantial information@ as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating a petitioned action, the Secretary considers whether the petition contains a detailed narrative justification for the recommended measure, including: past and present numbers and distribution of the species involved, and any threats faced by the species (50 CFR 424.14(b)(2)(ii)); and information regarding the status of the species throughout all or a significant portion of its range (50 CFR 424.14(b)(2)(iii)).

Under the ESA, a listing determination may address a species, subspecies, or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(15)). On February 7, 1996, we and the U.S. Fish and Wildlife Service (USFWS) adopted a policy to clarify the agencies' interpretation of the phrase ''Distinct population segment of any species of vertebrate fish or wildlife'' (ESA section 3(15)) for the purposes of listing, delisting, and reclassifying a species under the ESA (51 FR 4722). The joint DPS policy established two criteria that must be met for a population or group of populations to be considered a DPS: (1) The population segment must be discrete in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the population segment must be significant to the remainder of the species (or subspecies) to which it belongs.

A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA Sections 3(6) and 3(19), respectively).

Life History of Copper and Quillback Rockfish

Copper Rockfish - Copper rockfish are found from the Gulf of Alaska southward to central Baja California (Eschmeyer *et al.*, 1983; Stein and Hassler, 1989; Matthews, 1990a; Love, 1991), including in Puget Sound (Buckley and Hueckel, 1985; Quinnel and Schmitt, 1991). Adult copper rockfish are found in nearshore waters from the surface to 183 m deep (Eschmeyer *et al.*, 1983; Stein and Hassler, 1989). Larval and small juvenile copper rockfish are pelagic for several months and are frequently found

in surface waters and shallow habitats (Stein and Hassler, 1989; Love *et al.*, 1996). Juveniles use bays as nursery areas (Stein and Hassler, 1989) and recruit to nearshore benthic habitats (Matthews, 1990b) with cobble or rocky substrata. They are often associated with crevices, aquatic plants, and kelp holdfasts (Patten, 1973; Love, 1991; Love *et al.*, 1996; Buckley, 1997). Adults inhabit natural rocky reefs, artificial reefs, and rock piles, are closely associated with submerged vegetation (Matthews, 1990c), and exhibit strong site fidelity (Stein and Hassler, 1989; Matthews, 1990c; Love, 1991).

In Puget Sound, copper rockfish males and females become sexually mature at three to four years of age (Stein and Hassler, 1989). They spawn once a year and, like all Sebastes species, are ovoviviparous (i.e., eggs are fertilized internally, eggs develop within the mother nourished by an egg-yolk sac, and larvae ''hatch'' internally or immediately after they are released). Mating occurs from March to May, embryos are mature by April, and larvae are released from April to June (DeLacy *et al.*, 1964; Matthews, 1990b). Adults move inshore to release their young (Matthews, 1990a), and larvae remain pelagic until they are 40 to 50 mm long (Stein and Hassler, 1989). Copper rockfish live up to 55 years (Matthews, 1990b) and can grow to 57 cm length (Eschmeyer *et al.*, 1983; Stein and Hassler, 1989).

Quillback Rockfish - Quillback rockfish are found from the northern Channel Islands in southern California (Stout *et al.*, 2001), to the Gulf of Alaska (Miller and Lea, 1972), including the Strait of Georgia, the San Juan Islands, and Puget Sound (Clemons and Wilby, 1961; Hart, 1973; Matthews, 1990a; Love, 1991). Adult quillback rockfish are found in subtidal waters to depths of 275 m (Hart, 1973; Love, 1991), but typically inhabit depths from 41 m to 60 m (Murie *et al.*, 1994; Love, 1991). Larval and juvenile stages occupy mid-water habitats before they recruit to sandy substrata in nearshore waters associated with eelgrass, bull kelp beds, natural rocky reefs, and artificial reefs ((Matthews, 1990b; West *et al.*, 1994). Adults are solitary, exhibit site fidelity (Petten, 1973), live at or near the bottom (Miller and Lea, 1972; Matthews, 1988; Rosenthal *et al.*, 1988; Love, 1991), and are associated with artificial and natural reefs, coarse sand, or pebble substrata with flat-bladed kelps (Love, 1991). In Puget Sound, most female quillback rockfish become sexually mature at 2 or 3 (Gowan, 1983). Mating takes place in March, and the larvae are released from April to July, with a peak early in the season (Matthews, 1988, 1990b; Love, 1991). Female quillback rockfish probably move to non-reef habitats to release larvae (Matthews 1988). Quillback rockfish can live to be more than 50 years old (Gowan, 1983; Love, 1991), and can grow to 61 cm (Clemons and Wilby, 1961; Hart, 1973; Love, 1991). April 3,2001, we concluded that these DPSs did not warrant listing as a threatened or endangered species. Although these DPSs had experienced declines over the last 40 years likely due to overharvest, we noted that the populations appeared stable over the most recent 5 years, and that reductions in the recreational fishery bag limit and the establishment of voluntary no-take marine reserves had reduced levels of fishing mortality (66 FR 17659).

Analysis of Petition

We evaluated the information provided and/or cited in Mr. Wright's recent petition to determine if it presents substantial scientific and commercial information to suggest that the Puget Sound DPSs of copper and quillback rockfish may warrant listing under the ESA. Additionally, we reviewed other information readily available to our scientists (i.e., currently within agency files) to determine whether there is general agreement with the information presented in the petition. We addressed three questions in our analysis of the petition: (1) Does the petition or other information in our files present substantial information indicating that the delineated Puget Sound DPSs might warrant reconsideration?; (2) Does the petition present substantial information indicating that the 2001 extinction risk analyses or listing determinations might warrant reconsideration?; and (3) Does the petition present substantial information indicating that the DPSs are in danger of extinction (endangered), or likely to become endangered in the foreseeable future (threatened), throughout all or a significant portion of their ranges? Our Northwest Fisheries Science Center evaluated the scientific merits of the petition with respect to these three questions, concluding that the petition does not present substantial information indicating that the petitioned actions may be warranted, nor that would warrant a reevaluation of the conclusions of the 2001 BRT (Varanasi, 2006). Below are our summary and analysis of the information presented in the petition, organized according to the questions outlined above.

Does the Petition or Other Information in Our Files Present Substantial Information Indicating that the Delineated DPSs May Warrant Reconsideration?

With respect to the delineation of Puget Sound DPSs of copper and quillback rockfish, the petitioner concludes ''There does not appear [to] be any critical flaws in the original assessment or any compelling recent information from the past five years that would justify re-examination of the Puget Sound DPSs previously defined by Stout *et al.* (2001).'' We agree with the petitioner's conclusion. For copper rockfish, the 2001 BRT cited genetic data and analyses from Seeb (1998), Wimberger (unpublished), and Buonaccorsi (in prep) for genetic information relevant to the DPS question. The Buonaccorsi data have since been published (Buonaccorsi *et al.*, 2002), and the conclusions and analyses in the final publication are consistent with the conclusions of the 2001 BRT. We are aware of no new genetic data available for copper or quillback rockfish. There is ongoing research at the University of Washington to analyze otolith microchemistry in quillback rockfish that, when complete, may provide useful data to help confirm or refine the 2001 BRT's DPS conclusions for this species.

Does the Petition Present Substantial Information Indicating That the 2001 Extinction Risk Analyses or Listing Determinations May Warrant Reconsideration?

Criticism of the 2001 BRT Approach - The petitioner criticizes the general risk assessment approach used by the 2001 BRT. The petitioner contends that the approach relies on subjective and qualitative personal opinions and suggests that, with different membership, another BRT may have reached different risk conclusions. The risk assessment methods employed by the 2001 BRT are the same as those used in NMFS status reviews for West Coast species since 1998 including Pacific salmonids (*Oncorhynchus* spp.), Pacific cod (*Gadus macrocephalus*), Pacific hake (*Merluccius productus*), Pacific herring (*Clupea pallasi*), southern resident killer whales (*Orcinus orca*), and North American green sturgeon (*Acipenser medirostris*). These methods are described in detail by Wainwright and Kope (1999).

The petitioner points out some potential problems with this approach of using expert scientific panels to evaluate status information that often

includes incomplete and/or qualitative information. Such data limitations necessitate subjective evaluations of risk. The petitioner is correct that care must be taken to avoid or minimize the potential for status review conclusions to be affected by the composition of a given BRT. To minimize the risk of individual biases influencing a BRT's risk assessments, we endeavor to convene BRTs composed of several members (e.g., the 2001 BRT that reviewed the subject species was composed of six expert members) reflecting a diversity of expertise and perspectives. Our approach to risk assessment is also designed to apply a consistent and transparent methodology that makes use of the best available scientific data and analyses, including both quantitative and qualitative information. We agree with the petitioner that using a variety of appropriate methods to assess extinction risk is prudent, and this is the approach we have taken in our status reviews. In the subject 2001 status review, the BRT also evaluated extinction risk according to the method outlined by Musick *et al.* (2000). This approach is similar to the Wainwright and Kope (1999) method mentioned above, but evaluates risk relative to the reproductive potential and generation time of the species under consideration. The BRT considered the results from both the Wainwright and Kope (1999) and Musick *et al.* (2000) methods in reaching their conclusions that copper and quillback rockfish in Puget Sound are ''neither in danger of extinction or likely to become so'' (Stout *et al.*, 2001).

Criticism of the BRT's Consideration of Age Structure and Longevity - The petitioner also asserts, quoting extensively from Berkeley *et al.* (2004), that the 2001 BRT did not explicitly account for the ''truncation'' of the age structure of rockfish populations by overfishing, and, consequently, underestimated the extinction risk of these rockfish DPSs in Puget Sound. We do not believe that the findings of Berkeley *et al.* (2004), published since the 2001 status review, represent substantial information indicating that the 2001 BRT's risk assessments warrant re-evaluation, or that the DPSs may be endangered or threatened. The following paragraphs explain the information considered in reaching this conclusion.

Berkeley *et al.* (2004) demonstrated in the laboratory that larvae of black rockfish (*S. melanops*) born of older females survived longer in unfed conditions than larvae originating from younger fish. The mechanism ostensibly underlying this result is a greater volume of the larval energy reserves (i.e., oil globule) at birth, which is strongly related to maternal age. The ability of larval fish to survive a period of starvation is often critical because of the temporal and spatial unpredictability of food resources. The results of Berkeley *et al.* (2004) suggest that older females will produce larvae having greater average survival, while younger females will produce progeny with the highest larval mortality rates (hereafter we refer to this as the ''maternal-age effect''). Berkeley *et al.* (2004) argue that rockfish stock collapses may have resulted from an under-appreciation among fisheries managers of the maternal-age effect and the potentially disproportionate contribution of larger and older females to recruitment and maintaining sustainable rockfish populations over the long term.

Directly applying these laboratory findings to the wild populations of copper and quillback rockfishes in Puget Sound is problematic. First, the Berkeley *et al.* (2004) work did not actually measure differences in larval survival in the field. Moreover, even if there is a maternal-age effect, its population-level effect on recruitment will depend strongly on the population's age structure and age-at-maturity. For example, if the population is dominated by younger age classes, the survival advantage of larvae produced by older and larger females (which are few in number) is overridden by the larger number of females in younger age classes despite the relatively higher mortality of their progeny. The maternal-age effect may also be diminished depending on the age at which females become reproductively mature. In a recent study by O'Farrell and Botsford (2006) on black rockfish, researchers quantitatively investigated the fisheries implications of the Berkeley *et al.* (2004) maternal-age effect. O'Farrell and Botsford (2006) found that, although the youngest females produce progeny with the highest level of larval mortality, only a small proportion of the females in the youngest age class are sexually mature, and thus the youngest females represent a very small proportion of the total reproductive potential of the stock. For populations with similar life-history traits to the black rockfish, projections of population dynamics would be nearly identical whether the maternal-age effect was included (O'Farrell and Botsford, 2006). Age-specific abundance data for Puget Sound was not available to the 2001 BRT, and at present there are no data specifically addressing the importance of the maternal-age effect for copper or quillback rockfish. However, given the similarity in life-history traits of these species to black rockfish, the subject of the O'Farrell and Botsford (2006) study, it seems unlikely that the maternal-age effect would alter the conclusions of the 2001 status review.

Criticism of the Consideration of Fishing Impacts - The petitioner also criticized the 2001 determinations not to list under the ESA for failing to adequately consider adverse genetic impacts from fishing. The petitioner notes that fisheries remove the largest and oldest fish in the targeted population, and thus may have the effect of selecting against those fish that are genetically predisposed to fast growth and late maturation. The petitioner asserts that this effect has been largely ignored by fisheries managers who allegedly assume that exploited populations maintain their inherent rates of productivity. The petitioner cites Olsen *et al.* (2004) and Hutchings (2004), suggesting that heavy and continuous fishing pressure, by removing fast-growing, late-maturing fish, can select for slower growing individuals and result in the permanent loss of genetically based traits. We agree that some decrease in the relative abundance of older spawners is an unavoidable consequence of fisheries. Although the 2001 BRT did not explicitly discuss the potential impacts of such a decrease, it is implicit in the historical decline observed in the overall abundance of the copper and quillback rockfish DPSs. In its conclusions, the BRT acknowledged the historical decline and the fisheries' likely contribution to that decline. noted that these DPSs appeared to be stable over the most recent 5 years preceding the 2001 status review, indicating that any reduction in the relative abundance of older spawners, and any potential genetic impacts, had not resulted in persistent declines in recruitment.

The petitioner also criticizes the management of rockfish fisheries by the Washington Department of Fish and Wildlife (WDFW), in particular asserting that WDFW's 2000 regulation reducing the daily bag limit for rockfish to one fish is an inadequate measure for conserving Puget Sound rockfish stocks. WDFW's rockfish fishing regulations, and their impacts as manifested in the status information for the Puget Sound copper and quillback rockfish DPSs, were considered in the 2001 status review. In addition to the establishment of voluntary no-take marine reserves, the 2000 reduction in the recreation fishery bag limit was noted in the 2001 determinations not to list as a measure

that had reduced historical levels of fishery mortality. The petitioner further asserts that a 2004 regulation restricting spear and recreational fishing for rockfish to periods when fisheries were open for lingcod and/or Pacific salmon inadequately limits fishing effort and mortality during the open fishing periods. We recognize that the petitioner believes that WDFW could enact regulations to further protect Puget Sound rockfish stocks. However, the fishing regulations the petitioner criticizes represent a reduction in previous fishing levels, and do not portend an increasing threat due to fishing for the copper and quillback rockfish Puget Sound DPSs.

Does the Petition Present Substantial Information Indicating That the DPSs May be Endangered or Threatened?

The petitioner presents no new data or information regarding the abundance, trends, productivity, or distribution for these species. With respect to the maternal-age effect discussed above, the petitioner presents no substantive evidence that the age composition of these stocks has actually been truncated, or that the maternal-age effect is an important determinant for copper or quillback rockfish recruitment. Similarly, we do not have any new data on hand relevant to assessing the status of copper and quillback rockfishes in Puget Sound.

We are aware that WDFW is in the process of compiling new abundance data and finalizing a status report for these species. As yet, the new data and analyses are not available.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available to our scientists, we determine that the petition fails to present substantial scientific or commercial information indicating the petitioned actions may be warranted.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 17, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–943 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Oceanic and Atmospheric Research; National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described below.

DATES: The announced meeting is scheduled for: February 21–22, 2007.

ADDRESSES: Headquarters of the Consortium for Oceanographic Research & Education (CORE), 1201 New York Avenue, NW., 4th Floor Conference Room, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brown, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11717, Silver Spring, Maryland 20910, (301) 734–1088.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

A link to the agenda for the meeting can be found on the web at *http://www.seagrant.noaa.gov/leadership/review_panel.html.*

If you do not have access to the internet, please contact Joe Brown at the address above for a hard copy.

This meeting will be open to the public.

Dated: January 16, 2007.

Mark E. Brown,

Chief Financial Officer, Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E7–848 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011707D]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Vessel Monitoring Systems (VMS)/Enforcement Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, February 6, 2007, at 8 a.m.

ADDRESSES: The meeting will be held at the Sheraton Harborside, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. Introduction: safety, regulation compliance, and familiarizing industry with proper use of VMS.

2. Presentation by Office for Law Enforcement: the capabilities and limitations of VMS as an enforcement tool.

3. Comments and recommendations from the public, VMS users, state agencies, and the Coast Guard. The committee received the following request:

a. Safe harbor notification, to suspend fishing trip, due to storms or other emergencies;

b. Declaration in/out of a fishery while at sea, rather than in port;

c. Closed area transit notification, to replace gear stowage requirement.

4. Industry and law enforcement dialog on VMS usage, and how it can be improved.

5. Closed session: selection of new advisors and any other issues the committee finds pertinent.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically

identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 18, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–932 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011707E]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a three-day Council meeting on February 6–8, 2007, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, February 6 beginning at 1 p.m., and Wednesday and Thursday, February 7 and 8, beginning at 8:30 a.m. each day.

ADDRESSES: The meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; telephone: (603) 431–2300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, February 6, 2007

Following introductions, the Council will hear a series of brief reports from the Council Chairman and Executive Director, the NOAA Northeast Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NOAA Enforcement, and the Atlantic States Marine Fisheries Commission. Following these reports, the Council will have a general discussion about at-sea processing vessels, including potential monitoring, reporting, observer and Vessel Monitoring System (VMS) requirements. Changes to Council processes and procedures as a result of reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act will then be reviewed. The day will conclude with a report from the Council's Enforcement Committee. Its chair will discuss committee progress to develop recommendations concerning the use of VMS and other tools to address safety-at sea, regulatory compliance, and other fishery management-related activities.

Wednesday, February 7, 2007

During the morning session, the Council will receive a report on the comments received in response to public hearings held to consider standardized bycatch reporting methodology alternatives. The Council will also hold a hearing on Amendment 13 to the Sea Scallop Fishery Management Plan. The intent is to provide an opportunity for the public to comment on the establishment of a mechanism to reactivate the industry-funded observer program in the scallop fishery. The hearing will be followed by final action on the amendment. The Council will then discuss the alternatives identified in Amendment 11 to the Scallop Plan, some of which may be affected by provisions in the newly reauthorized Magnuson-Stevens Act. The Council will hear an update concerning the status of five stocks of small mesh multispecies whiting, red hake and offshore hake. The briefing also will address issues related to the development of the next small mesh multispecies amendment. An open period for the public to address any other Council-related business will be provided at this point in the day. During the afternoon session of the meeting, the Trawl Survey Committee will seek approval of recommendations related to the FSV Henry Bigelow, soon to be deployed in the Northeast Region. At the end of the day, the Council plans to review and approve Phase I of the Essential Fish Habitat Draft Supplemental Environmental Impacts Statement.

Thursday, February 8, 2007

The Council's Research Steering Committee Chairman will report on the committee's recommendations concerning the use of information provided in several cooperative research final reports. This will be followed by a discussion of other issues related to cooperative research, including the future use of industry-based surveys. There will be a presentation on the results of the 44th Northeast Regional Stock Assessment Workshop. The status of surf clams, ocean quahogs, and the skate complex will be reviewed. The Groundfish Committee will provide a report to the Council on scoping comments received for Amendment 16 to the Northeast Multispecies Fishery Management Plan. The Council will consider committee recommendations concerning alternatives to be developed, including input from the on the Recreational Advisory Panel.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: January 18, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–934 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011707F]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Management Team (HMSMT) and Highly Migratory Species Advisory Subpanel (HMSAS) will hold work sessions, which are open to the public.

DATES: The HMSMT/HMSAS work sessions will be held on Wednesday, February 7, 2007, from 8:30 a.m. until 5 p.m. and on Thursday, February 8, 2008, beginning at 8:30 a.m. until business is completed.

ADDRESSES: The work sessions will be held at the National Marine Fisheries Service, Southwest Fisheries Science Center, Large Conference Room and Green Room, 8604 La Jolla Shores Drive, La Jolla, CA 92037; telephone: (858) 546–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The HMSMT/HMSAS work sessions will continue review of U.S. and Canadian albacore catch and effort data, with the intent of recommending an appropriate method to characterize historical effort in the fishery. The two groups will also review progress in developing environmental impact evaluations of exempted fishing permit proposals for 2007 and any information on potential applications for 2008. They will also discuss development of an fishery management plan amendment to address overfishing of yellowfin tuna in the eastern Pacific Ocean and procedures to enhance communication with regional fishery management organizations, including the Western Pacific Fishery Management Council. The HMSMT will also discuss preparation of the 2007 stock assessment and fishery evaluation report and related data issues.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 18, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–933 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011707A]

Marine Mammals; File No. 774–1847–01

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

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that NMFS Southwest Fisheries Science Center, Antarctic Marine Living Resources Program (Rennie Holt, Ph.D., Principal Investigator), 8604 La Jolla Shores Drive, La Jolla, CA 92037, has requested an amendment to scientific research Permit No. 774–1847.

DATES: Written, telefaxed, or e-mail comments must be received on or before February 22, 2007.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

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

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 774–1847–01.

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

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 774–1847, issued on September 11, 2006 (71 FR 53423) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 774–1847 authorizes the permit holder to continue a long-term ecosystem monitoring program of pinniped species in the South Shetland Islands, Antarctica. The applicant is authorized to take up to 710 Antarctic fur seals and 20 leopard seals annually. The animals are captured, measured, weighed, tagged, blood sampled, and have time-depth recorders, VHF transmitters, and platform terminal transmitters attached. A subset of fur seals are given an enema, have a tooth extracted, milk sampled, and are part of a doubly-labeled water study on energetics. A subset of leopard seals are blubber and muscle sampled. The permit authorizes the research-related mortality of up to three Antarctic fur seals (one adult and two pups) and one leopard seal annually.

The permit holder requests authorization to increase research-related mortality to eight Antarctic fur seals (3 adults and 5 pups) and two leopard seals annually. Permit conditions are such that research must be stopped when the mortality level is reached. The requested amendment is intended to allow the continuation of the long-term monitoring studies in the event of greater than anticipated levels of research-related mortality.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 17, 2007.

P. Michael Payne,

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

[FR Doc. E7–944 Filed 1–23–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Post Allowance and Refiling

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 26, 2007.

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

- *E-mail: Susan.Brown@uspto.gov.* Include ''0651–0033 comment'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Brown.
- *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert A. Clarke, Deputy Director, Office of Patent Legal Administration, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7735; or by e-mail at *Robert.Clarke@uspto.gov.*

SUPPLEMENTARY INFORMATION

I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents. When an application for a patent is allowed by the USPTO, the USPTO issues a notice of allowance and the applicant must pay the specified issue fee (including the publication fee, if applicable) within three months to avoid abandonment of the application. If the appropriate fees are paid within the proper time period, the USPTO can then issue the patent. If the fees are not paid within the designated time period, the application is abandoned and the applicant may petition the Director to accept a delayed payment with a satisfactory showing that the delay was unavoidable. This Petition for Revival of an Application for Patent Abandoned Unavoidably (Form PTO/SB/61) is approved under information collection 0651–0031. The rules outlining the procedures for payment of the issue fee and issuance of a patent are found at 37 CFR 1.18 and 1.311–1.317.

Chapter 25 of Title 35 U.S.C. provides that there are several actions that the applicant may take after issuance of a patent, including requesting the correction of errors in a patent. For original patents that are deemed wholly or partly inoperative, applicants may file a reissue application, which entails several formal requirements including an oath or declaration stating that the errors in the patent were not the result of any deceptive intention on the part of the applicant. The rules outlining these procedures are found at 37 CFR 1.171–1.178 and 1.322–1.325.

Chapter 30 of Title 35 U.S.C. provides that any person at any time may file a request for reexamination by the USPTO of any claim of a patent on the basis of prior art patents or printed publications. Once initiated, the reexamination proceedings are substantially *ex parte* and do not permit input from third parties under Chapter 30, but Chapter 31 also provides for *inter partes* reexamination allowing third parties to participate. If a request for *ex parte* or *inter partes* reexamination is denied, the requester may petition the Director to review the examiner's refusal of reexamination. The rules outlining *ex parte* and *inter partes* reexaminations are found at 37 CFR 1.510–1.570 and 1.902–1.997.

The USPTO is adding two items to this information collection, an electronic version of the Issue Fee Transmittal (Form PTOL–85B) and a petition to request an extension of time in *ex parte* or *inter partes* reexamination proceedings. The USPTO is developing a new version of the existing Issue Fee Transmittal that customers will be able to submit electronically through EFS-Web, the USPTO's latest electronic filing initiative. EFS-Web is a web-based patent application and document submission system that allows customers to file applications and associated documents through their standard web browser. EFS-Web offers many benefits to filers, including immediate notification that a submission has been received by the USPTO, automated processing of requests, and avoidance of postage and other paper delivery costs. The petition for an extension of time in an *ex parte* or *inter partes* reexamination allows patent owners to request additional time to take action in a reexamination proceeding for sufficient cause and for a reasonable time specified. This petition is an existing requirement that was not previously covered under this information collection. No form is provided for this petition.

The public uses this information collection to request corrections of errors in issued patents, to request reissue patents, to request reexamination proceedings, and to ensure that the associated fees and documentation are submitted to the USPTO.

II. Method of Collection

By mail, facsimile, hand delivery, or electronically to the USPTO.

III. Data

OMB Number: 0651–0033.

Form Number(s): PTO/SB/44/50/51/51S/52/53/56/57/58 and PTOL–85B.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Estimated Number of Respondents: 224,926 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public from 1.8 minutes (0.03 hours) to 2 hours to gather the necessary information, prepare the appropriate form or other document, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 68,245 hours per year.

Estimated Total Annual Respondent Cost Burden: $12,486,080 per year. The USPTO expects that the information in this collection will be prepared by attorneys, except for the Issue Fee Transmittal, which will be prepared by paraprofessionals. Using the professional rate of $304 per hour for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for attorneys submitting the information in this collection will be $9,012,080 per year. Using the paraprofessional rate of $90 per hour, the USPTO expects that the respondent cost burden for submitting the Issue Fee Transmittal will be $3,474,000 per year.

Item	Form No.	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Certificate of Correction	PTO/SB/44	1 hour	25,000	25,000
Reissue Documentation	None	2 hours	1,100	2,200
Reissue Patent Application Transmittal	PTO/SB/50	12 minutes	1,100	220
Reissue Application Declaration by the Inventor or the Assignee.	PTO/SB/51/52	30 minutes	1,100	550
Supplemental Declaration for Reissue Patent Application to Correct ''Errors'' Statement (37 CFR 1.175).	PTO/SB/51S	1.8 minutes	700	21
Reissue Application: Consent of Assignee; Statement of Non-assignment.	PTO/SB/53	6 minutes	1,075	108
Reissue Application Fee Transmittal Form	PTO/SB/56	12 minutes	1,100	220
Request for Ex Parte Reexamination Transmittal Form.	PTO/SB/57	2 hours	500	1,000
Request for Inter Partes Reexamination Transmittal Form.	PTO/SB/58	2 hours	100	200
Petition to Review Refusal to Grant Ex Parte Reexamination.	None	1 hour	100	100
Petition to Review Refusal to Grant Inter Partes Reexamination.	None	1 hour	1	1
Petition to Request Extension of Time in Ex Parte or Inter Partes Reexamination.	None	30 minutes	50	25
Issue Fee Transmittal	PTOL–85B	12 minutes	154,400	30,880
Issue Fee Transmittal (EFS-Web)	PTOL–85B	12 minutes	38,600	7,720
Totals			224,926	68,245

Estimated Total Annual Non-hour Respondent Cost Burden: $273,113,430 per year. There are no capital start-up or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees, postage costs, and recordkeeping costs.

The total estimated annual filing fees for this collection are calculated in the accompanying table. The Reissue Application Fee Transmittal Form includes the fees for the reissue application under 37 CFR 1.16, including the basic filing fee, search fee, and examination fee. These fees cover all parts of the application, including reissue documentation, reissue application transmittal, reissue application declarations, and consent of assignee or statement of non-assignment. There is no fee for the supplemental declaration for a reissue patent application to correct an ''errors'' statement.

Additionally, there are several different issue fees under 37 CFR 1.18 depending on the type of patent being issued, whether a publication fee is required, and whether the inventor is entitled to the discounted small entity fee. The additional publication fee may not be owed at the time of patent issue for any of the following reasons: (1) The application requested non-publication under 35 U.S.C. 122(b)(2)(B)(i); (2) the application will not be published due to national security concerns as provided in 35 U.S.C. 122(d); (3) the applicant has paid the publication fee prior to issue due to a request for early or amended publication under 37 CFR 1.219; or (4) the application was filed prior to November 29, 2000 and therefore not subject to eighteen-month publication under 35 U.S.C. 122(b). The USPTO estimates that the total filing costs associated with this collection will be $273,013,030 per year.

Item	Form No.	Estimated annual responses	Fee amount	Estimated annual filing costs
Certificate of Correction	PTO/SB/44	25,000	$100.00	$2,500,000.00
Reissue Documentation	None	1,100	0.00	0.00
Reissue Patent Application Transmittal	PTO/SB/50	1,100	0.00	0.00
Reissue Application Declaration by the Inventor or the Assignee	PTO/SB/51/52	1,100	0.00	0.00
Supplemental Declaration for Reissue Patent Application to Correct ''Errors'' Statement (37 CFR 1.175).	PTO/SB/51S	700	0.00	0.00
Reissue Application: Consent of Assignee; Statement of Non-assignment.	PTO/SB/53	1,075	0.00	0.00
Reissue Application Fee Transmittal Form	PTO/SB/56	657	1,400.00	919,800.00
Reissue Application Fee Transmittal Form (small entity)	PTO/SB/56	443	700.00	310,100.00
Request for Ex Parte Reexamination Transmittal Form	PTO/SB/57	500	2,520.00	1,260,000.00
Request for Inter Partes Reexamination Transmittal Form	PTO/SB/58	100	8,800.00	880,000.00
Petition to Review Refusal to Grant Ex Parte Reexamination	None	100	130.00	13,000.00
Petition to Review Refusal to Grant Inter Partes Reexamination	None	1	130.00	130.00
Petition to Request Extension of Time in Ex Parte or Inter Partes Reexamination.	None	50	200.00	10,000.00
Issue Fee (utility patent, no publication fee)	PTOL–85B	25,000	1,400.00	35,000,000.00
Issue Fee (utility patent, no publication fee, small entity)	PTOL–85B	9,000	700.00	6,300,000.00
Issue Fee (utility patent, with publication fee)	PTOL–85B	105,000	1,700.00	178,500,000.00
Issue Fee (utility patent, with publication fee, small entity)	PTOL–85B	36,000	1,000.00	36,000,000.00
Issue Fee (design patent, no publication fee)	PTOL–85B	8,500	800.00	6,800,000.00

Item	Form No.	Estimated annual responses	Fee amount	Estimated annual filing costs
Issue Fee (design patent, no publication fee, small entity)	PTOL–85B	8,500	400.00	3,400,000.00
Issue Fee (plant patent, no publication fee)	PTOL–85B	120	1,100.00	132,000.00
Issue Fee (plant patent, no publication fee, small entity)	PTOL–85B	80	550.00	44,000.00
Issue Fee (plant patent, with publication fee)	PTOL–85B	480	1,400.00	672,000.00
Issue Fee (plant patent, with publication fee, small entity)	PTOL–85B	320	850.00	272,000.00
Totals		224,926		273,013,030.00

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a mailed submission will be 52 cents and that up to 186,326 submissions will be mailed to the USPTO per year. The total estimated postage cost for this collection is $96,890 per year.

When submitting the electronic version of the Issue Fee Transmittal, the applicant is strongly urged to retain a copy of the acknowledgment receipt as evidence that the form was received by the USPTO on the date noted. The USPTO estimates that it will take 5 seconds (0.001 hours) to print and retain a copy of the acknowledgment receipt and that 38,600 submissions per year will submit the issue fee electronically, for a total of approximately 39 hours per year for printing this receipt. Using the paraprofessional rate of $90 per hour, the USPTO estimates that the recordkeeping cost associated with this requirement will be $3,510 per year.

The total non-hour respondent cost burden for this collection in the form of filing fees, postage costs, and recordkeeping costs is $273,113,430 per year.

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, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 16, 2007.

Susan K. Brown,

Records Officer, USPTO Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.

[FR Doc. E7–908 Filed 1–22–07; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Establishment and Operation of an Intelligence, Surveillance, Reconnaissance, and Strike Capability, Andersen Air Force Base, Guam

AGENCY: Department of the Air Force.

ACTION: Record of Decision (ROD).

SUMMARY: On January 12, 2007, the United States Air Force signed the ROD for the Establishment and Operation of an Intelligence, Surveillance, Reconnaissance, and Strike Capability, Andersen Air Force Base, Guam. The decision was based on matters discussed in the Final Environmental Impact Statement (EIS), inputs from the public and regulatory agencies, and other relevant factors. The Final EIS was made available on November 24, 2006 in the **Federal Register** (Volume 71, Number 226, Page 67864) with a wait period ending December 26, 2006. The Air Force was the National Environmental Policy Act (NEPA) lead agency with the Department of the Navy acting as a Cooperating Agency under NEPA. The ROD documents only the decision of the Air Force with respect to the proposed Air Force actions analyzed in the Final EIS.

FOR FURTHER INFORMATION: Jonathan Wald, 36 Civil Engineer Squadron, 671–366–2549.

Bao-Anh Trinh,

DAF, Air Force Federal Register Liaison Officer.

[FR Doc. E7–893 Filed 1–22–07; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before March 26, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the

Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 17, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Conversion Magnet Schools Evaluation.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 71.

Burden Hours: 1,131.

Abstract: The Conversion Magnet Schools Evaluation studies the impact of federally funded elementary magnet schools on the academic achievement of students who attend them, and on minority group isolation in the schools. The first phase of the study investigates the feasibility of conducting rigorous research using experimental or quasi-experimental designs to explore the impact of the magnet programs on students who attend them as their neighborhood schools and on students from other neighborhoods who compete in lotteries for admission. Collection and analysis of student data will proceed if rigorous studies are found to be feasible. The evaluation will inform policymakers and researchers on the effectiveness of magnet schools as an educational approach and a type of school choice.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3262. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to: *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–917 Filed 1–22–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 22, 2007.

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

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 17, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Reinstatement.

Title: Native American Career and Technical Education Program.

Frequency: Semi-Annually; Annually.

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

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 9,600.

Abstract: The Native American Career and Technical Education Program (NACTEP) is authorized under Section 116 of the Carl D. Perkins Career and Technical Education Improvement Act of 2006. The purpose of the Native American Career and Technical Education Program is to provide grants to improve career and technical education programs that are consistent with the purposes of the Act and that benefit American Indians and Alaska Natives.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3255. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–918 Filed 1–22–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.215X]

Office of Innovation and Improvement, Teaching American History Program

ACTION: Notice announcing a technical assistance workshop.

SUMMARY: This notice provides information about a technical assistance workshop the Department will be holding to assist eligible applicants interested in preparing grant applications for fiscal year (FY) 2007 new awards under the Teaching American History (TAH) program. Staff will present information about the purpose of the TAH program, selection criteria, application content, submission procedures, and reporting requirements.

The notice inviting applications for new awards for FY 2007 for the TAH program was published in the **Federal Register** on January 8, 2007 (72 FR 748).

FOR FURTHER INFORMATION CONTACT: Alex Stein, Team Leader, or Emily Fitzpatrick, Program Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5960. *Telephone:* (202) 205–9085 or (202) 260–1498. *E-mail: teachingamericanhistory@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION: The technical assistance workshop will be conducted on Wednesday, January 31, 2007, from 9 a.m.–12 p.m. at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024. *Hotel telephone:* (202) 479–4000. This site is in Southwest Washington, DC, across the street from the U.S. Department of Education headquarters at 400 Maryland Avenue, SW. This site is accessible by Metro on the Blue, Orange, Green, and Yellow Lines at the 7th Street and Maryland Avenue exit of the L'Enfant Plaza station. Please contact the U.S. Department of Education contact persons listed under **FOR FURTHER INFORMATION CONTACT** if you have any questions about the details of the workshop.

Individuals interested in attending this workshop are encouraged to pre-register by e-mailing their name, organization, and contact information to *teachingamericanhistory@ed.gov*. There is no registration fee for this workshop. We encourage attendance from those who will be responsible for submitting the application or otherwise providing technical support for submitting the application electronically using the Grants.gov Apply site.

Assistance to Individuals With Disabilities Attending the Technical Assistance Workshop

The technical assistance workshop site is accessible to individuals with disabilities. If you need an auxiliary aid or service to participate in the workshop (e.g., interpreting service, assistive listening device, or materials in an alternative format), notify the contact persons listed under **FOR FURTHER INFORMATON CONTACT**.

Electronic Access to This Document

You may view this document, as well as other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 6721.

Dated: January 18, 2007.

Morgan S. Brown,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E7–939 Filed 1–22–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos: 84.350A, 84.350B, 84.350C]

Office of Innovation and Improvement, Transition to Teaching Program

ACTION: Notice announcing a technical assistance workshop.

SUMMARY: This notice provides information about a technical assistance workshop the Department will be holding to assist eligible applicants interested in preparing grant applications for fiscal year (FY) 2007 new awards under the Transition to Teaching (TTT) program. Staff will present information about the purpose of the TTT program, selection criteria, application content, submission procedures, and reporting requirements.

The notice inviting applications for new awards for FY 2007 for the TTT program was published in the **Federal Register** on January 8, 2007 (72 FR 753).

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Team Leader, or Kelly O'Donnell, Program Officer, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5960. *Telephone:* (202) 260–0223 or (202) 205–5231. *E-mail: transitiontoteaching@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION: The technical assistance workshop will be conducted on Wednesday, January 31, 2007, from 1 p.m.–4 p.m. at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024. *Hotel telephone:* (202) 479–4000. This site is in Southwest Washington, DC, across the street from the U.S. Department of Education headquarters at 400 Maryland Avenue, SW. This site is accessible by Metro on the Blue, Orange, Green, and Yellow Lines at the 7th Street and Maryland Avenue exit of the L'Enfant Plaza station. Please contact the U.S. Department of Education contact persons listed under **FOR FURTHER INFORMATION CONTACT** if you have any questions about the details of the workshop.

Individuals interested in attending this workshop are encouraged to pre-register by e-mailing their name, organization, and contact information to *transitiontoteaching@ed.gov*. There is no registration fee for this workshop. We encourage attendance from those who will be responsible for submitting the application or otherwise providing technical support for submitting the application electronically using the Grants.gov Apply site.

Assistance to Individuals With Disabilities Attending the Technical Assistance Workshop

The technical assistance workshop site is accessible to individuals with disabilities. If you need an auxiliary aid or service to participate in the workshop (e.g., interpreting service, assistive listening device, or materials in an alternative format), notify the contact

persons listed under **FOR FURTHER INFORMATON CONTACT**.

Electronic Access to This Document

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To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 6681–6684.

Dated: January 18, 2007.

Morgan S. Brown,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E7–940 Filed 1–22–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Tribal Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Tribal Colleges and Universities, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to set forth the schedule and agenda of the meeting of the President's Board of Advisors on Tribal Colleges and Universities. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

When and Where Will the Meeting Take Place?

We will hold the public meeting on Monday, February 5, 2007, from 8:30 a.m. until approximately 5 p.m.; and on Tuesday, February 6, 2007, from 8:30 a.m. until approximately 4:30 p.m., at The Hotel Washington, 15th and Pennsylvania Avenue, NW., Washington, DC 20005. You may call the hotel at (202) 638–5900 to inquire about rooms.

What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify Tonya Ewers at (202) 219–7040, no later than Monday January 29, 2007. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Deborah Cavett, Executive Director, White House Initiative on Tribal Colleges and Universities. You may contact her at the U.S. Department of Education, Room 7010, 1990 K St., NW., Washington, DC 20006, *telephone:* (202) 219–7040, *fax:* (202) 219–7086, *e-mail: Deborah.Cavett@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the Board of Advisors?

The President's Board of Advisors on Tribal Colleges and Universities is established under Executive Order 13270, dated July 2, 2002, and Executive Order 13385, dated September 25, 2005.

What Are the Functions of the National Advisory Committee?

The Board Is Established

- To report to the President annually on the results of the participation of tribal colleges and universities (TCUs) in Federal programs, including recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis also given to enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions;
- To advise the President and Secretary of Education (Secretary) on the needs to TCUs in the areas of infrastructure, academic programs, and faculty and institutional development;
- To advise the Secretary in the preparation of a three-year Federal plan for assistance to TCUs in increasing their capacity to participate in Federal programs;
- To provide the President with an annual progress report on enhancing the capacity of TCUs to serve their students; and
- To develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist TCUs.

What Items Will Be on the Agenda for Discussion at the Meeting?

Agenda topics will include the final 2005 draft report to the President, the agencies' three-year plans, and establish the 2007 action agenda as the Board pursues opportunities to strengthen capacity of programs at the tribal colleges and universities.

How Do I Request To Present Comments at the Meeting?

An opportunity for public comments is available on Tuesday, February 6, 2007 between 3:15–4:15 p.m. Comments will be limited to ten (10) minutes for those speakers who sign up to speak. Those members of the public interested in submitting written comments may do so at the address indicated above by Monday, January 29, 2007.

How May I Obtain Access to the Records of the Meeting?

Records are kept of all Board proceedings and are available for public inspection at the Office of the White House Initiative on Tribal Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006, during the hours of 8 a.m. to 5 p.m.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/index.html.*

Authority: 5 U.S.C. Appendix 2.

Dated: January 17, 2007.

James F. Manning,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E7–876 Filed 1–22–07; 8:45 am]

BILLING CODE 4000–01–P

U.S. ELECTION ASSISTANCE COMMISSION

Information Collection; Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots—Survey of Registered Voters

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice; request for comments.

SUMMARY: The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. 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.

DATES: Written comments must be submitted on or before March 23, 2007.

ADDRESSES: Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, ATTN: Ms. Laiza N. Otero (or via the Internet at *lotero@eac.gov*).

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the Focus Group Discussion Guide, please, write to the above address or call Ms. Laiza N. Otero at (202) 566–3100. You may also view the proposed collection instrument by visiting our Web site at *www.eac.gov*.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots—Survey of Registered Voters.

OMB Number: Pending.

Type of Review: Regular submission.

Needs and Uses: Sec. 246 of the Help America Vote Act requires the Election Assistance Commission (EAC), in consultation with the United States Postal Service, to conduct a study on the feasibility and advisability of establishing a program under which the U.S. Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots returned by voters in general elections for Federal office. This study does not address the cost to the U.S. Postal Service for free postage for sending absentee ballots but may consider costs to election officials that are related to implementing such a program including the costs of sending absentee ballots to voters. It also does not include consideration of the 39 U.S.C. 3406 provisions for the mailing of balloting materials for military and overseas absentee voters. As part of the study, the Commission is directed to conduct a survey of potential beneficiaries, including the elderly and disabled, and to take into account the results of this survey in determining the feasibility and advisability of establishing such a program. At the conclusion of the study effort, EAC is required to submit a report to Congress with recommendations for such legislative and administrative action as EAC determines appropriate. The report shall contain an analysis of the feasibility of implementing such a program and an estimate of the costs.

Affected Public: Citizens.

Estimated Number of Respondents: 1,200.

Responses per Respondent: 1.

Estimated Burden per Response: .25 hours.

Estimated Total Annual Burden Hours: 300 hours.

Information will be collected through a survey of U.S. citizens to determine the possible effect that a free and/or reduced cost absentee ballot postage program would have on voter participation. The sample will be designed in such a way so as to afford analysis of the results according to significant sub-groups including those living in states with high versus low rates of absentee voting and states with restrictive versus states with laws favoring absentee voting. The surveys will be representative of the U.S. population and will be conducted by phone using random digit dialing (RDD) technology. Within each contacted household, a respondent will be selected among all adults in the household aged 18 years and older. The following information will be requested from each respondent:

1. Background Information

The survey will gather data regarding each respondent's background. Background information will include, the respondent's location (state, county, and zip code), the location of the respondent's voter registration (state, county, zip code), age, ethnicity, education, income bracket, whether the respondent is living with a disability, whether the respondent was displaced due to a natural disaster, and whether the respondent is currently an active-duty member of the armed forces (or a dependent thereof).

2. Voting Information

The survey will gather date regarding the respondent's voting history. Voting information will include, registration status, whether the respondent voted in the 2006 Congressional election, whether the respondent voted in the 2004 Presidential election, whether the respondent voted in the 2000 Presidential election, how the respondent voted in past elections (in person, by mail, absentee), whether the respondent is eligible to vote absentee (or whether the respondent does not know).

3. Program Effect

The survey will gather data from all respondents regarding the various effects that the establishment of this program would have on the targeted citizens. Questions on the program will cover (1) whether the program will increase the likelihood that the respondent would use the absentee ballot process; (2) whether the program will increase the likelihood that the respondent would vote in a federal election; (3) whether the program will make it easier for the voter to participate in elections.

This study is further being supplemented with information collected through a series of three focus groups comprised of potential beneficiaries of a free and/or discounted absentee ballot postage program. Information about the focus groups' information collection can be found at

www.eac.gov and the **Federal Register** (Vol. 71, No. 219, Page 66321).

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07–261 Filed 1–22–07; 8:45 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Office of International Regimes and Agreements

Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Notice of Proposed Subsequent Arrangement.

SUMMARY: This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed ''subsequent arrangement'' under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns a request for a one-year extension (April 2007 to April 2008) of the current one-year programmatic approval for retransfer of U.S.-obligated irradiated fuel rods between Studsvik Nuclear AB, Sweden and the Institutt for Energiteknikk, Norway. The rods are being transferred for irradiation service, tests and examination, and returned to Sweden for further tests and disposal. The amounts are the same as under the current approval—a maximum of 30,000 grams uranium, 400 grams U–235 and 400 grams plutonium in all shipments combined, with a maximum of 100 grams of plutonium per shipment. The original programmatic consent, published in the **Federal Register** June 13, 2006, is set to expire in March 2007. Additional transactions are scheduled to occur between April 2007 and April 2008 and will be subject to U.S.-Euratom Agreement for Cooperation on Peaceful Uses of Nuclear Energy.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than 15 days after the date of publication of this notice.

Dated: January 12, 2007.

For the Department of Energy.

Richard Goorevich,

Director, Office of International Regimes and Agreements.

[FR Doc. E7–914 Filed 1–22–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 16, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–707–000.

Applicants: Arkansas Electric Cooperative Corporation.

Description: Arkansas Electric Cooperative Corporation submits a notice, of conditional withdrawal of protests.

Filed Date: 01/11/2007.

Accession Number: 20070111–5016.

Comment Date: 5 p.m. Eastern Time on Monday, January 22, 2007.

Docket Numbers: ER06–739–004; ER06–738–004; ER03–983–003.

Applicants: Cogen Technologies Linden Venture, L.P.; East Coast Power, Linden Holding, L.L.C.

Description: Cogen Technologies Linden Venture LP et al notifies FERC, of a change in status resulting from acquisition of an, ownership interest in Babcock & Brown Wind Portfolio, Holdings 1 LLC etc.

Filed Date: 01/09/2007.

Accession Number: 20070111–0043.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 30, 2007.

Docket Numbers: ER06–1452–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits a corrected Wholesale, Market Participation Agreement.

Filed Date: 01/11/2007.

Accession Number: 20070112–0061.

Comment Date: 5 p.m. Eastern Time on Thursday, February 01, 2007.

Docket Numbers: ER06–1453–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits a corrected Wholesale, Market Participation Agreement.

Filed Date: 01/10/2007.

Accession Number: 20070111–0046.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 31, 2007.

Docket Numbers: ER07–233–001.

Applicants: Occidental Power Services, Inc.

Description: Occidental Power Services, Inc submits an amendment to its, 11/17/06 rate schedule amendment.

Filed Date: 01/10/2007.

Accession Number: 20070111–0044.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 31, 2007.

Docket Numbers: ER07–340–001.

Applicants: Bell Independent Power Corporation.

Description: Bell Independent Power Corp submits an amended petition, for acceptance of initial Tariff, Original Volume 1, waivers, and blanket authority.

Filed Date: 01/11/2007.

Accession Number: 20070112–0062.

Comment Date: 5 p.m. Eastern Time on Thursday, February 01, 2007.

Docket Numbers: ER07–358–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a supplement to its, 12/22/06 filing of an executed Service Agreement for Firm, Point-to-Point Transmission Service w/ Western Resources, dba Westar Energy etc.

Filed Date: 01/11/2007.

Accession Number: 20070112–0063.

Comment Date: 5 p.m. Eastern Time on Thursday, February 01, 2007.

Docket Numbers: ER07–422–000.

Applicants: New York Independent System Operator., Inc.

Description: New York Independent System Operator, Inc submits, proposed revisions to its Open Access Transmission Tariff, and its Market Administration and Control Area Services, Tariff.

Filed Date: 01/09/2007.

Accession Number: 20070111–0017.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 30, 2007.

Docket Numbers: ER07–423–000.

Applicants: South Carolina Electric & Gas Company.

Description: South Carolina Electric & Gas Co submits a Facilities, Agreement with New Horizon Electric Cooperative.

Filed Date: 01/10/2007.

Accession Number: 20070111–0045.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 31, 2007.

Docket Numbers: ER07–424–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection LLC submits a report of the, recommended allocations of cost responsibility for baseline, transmission updgrades reviewed and approved by PJM, Board of Managers and revised tariff sheets.

Filed Date: 01/11/2007.

Accession Number: 20070112–0064.

Comment Date: 5 p.m. Eastern Time on Monday, February 12, 2007.

Docket Numbers: ER07–425–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power Service Corp submits notices of, cancellation for two ERCOT Generation Interconnection, Agreements between AEP TCC and La Palma WLE, LP and, AEP TCC and Lon C. Hill.
Filed Date: 01/12/2007.
Accession Number: 20070116–0051.
Comment Date: 5 p.m. Eastern Time on Friday, February 02, 2007.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC07–6–000.
Applicants: Nuovo Pignone s.p.a.
Description: Nuovo Pignone s.p.a. submits a notice for Self-Certification, of Foreign Utility Company Status pursuant to Section 366.1, of the Commission's regulations.
Filed Date: 12/29/2006.
Accession Number: 20070110–0085.
Comment Date: 5 p.m. Eastern Time on Friday, January 19, 2007.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR06–1–005.
Applicants: North American Electric Reliability Corporation.
Description: North American Electric Reliability Corporation submits a, compliance filing in response to the Commission's order, issued 10/30/06.
Filed Date: 01/12/2007.
Accession Number: 20070112–5032.
Comment Date: 5 p.m. Eastern Time on Friday, February 02, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E7–874 Filed 1–22–07; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket Nos. II–2006–01; FRL–8272–4]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Marcal Paper Mills, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision concerning a State operating permit.

SUMMARY: This document announces a decision the EPA Administrator has made. It responds to a citizen petition submitted by the Rutgers Environmental Law Clinic (RELC) on behalf of a number of petitioners. The petition requests EPA to object to an operating permit issued to the Marcal Paper Mills, Inc. (''Marcal'') by the New Jersey Department of Environmental Protection (DEP). The Administrator has partially granted and partially denied the subject petition.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), petitioners may seek judicial review of those portions of the petition which EPA denied in the United States Court of Appeals for the appropriate circuit. Pursuant to section 307 of the Act, any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register.**

ADDRESSES: You may review copies of the final order, the petition, and all relevant information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for Marcal is available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2002.htm.*

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and object, as appropriate, to operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise those issues during the comment period or the grounds for the issues arose after this period.

On March 1, 2006, EPA Region 2 received a petition from RELC on behalf of a number of petitioners requesting that EPA object to the title V operating permit issued to Marcal on the following bases: (1) The permit is not accompanied by a statement of basis that is understandable, available to the public and describes the past compliance history of the facility and permitting decisions by DEP; (2) the permit fails to include a compliance schedule containing the terms of the settlement agreement between Marcal and DEP dated June 20, 2005 that are required to satisfy pending violations; (3) the permit fails to impose sufficient opacity monitoring, such as continuous opacity monitoring, to assure compliance with particulate matter limits; (4) the permit fails to require continuous emissions monitoring or more frequent stack testing to monitor VOC and NO_X; (5) the DEP did not

adequately address the environmental justice issue raised by Petitioners as is required by state and federal environmental justice executive orders; and (6) the DEP did not adequately address issues raised by Petitioners during the public hearing. On November 30, 2006, the Administrator issued an order granting on the issue of Statement of Basis and denying on the other issues. The order explains EPA's reasons for granting on the Statement of Basis issue and for denying the remaining issues.

Dated: January 4, 2007.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E7–818 Filed 1–22–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[MI–88–1; FRL–8272–8]

Adequacy Status of Motor Vehicle Emissions Budgets for Four Areas in Michigan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this action, EPA is notifying the public that EPA has found that the motor vehicle emissions budgets (MVEBs) for four areas across the state of Michigan are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Flint (consisting of Genesee and Lapeer Counties), Muskegon County, Berrien County, and Cass County areas can use the (MVEBs) for future conformity determinations. These budgets are effective February 7, 2007. The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Life Scientist, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *Maietta.anthony@epa.gov.*

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

Background

Today's action is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Michigan Department of Environmental Quality on November 29, 2006, stating that the 2018 (MVEBs) in the Flint, Muskegon County, Berrien County, and Cass County areas are adequate. Michigan submitted the budgets as part of the 8-hour ozone redesignation requests and maintenance plans for these areas. This finding was announced on EPA's conformity Web site, and received no comments: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm,* (once there, click on ''What SIP submissions are currently under EPA adequacy review?'').

The 2018 (MVEBs), in tons per day, for volatile organic compounds and oxides of nitrogen for these areas are as follows:

Area	2018 VOC MVEB (tpd)	2018 NO_X MVEB (tpd)
Flint	25.68	37.99
Muskegon County	6.67	11.00
Berrien County	9.16	15.19
Cass County	2.76	3.40

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

Dated: January 11, 2007.

Mary A. Gade,

Regional Administrator, Region 5.

[FR Doc. E7–919 Filed 1–22–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IL228–2; FRL–8272–7]

Notice of Prevention of Significant Deterioration Final Determination for Indeck-Elwood, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal action.

SUMMARY: This notice announces that EPA is withdrawing the Notice of Final Agency Action of November 22, 2006 (71 FR 67560), for the Indeck-Elwood, LLC Prevention of Significant Deterioration (PSD) permit, because the Environmental Appeals Board (EAB) remanded the permit in part. On September 27, 2006, the EAB of the EPA denied in part, and remanded in part, a petition for review of a federal PSD permit issued to Indeck-Elwood, LLC by the Illinois Environmental Protection Agency. According to 40 CFR part 124, a final permit decision shall be issued by the Regional Administrator when the EAB issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings. Because the EAB's decision on this permit appeal included a partial remand, there is not yet a final agency action subject to review.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Constantine Blathras at (312) 886–0671.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Air and Radiation Division, Air Programs Branch, Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Anyone who wishes to review the EAB decision can obtain it at *http://www.epa.gov/eab/.*

Dated: January 17, 2007.

Bharat Mathur,

Deputy Regional Administrator, Region 5.

[FR Doc. E7–920 Filed 1–22–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2005–0051; FRL–8272–1]

Asbestos-Containing Materials in Schools; State Request for Waiver From Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final approval.

SUMMARY: EPA is approving a waiver of the requirements of the Federal asbestos-in-schools program for the Commonwealth of Kentucky. A waiver request can be granted if EPA determines that the Commonwealth of Kentucky is implementing or intends to implement a state program of asbestos inspection and management that is at least as stringent as the federal program. This action approves the waiver request submitted by Governor Paul E. Patton, on January 4, 1999. On June 1, 2006, EPA published a notice of proposed approval and request for comments, and on August 31, 2006, published a reopening of comment period and correction. A detailed description of this waiver request and EPA's rationale for approving it was provided in the notice of proposed approval and request for comments and will not be restated here. No significant or adverse comments were received on EPA's proposal.

EFFECTIVE DATE: This final approval is effective on February 22, 2007.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–HQ–OPPT–2005–0051. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Asbestos Coordinator, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 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 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8182; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: John Hund, Asbestos Coordinator, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960; telephone number: (404) 562–8978; e-mail address: *hund.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Action Is the Agency Taking?

EPA is granting a waiver of the asbestos-in-schools program to the Commonwealth of Kentucky. This waiver is issued under section 203(m) of the Toxic Substances Control Act (TSCA) and 40 CFR 763.98. Section 203 is within Title II of TSCA, the Asbestos Hazard Emergency Response Act (AHERA). The Agency recognizes that a waiver granted to any State would not encompass schools operated under the defense dependents' education system (the third type of local education agency (LEA) defined at TSCA section 202(7) and 40 CFR 763.83), which serve dependents in overseas areas, and other elementary and secondary schools outside a State's jurisdiction, which generally includes schools in Indian country. Such schools would remain subject to EPA's asbestos-in-schools program.

On June 1, 2006, (71 FR 31183) EPA published a notice of proposed approval and request for comments. A detailed description of this waiver request and EPA's rationale for approving it was provided in the notice of proposed approval and request for comments and will not be restated here. On August 31, 2006, (71 FR 51816) EPA published a reopening of comment period and correction notice. No significant or adverse comments were received on EPA's proposal.

II. What Is the Agency's Authority for Taking This Action?

In 1987, under TSCA section 203, the Agency promulgated regulations that require the identification and management of asbestos-containing material by LEAs in the nation's elementary and secondary school buildings: The ''AHERA Schools Rule'' (40 CFR part 763, subpart E). Under section 203(m) of TSCA and 40 CFR 763.98, upon request by a State Governor and after notice and comment and opportunity for a public hearing in the State, EPA may waive, in whole or in part, the requirements of the asbestos-in-schools program (TSCA section 203 and the AHERA Schools Rule) if EPA determines that the State has established and is implementing or intends to implement a program of asbestos inspection and management that contains requirements that are at least as stringent as those in the Agency's asbestos-in-schools program. A State seeking a waiver must submit its request to the EPA Region in which that State is located.

III. When Did Kentucky Submit Its Request for a Waiver?

On January 4, 1999, Governor Paul E. Patton, submitted to the EPA Region 4 Regional Administrator, a letter with supporting documentation requesting a full waiver of the requirements of EPA's asbestos-in-schools program pursuant to the AHERA statute and 40 CFR 763.98. The EPA Region 4 Administrator indicated by letter dated February 19, 1999, to Kentucky that the request was complete. A subsequent letter dated August 21, 2000, from the Director of Kentucky Division for Air Quality, corrected an inadvertent error in the January 4, 1999, letter.

IV. Materials in the Official Record

The official record, under Docket ID Number EPA–HQ–OPPT–2005–0051, contains the Kentucky waiver request, and any other supporting or relevant documents.

List of Subjects

Environmental protection, Asbestos, Hazardous substances, Occupational health and safety, Reporting and recordkeeping requirements, Schools.

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

Dated: January 8, 2007.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. E7–922 Filed 1–22–07; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Board Action Cancelling Charter of the Farm Credit System Financial Assistance Corporation

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board, cancelled the charter of the Farm Credit System Financial Assistance Corporation (FAC or Corporation) at the January 11, 2007, Board meeting. The FCA chartered the FAC on January 11, 1988, to carry out a program to provide capital to Farm Credit System (System) institutions that were experiencing financial difficulties, and to assist in the repayment by System institutions to those that provided funds in connection with the program. The FAC discharged all of its responsibilities with respect to the repayment of FAC obligations during June 2005, and as a result, became eligible to terminate its corporate existence.

EFFECTIVE DATE: December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Eric Howard, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4481, TTY (703) 883–4056, or Rebecca Orlich, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On January 11, 2007, the FCA Board took action to cancel the charter and corporate existence of the FAC. The text of the Board action is set forth below:

Whereas, on January 11, 1988, the Farm Credit Administration chartered the Farm Credit System Financial Assistance Corporation pursuant to section 6.20, title VI, subtitle B of the Farm Credit Act of 1971, as amended (Act), to carry out a program to provide capital to institutions of the Farm Credit System (System) that were experiencing financial difficulties and to assist in the repayment by System institutions to those that provided funds in connection with the program; and

Whereas, section 6.31 of the Act provides that the Farm Credit System Financial Assistance Corporation will terminate upon the complete discharge of its statutory obligations, but in no event later than 2 years following the maturity and full payment of its debt obligations; and

Whereas, on June 10, 2005, the last remaining debt obligation issued by the Farm Credit System Financial Assistance Corporation matured and was repaid; and

Whereas, on June 10, 2005, all interest advanced by the U.S. Treasury was repaid; and

Whereas, the final audit of the Farm Credit System Financial Assistance Corporation as of September 30, 2005, was completed by PricewaterhouseCoopers, an independent auditor; and

Whereas, on November 14, 2005, the Farm Credit Administration issued to the Farm Credit System Financial Assistance Corporation a final Report of Examination as of September 30, 2005; and

Whereas, the Farm Credit Administration has determined that the Farm Credit System Financial Assistance Corporation has effectively completed its statutory mission, complied with applicable laws and regulations, operated in a safe and sound manner, and thus has fulfilled its statutory obligations and discharged its responsibilities under sections 6.9 and 6.26 of the Act;

Now, therefore, it is hereby ordered that:

The charter of the Farm Credit System Financial Assistance Corporation is hereby cancelled retroactively to December 31, 2006.

Signed by Nancy C. Pellett, Chairman, Farm Credit Administration Board on January 11, 2007.

Dated: January 18, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E7–903 Filed 1–22–07; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 7, 2007.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. John P. Stinner and Rita E. Stinner, both of Gering, Nebraska, to acquire voting shares of First Express of Nebraska, Inc., Gering, Nebraska, and thereby indirectly acquire voting shares of Valley Bank and Trust Company, Scottsbluff, Nebraska.

Board of Governors of the Federal Reserve System, January 17, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–846 Filed 1–22–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the

standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 2007.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Wyoming Bancorporation of Laramie, Wyoming; to become a bank holding company through the acquisition of 100 percent of the voting shares Wyoming State Bank, both in Laramie, Wyoming.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Family Bancorp, Inc. San Antonio, Texas; to become a bank holding company by acquiring 100 percent of The First National Bank of Refugio, Refugio, Texas.

Board of Governors of the Federal Reserve System, January 17, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–847 Filed 1–22–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Heritage Bancorp, Inc. Mason, Tennessee; to become a bank holding company by acquiring 50 percent of Fayette Bancorp, Inc., and thereby indirectly acquire Mason Bancorp, Inc., and Bank of Mason, all of Mason, Tennessee.

Board of Governors of the Federal Reserve System, January 18, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–921 Filed 1–22–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

The Data Measures, Data Composites, and National Standards To Be Used in the Child and Family Services Reviews; Corrections

AGENCY: Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice; corrections.

SUMMARY: The Administration for Children and Families (ACF) published a notice in the **Federal Register** of June 7, 2006 (Vol. 71, No. 109), pages 32969–32987, presenting the data measures, data composites, and national standards to be used in the Child and Family Services Review (CFSR). This notice provides corrections to this notice. A consolidated version of the June 7 **Federal Register** Announcement incorporating these corrections is provided on the Children's Bureau's Web site (address). The following are the key changes in the document and the reasons for the changes:

- *There are new specifications for each of the individual measures included in each composite.* After publication of the June 7, **Federal Register** Announcement, ACF conducted trainings on the CFSR data indicators at each of the 10 ACF Regional Offices. The trainings were provided to key administrators and staff of State child welfare agencies. During these trainings, issues were identified and questions were raised regarding the individual measures included in the composite. After reviewing these issues and questions, ACF determined that more specific information about the measures was needed and that some measures required revision in order to better target the outcome being assessed. The increased specification includes using the precise terminology that is used in the Adoption and Foster Care Analysis and Reporting System (AFCARS) and describing in greater detail the children who are in the denominator and numerator of each measure. The revisions to some of the measures required changes in the syntax used to calculate the measures.
- *There is a new definition of foster parent used by the National Child Abuse and Neglect Data System (NCANDS).* The change was made in this definition because the definition of a foster parent used by NCANDS was recently revised.
- *There is a new version of the table of ranges, percentiles, and national standards for the data indicators and measures to be used in the second round of the Child and Family Services Review.* This table replaces the Table 1 provided in the June 7, 2006 **Federal Register.** *It was revised to reflect new data and new national standards for all of the CFSR data indicators.* The data in the table and the national standards for all of the data indicators and measures are different than those presented in the June 7 **Federal Register** notice. This difference is due to one or both of the following reasons: (1) A change in the syntax for calculating some of the measures, and (2) a change in the process for calculating the national standards. The reason for the change in the procedures for calculating the national standards is provided in the following bullet.
- *There are revisions and corrections to Attachment B: Methodology for Developing the Composites. The revisions in Attachment B were made to (1) correct an error in the original attachment B, (2) provide the new coefficients (weights) for the composite*

measures that resulted from the changes in the syntax, and (3) explain the new procedure for calculating the national standards. The error in the original attachment B occurred in Step 10 of the process of calculating the composite scores. The new coefficients (weights) for each of the measures included in the composites are presented in Table 1 of the attachment—Coefficients (Weights) for the Measures Included in the Permanency Related Data Composites. The coefficients/weights changed due to changes in the syntax used to calculate some of the individual measures. The new procedure for calculating the national standards involved changes in the statistical requirements for fitting the data to a normal curve and to changes in the parameters used in calculating the sampling error.

Correction 1

In the **Federal Register** of June 7, 2006, the text beginning on page 32974, column 1, Section Heading B (CFSR Composites and Measures That will be Used as Part of the Assessment of a State's Substantial Conformity with CFSR Permanency Outcome 1—Children have permanency and stability in their living situations) should be replaced with the specifications presented below for the individual measures included in each composite. The new specifications increase the precision of the measures and address requests for clarification by participants of several training sessions focusing on the data indicators. In some instances, increasing precision involved changes to the syntax used to calculate performance on the measure.

Specifications of Individual Measures Included in Each Composite

The following provides specifications of the individual measures included in each data composite used to evaluate State performance for the second round of the CFSR. More detailed specifications are provided in a ''pseudo code'' as well as the SPSS syntax, both of which will be made available on the Web site of the National Resource Center for Child Welfare Data Technology (*http://www.nrccwdt.org/*). All measures included in the composites are derived from data reported to AFCARS. The AFCARS data set used to calculate the measures excludes children who are 18 years of age or older on the first day of the CFSR ''12-month target period.'' The term ''12-month target period'' refers to the primary timeframe for which a State is assessed under the CFSR. Depending upon the time of its CFSR, a State's 12-month target period may include either the combination of an AFCARS A file (the first 6 months of a fiscal year) and B file (the second 6 months of a fiscal year), or it may include the combination of an AFCARS B file (the second 6 months of a fiscal year) and A file (the first 6 months of the subsequent fiscal year). The 12-month target period used for establishing the national standards was fiscal year (FY) 2004.

Composite 1: Timeliness and Permanency of Reunification

For the CFSR data measures, reunification occurs if the child is reported to AFCARS as discharged from foster care and the reason for discharge is either ''reunification with parents or primary caretakers'' or ''living with other relatives.'' Children who are reported to AFCARS as discharged to a legal guardianship are not included in the count of reunifications, even if the legal guardian to whom the child is discharged is a relative. If the relative is a legal guardian, the discharge reason of ''guardianship'' is to be used in the AFCARS submission.

Component A: Timeliness of Reunification

The measures for the Timeliness of reunification component include an adjustment to account for State policies or practices in which children are reunified but the State continues to have care and supervision responsibilities for a period of time before discharging the child from foster care. This is referred to as the ''Trial Home Visit adjustment.''

A child is eligible for the trial home visit adjustment if all of the following criteria are met:

- The child has a date of discharge from foster care that occurs during the 12-month target period and the reason for discharge is either ''reunification with parents or caretakers'' or ''living with other relatives;''
- At the time of discharge from foster care, the child is in a ''current placement setting'' of ''Trial Home Visit,'' and
- At the time of discharge from foster care, the child had been in the placement setting of trial home visit for longer than 30 days.

If these criteria are met, the child's calculated length of stay in foster care prior to reunification or live with relative is determined in the following way: First, the number of days between the child's latest removal from home and the date of placement in the trial home visit setting is determined. Then, 30 days are added to that number of days to provide the calculated ''length of stay in foster care'' prior to reunification.

Individual Measure C1.1: Of all children who were discharged from foster care to reunification in the target 12-month period, and who had been in foster care for 8 days or longer, what percent were reunified in less than 12 months from the date of the latest removal from home?

The denominator for this measure includes children who meet all of the following criteria:

- The child is in foster care for 8 days or longer;
- The child's date of discharge from foster care occurs during the 12-month target period; and
- The child has a reason for discharge, and the reason is either ''reunification with parents or primary caretakers'' or ''living with other relatives.''

The numerator for this measure includes children who meet all of the criteria for inclusion in the denominator and also meet one of the following criteria:

- The child's date of discharge from foster care occurs less than 12 months from the date of the latest removal from home; or
- Using the Trial Home Visit adjustment, the child's ''length of stay'' in foster care is less than 12 months from the date of the child's latest removal from home.

Individual Measure C1.2: Of all children who were discharged from foster care to reunification in the 12-month target period, and who had been in foster care for 8 days or longer, what was the median length of stay in months from the date of the latest removal from home until the date of discharge to reunification?

This measure includes children who meet all of the following criteria:

- The child is in foster care for 8 days or longer;
- The child's date of discharge from foster care occurs during the 12-month target period; and
- The child has a reason for discharge, and the reason is either ''reunification with parents or primary caretakers'' or ''living with other relatives.''

Median length of stay is calculated based on one of the following procedures:

- The difference between the child's date of discharge from foster care and the child's date of latest removal from home; or
- The child's ''length of stay'' in foster care using the Trial Home Visit adjustment calculation.

Individual Measure C1.3: Of all children who entered foster care for the first time in the 6-month period just

prior to the target 12-month period, and who remained in foster care for 8 days or longer, what percent were discharged from foster care to reunification in less than 12 months from the date of latest removal from home?

The denominator for this measure includes children who meet all of the following criteria:

- The child's date of first removal from home occurs during the 6-month period just prior to the 12-month target period, and
- The child is in foster care for 8 days or longer.

The numerator for this measure includes children who meet all of the criteria for inclusion in the denominator and who also meet at least one of the following criteria:

- The child has a date of discharge from foster care that is less than 12 months from the date of first removal from home, and the reason for discharge is either ''reunification with parents or primary caretakers'' or ''living with other relatives;'' or
- Using the Trial Home Visit adjustment, the child's calculated length of stay in foster care is less than 12 months from the date of the child's first removal from home.

Component B: Permanency of Reunification

Individual Measure C1.4: Of all children who were discharged from foster care to reunification in the 12-month period prior to the target 12-month period, what percent re-entered foster care in less than 12 months from the date of discharge?

Individual Measure C1.4: Of all children who were discharged from foster care to reunification in the 12-month period prior to the target 12-month period, what percent re-entered foster care in less than 12 months from the date of discharge?

The denominator for this measure includes children who meet all of the following criteria:

- The child's date of discharge from foster care occurs during the 12-month period just prior to the 12-month target year; and
- At the time of the date of discharge, the reason for discharge is either ''reunification with parents or primary caretakers'' or ''living with other relatives.''

The numerator for this measure includes children who meet all of the criteria for inclusion in the denominator and also meet the following criterion:

- The child's date of latest removal from home is less than 12 months from the date of discharge from foster care that occurred during the 12-month period just prior to the 12-month target year.

Composite 2: Timeliness of Adoptions

Component A: Timeliness of Adoptions of Children Exiting Foster Care

Individual Measure C2.1: Of all children who were discharged from foster care to a finalized adoption during the 12-month target period, what percent were discharged in less than 24 months from the date of the latest removal from home?

The denominator for this measure includes children who meet all of the following criteria:

- The child has a date of discharge from foster care during the 12-month target period, and
- The reason for discharge is adoption.

The numerator for this measure includes children who meet all of the criteria for inclusion in the denominator, and also meet the following criterion:

- The child's date of discharge is less than 24 months from the date of latest removal from home.

Individual Measure C2.2: Of all children who were discharged from foster care to a finalized adoption during the 12-month target period, what was the median length of stay in foster care in months from the date of latest removal from home to the date of discharge to adoption?

This measure includes children who meet all of the following criteria:

- The child's date of discharge from foster care occurs during the 12-month target period; and
- The reason for discharge is adoption.

The ''length of stay'' in foster care is the time difference between the date of discharge from foster care to adoption and the date of the latest removal from home.

Component B: Progress Toward Adoption of Children Who Have Been in Foster Care for 17 Months or Longer

Individual Measure C2.3: Of all children in foster care on the first day of the 12-month target period who were in foster care for 17 continuous months or longer, what percent were discharged from foster care to a finalized adoption by the last day of the 12 month target period? (The denominator for this measure excludes children who, by the last day of the 12-month target period, are discharged from foster care with a discharge reason of reunification with parents or primary caretakers, living with other relatives, or guardianship.)

The denominator for this measure includes children who meet all of the following criteria:

- The child was in foster care for 17 or more continuous months or longer as of the first day of the 12-month target period, and
- By the last day of the 12-month target period, the child had not discharged from foster care with a discharge reason of reunification with parents or primary caretakers, living with other relatives, or guardianship.

The numerator for this measure includes children who meet all of the criteria for inclusion in the denominator and also meet all of the following criteria:

- The child's date of discharge from foster care occurs during the 12-month target period (including the first day of the target period); and
- The reason for discharge is adoption.

Individual Measure C2.4: Of all children in foster care on the first day of the 12-month target period who were in foster care for 17 continuous months or longer, and who were not legally free for adoption prior to that day, what percent became legally free for adoption during the first 6-months of the 12-month target period?

A child is considered to be legally free for adoption if there is a parental rights termination date reported to AFCARS for both mother and father. In AFCARS, if a parent is deceased, the date of death is to be reported as the parental rights termination date.

The denominator for this measure includes children who meet ALL of the following criteria:

- The child was in foster care for 17 continuous months or longer as of the first day of the 12-month target period, and
- The child was not legally free for adoption prior to the first day of the 12-month target period.

The denominator for this measure excludes any child who did not become legally free during the first 6 months of the target year, but who, during that 6-month period, is discharged from foster care with a discharge reason of reunification with parents or primary caretakers, living with other relatives, or guardianship.

The numerator for this measure includes children who meet all of the criteria for inclusion in the denominator and also meet the following criterion:

- The child became legally free for adoption during the first 6 months of the 12-month target period (including the first and last day of the 6-month period).

Component C: Timeliness of Adoptions of Children Who Are Legally Free for Adoption

Individual Measure C2.5: Of all children who became legally free for adoption during the 12 months prior to the target 12-month period, what percent were discharged from foster care to a finalized adoption in less than 12 months from the date of becoming legally free?

The denominator for this measure includes children who meet all of the following criteria:

- The child has a parental rights termination date for both mother and father, and
- The latest parental rights termination date occurs in the 12-months just prior to the 12-month target period.

The numerator for this measure includes children who meet all of the criteria for inclusion in the denominator and also meet the following criteria:

- The child has a date of discharge from foster care that occurs in less than 12 months of the latest date of parental rights termination, and
- The reason for discharge is adoption.

Composite 3: Achieving Permanency for Children in Foster Care for Long Periods of Time

Component A: Achieving Permanency for Children in Foster Care for Extended Periods of Time

Individual Measure C3.1: Of all children who were in foster care for 24 months or longer on the first day of the 12-month target period, what percent were discharged to a permanent home by the last day of the 12-month period and prior to their 18th birthday?

A child is considered as discharged to a permanent home if the discharge reason reported to AFCARS is reunification with parents or primary caretakers, living with other relatives, guardianship, or adoption.

The denominator for this measure includes children who meet the following criterion:

- The child is in foster care for 24 continuous months or longer on the first day of the 12-month target period.

The numerator for this measure includes children who meet the criterion for the denominator and also meet all of the following criteria:

- The child's date of discharge from foster care occurs during the 12-month target period;
- The child's reason for discharge is reunification with parents or primary caretakers, living with other relatives, guardianship, or adoption; and
- The date of discharge from foster care occurs before the child's 18th birthday.

Individual Measure C3.2: Of all children who were discharged from foster care during the 12-month target period, and who were legally free for adoption (i.e., there is a parental rights termination date for both parents) at the time of discharge, what percent were discharged to a permanent home prior to their 18th birthday?

A child is considered as discharged to a permanent home if the discharge reason reported to AFCARS is reunification with parents or primary caretakers, living with other relatives, guardianship, or adoption.

The denominator for this measure includes children who meet all of the following criteria:

- The child has a parental rights termination date for both mother and father at the time of discharge from foster care, and
- The child has a date of discharge from foster care that occurs during the 12-month target period.

The numerator for this measure includes children who meet all of the criteria for inclusion in the denominator, and also meet all of the following criteria:

- The child has a discharge reason of reunification with parents or primary caretakers, living with other relatives, guardianship, or adoption; and
- The date of discharge is prior to the child's 18th birthday.

Component B: Children Growing Up in Foster Care

Individual Measure C3.3: Of all children who either (1) were, prior to age 18, discharged from foster care during the 12-month target period with a discharge reason of emancipation, or (2) reached their 18th birthday while in foster care but had not yet been discharged from foster care, what percent were in foster care for 3 years or longer?

The denominator for this measure includes children who meet one of the following criteria:

- The child has a date of discharge from foster care during the 12-month target period that occurs prior to the child's 18th birthday and the reason for discharge is ''emancipation;'' or
- The child reaches his or her 18th birthday during the 12-month target period and is in foster care at the time of the birthday.

The numerator for this measure includes children who meet one of the criteria for inclusion in the denominator and also meet one of the following criteria:

- The time from the date of the latest removal from home and the date of discharge is equal to, or greater than, 3 years; or
- The time from the date of the latest removal from home and the date of the child's 18th birthday is equal to, or greater than, 3 years.

In AFCARS, emancipation is defined as ''the child reached majority according to State law by virtue of age, marriage, etc.''

Composite 4: Placement Stability

Individual Measure C4.1: Of all children who were served in foster care during the 12-month target period, and who were in foster care for at least 8 days but less than 12 months, what percent had two or fewer placement settings?

The denominator for this measure includes children who meet all of the following criteria:

- The child is in foster care at some time during the 12-month target period, and
- The child's length of stay in foster care during the most recent foster care episode is at least 8 days but less than 12 months.

The numerator for this measure includes children who meet all of the criteria for inclusion in the denominator and also meet the following criterion:

- The child's number of placement settings during this removal episode does not exceed two (2).

Individual Measure C4.2: Of all children who were served in foster care during the 12-month target period, and who were in foster care for at least 12 months but less than 24 months, what percent had two or fewer placement settings?

The denominator for this measure includes children who meet all of the following criteria:

- The child is in foster care at some time during the 12-month target period, and
- The child's length of stay in foster care during the most recent foster care episode is at least 12 months but less than 24 months.

The numerator for this measure includes children who meet all of the criteria for inclusion in the denominator and also meet the following criterion:

- The child's number of placement settings during this removal episode does not exceed two (2).

Individual Measure C4.3: Of all children who were served in foster care during the 12-month target period, and who were in foster care for at least 24 months, what percent had two or fewer placement settings?

The denominator for this measure includes children who meet all of the following criteria:

• The child is in foster care at some time during the 12-month target period, and

• The child's length of stay in foster care during the most recent foster care episode is at least 24 months.

The numerator for this measure includes children who meet all of the criteria for inclusion in the denominator and also meet the following criterion:

• The child's number of placement settings during this removal episode does not exceed two (2).

Correction 2

In the **Federal Register** of June 7, 2006, Table 1 on page 32980 showing the range, percentiles, and national standards for the data indicators to be used in the second round of the CFSR is to be replaced by Table 1 in this current notice. The ranges, percentiles, and national standards for all six data indicators (the two safety-related indicators and the four permanency-related indicators) are different than those reported in the June 7 **Federal Register.** For the safety-related indicators, the differences are due to a change in the procedure for calculating the sampling error used for establishing the national standards. For the permanency-related composite indicators, the differences are a result of an increased precision of the measures and/or a change in the procedure for calculating the sampling error used for establishing the national standards (See correction 7 for information on the change in calculation of the sampling error.)

Correction 3

In the **Federal Register** of June 7, 2006, on page 32973, in the second column, the definition of the term ''foster parent,'' as it is used by the NCANDS has been changed. The new definition is the following: An individual who provides a home for orphaned, abused, neglected, delinquent, or disabled children under the placement, care or supervision of the State. The individual may be a relative or non-relative and need not be licensed by the State agency to be considered a foster parent.

Correction 4

In the **Federal Register** of June 7, 2006, page 32981, column A, under the heading *Attachment A: List of Data to be Included in the State Data Profile,* the descriptive information currently included in the State Data Profile from NCANDS (section A) did not include all of the information included in the profile. This section should be replaced with the following text:

Descriptive Information Currently Included in the State Data Profile

A. Descriptive Information From the National Child Abuse and Neglect Data System (NCANDS)

1. The number of reports alleging maltreatment of children that reached a disposition within the reporting year, the total number of reports, the number of unique children associated with reports alleging maltreatment, and the number of ''duplicate children.''

2. The numbers and percentages of reports that were given a disposition of Substantiated and Indicated, Unsubstantiated, or Other, and the numbers and percentages of duplicate and unique children.

3. The numbers and percentages of unique and duplicate child victim cases opened for services, based on the number of victims during the reporting period under review.

4. The numbers and percentages of duplicate and unique victims entering foster care in response to a child abuse/neglect report.

5. The number of child fatalities.

Correction 5

In the **Federal Register** of June 7, 2006, page 32985, second column, the text for section 10 did not accurately describe the final step in calculating the composite score. This section should be replaced by the following:

10. *Generate the composite scores for each State.* After the composite score for each county is calculated, that score is multiplied by the number of children served in foster care in that county during the 12-month target period. The result is a ''weighted'' county composite score. This ''weighting'' allows counties with larger foster care populations to make a greater contribution to the overall State score. The weighted county scores are then summed and divided by the total number of children served in foster care in all of the counties included in the calculation. The result is the State composite score.

Correction 6

In the **Federal Register** of June 7, 2006, page 32986, in column 1, information in the first bullet point was not included in the publication. The first bullet point should read as follows:

Set Bullets

• *PCA does not compensate for measures that are currently misunderstood or inadequately defined; it compounds the existing weakness in each measure.* It is incorrect to say that PCA compounds weaknesses in each measure. PCA provides a well understood empirical strategy for combining variables or measures. The main body of the **Federal Register** Announcement provides a response to concerns about the adequacy of the measures.

Correction 7

In the **Federal Register** of June 7, 2006, page 32986, column 3, the paragraph under the heading *Establishing the National Standards* should be replaced because of changes that ACF has made in the procedures for calculating the national standard. The text should read as follows:

Establishing the National Standard

The process for establishing the national standards on the composite scores differs from that used for the first round of the CFSR. In the first round of the CFSR, the procedure for establishing the national standard for each measure involved fitting the data to a normal curve based on a level of significance of .05, and adjusting for the 75th percentile by calculating the sampling error using the lower limit of a 95 percent confidence interval for estimating the population mean. ACF determined that this procedure was not appropriate for the second round of the CFSR. One concern was that using a level of significance of .05 would result in eliminating States at either end of the range of each of the State permanency composite data indicators and safety-related data indicators in order to fit the distribution to a normal curve. Consequently, not all States would be included in the calculation of the national standards. Although this was appropriate for the first round of the CFSR because of data quality problems at the time that the standards were established, these data quality problems are no longer as significant an issue. Another concern was that using the 95 percent confidence interval would result in a considerable reduction in the actual percentile represented by each of the permanency and safety standards.

To address the concern relevant to eliminating States from the calculation of the national standard, ACF changed the level of significance for fitting the data to a normal curve from .05 to .01. At this higher significance level, all States could be included in the fitted normal probability distribution for both the composite data indicators and the safety-related data indicators. Consequently, performance of all States was used to determine the national standards for all data indicators. To

address the concern relevant to the considerable reduction in the actual percentile represented by the national standard for each of the indicators, the basis for calculating the sampling error was changed from the lower limit of 95 percent confidence interval to the lower limit of an 80 percent confidence interval. As a result of this change, the adjusted 75th percentile is close to the 69th percentile, with the percentile based on the distribution to the normal curve.

Correction 8

In the **Federal Register** of June 7, 2006, page 32986, Attachment B, table 1 showing the coefficients (weights) for the individual measures included in the permanency composites is to be replaced by Table 2 in this document. There are differences in the coefficients for the individual measures. The differences are due to changes in the syntax resulting from increasing the precision of the measures.

Dated: January 16, 2007.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

TABLE A.—DATA INDICATORS FOR THE CHILD AND FAMILY SERVICES REVIEW

[Ranges, medians, and national standards for the Child and Family Services Review (CFSR) data indicators*]

Data indicators	Range	Median**	National standard**
Data Indicators Associated With CFSR Safety Outcome 1—Children Are, First and Foremost, Protected From Abuse and Neglect			
Of all children who were victims of a substantiated or indicated maltreatment allegation during the first 6 months of FY 2004, what percent were not victims of another substantiated or indicated maltreatment allegation within the 6-months following that maltreatment incident? (45 States).	86.0–98.0	93.3	94.6 or higher.
Of all children served in foster care in FY 2004, what percent were not victims of a substantiated or indicated maltreatment by a foster parent or facility staff member during the fiscal year? (37 States).	98.59–100	99.52	99.68 or higher.
Data Indicators Associated With CFSR Permanency Outcome 1—Children Have Permanency and Stability In Their Living Situations			
Permanency Composite 1: Timeliness and Permanency of Reunification (47 States)***	50–150	113.7	122.6 or higher.
Component A: Timeliness of reunification****:			
Measure C1.1: Of all children discharged from foster care to reunification in FY 2004 who had been in foster care for 8 days or longer, what percent were reunified in less than 12 months from the date of the latest removal from home? (This includes the ''trial home visit adjustment.'') (51 States).	44.3–92.5	69.9	No Standard.
Measure C1.2: Of all children who were discharged from foster care to reunification in FY 2004, and who had been in foster care for 8 days or longer, what was the median length of stay in months from the date of the latest removal from home until the date of discharge to reunification? (This includes the ''trial home visit adjustment.'') (51 States).	1.1–13. 7	6.5	No Standard.
Measure C1.3: Of all children who entered foster care for the first time in the 6-month period just prior to FY 2004, and who remained in foster care for 8 days or longer, what percent were discharged from foster care to reunification in less than 12 months from the date of latest removal from home? (This includes the ''trial home visit adjustment.'') (47 States).	17.7–68.9	39.4	No Standard.
Component B: Permanency of reunification****:			
Measure C14: Of all children who were discharged from foster care to reunification in the 12-month period prior to FY 2004 (i.e., FY 2003), what percent re-entered foster care in less than 12 months from the date of discharge? (47 States).	1.6–29.8	15.0	No Standard.

* The data shown are for the national standard target year of FY 2004. Each State will be evaluated against the standard on data relevant to its specific CFSR 12-month target period. The national standards will remain the same throughout the second round of the CFSR.

** The medians and the national standards for the safety and composite data indicators are based on an adjustment to the distribution using the sampling error for each data indicator. The medians and national standards for the composite data indicators are from a dataset that excluded counties in a State that did not have data for all measures within a particular composite. The range and medians for each individual measure reflect the distribution of all counties that had data for that particular measure, even if that county was not included in the overall composite calculation.

*** A State was excluded from the calculation of the composite national standard if (1) it did not submit FIPS codes in its AFCARS submissions (1 State), or (2) with regard to composite 1 and 2, it did not provide unique identifiers that would permit tracking children across fiscal years (4 States).

**** Children are included in the count of reunifications if the reason for discharge reported to AFCARS was either ''reunification'' or ''live with relative.'' They are not included in the count of ''reunifications'' if the reason for discharge reported to AFCARS was ''guardianship,'' even if the guardian is a relative.

Data Indicators Associated With CFSR Permanency Outcome 1—Children Have Permanency and Stability in Their Living Situations*			
Permanency Composite 2: Timeliness of Adoptions (47 States)	50–150	95.3	106.4 or higher.
Component A: Timeliness of adoptions of children discharged from foster care:			
Measure C2.1: Of all children who were discharged from foster care to a finalized adoption during FY 2004, what percent were discharged in less than 24 months from the date of the latest removal from home? (51 States).	6.4–74.9	26.8	No Standard.

TABLE A.—DATA INDICATORS FOR THE CHILD AND FAMILY SERVICES REVIEW—Continued

[Ranges, medians, and national standards for the Child and Family Services Review (CFSR) data indicators*]

Data indicators	Range	Median**	National standard**
Measure C2.2: Of all children who were discharged from foster care to a finalized adoption during FY 2004, what was the median length of stay in foster care in months from the date of latest removal from home to the date of discharge to adoption? (51 States).	16.2–55.7	32.4	No Standard.
Component B: Progress toward adoption for children in foster care for 17 months or longer:			
Measure C2.3: Of all children who were in foster care on the first day of FY 2004, and who were in foster care for 17 continuous months or longer, what percent were discharged from foster care to a finalized adoption by the last day of FY 2004? The denominator for this measure excludes children who, by the end of FY 2004, were discharged from foster care with a discharge reason of live with relative, reunification, or guardianship. (51 States).	2.4–26.2	20.2	No Standard.
Measure C2.4: Of all children who were in foster care on the first day of FY 2004 for 17 continuous months or longer, and who were not legally free for adoption prior to that day, what percent became legally free for adoption during the first 6 months of FY 2004? (Legally free means that there was a parental rights termination date reported to AFCARS for both mother and father.) The denominator for this measure excludes children who, by the last day of the first 6 months of FY 2004, were not legally free, but had been discharged from foster care with a discharge reason of live with relative, reunification, or guardianship. (51 States).	0.1–17.8	8.8	No Standard.
Component C: Progress toward adoption of children who are legally free for adoption:			
Measure C2.5: Of all children who became legally free for adoption during FY 2003 (i.e., there was a parental rights termination date reported to AFCARS for both mother and father), what percent were discharged from foster care to a finalized adoption in less than 12 months of becoming legally free? (47 States).	20.0–100	45.8	No Standard.

* The data shown are for the national standard target year of FY 2004. Each State will be evaluated against the standard on data relevant to its specific CFSR 12-month target period. The national standards will remain the same throughout the second round of the CFSR.

** The medians and the national standards for the safety and composite data indicators are based on an adjustment to the distribution using the sampling error for each data indicator. The medians and national standards for the composite data indicators are from a dataset that excluded counties in a State that did not have data for all measures within a particular composite. The range and medians for each individual measure reflect the distribution of all counties that had data for that particular measure, even if that county was not included in the overall composite calculation.

*** A State was excluded from the calculation of this composite either because (1) it did not submit FIPS codes in its AFCARS submissions (1 State), or (2) with regard to composite 1 and 2, it did not provide unique identifiers that would permit tracking children across fiscal years (4 States).

Data Indicators Associated With CFSR Permanency Outcome 1—Children Have Permanency and Stability in Their Living Situations*			
Permanency Composite 3: Achieving Permanency for Children in Foster Care for Long Periods of Time (51 States)***.	50–150	112.7	121.7 or higher.
Component A: Permanency for children in foster care for long periods of time:			
Measure C3.1: Of all children who were in foster care for 24 months or longer on the first day of FY 2004, what percent were discharged to a permanent home prior to their 18th birthday and by the end of the fiscal year? A child is considered discharged to a permanent home if the discharge reason is adoption, guardianship, reunification, or live with relative. (51 States).	8.1–35.3	25.0	No Standard.
Measure C3.2: Of all children who were discharged from foster care in FY 2004 who were legally free for adoption at the time of discharge (*i.e.*, there was a parental rights termination date reported to AFCARS for both mother and father), what percent were discharged to a permanent home prior to their 18th birthday? A child is considered discharged to a permanent home if the discharge reason is adoption, guardianship, reunification, or live with relative. (51 States).	84.9–100	96.8	No Standard.
Component B: Children growing up in foster care:			
Measure C3.3: Of all children who either (1) were discharged from foster care in FY 2004 with a discharge reason of emancipation, or (2) reached their 18th birthday in FY 2004 while in foster care, what percent were in foster care for 3 years or longer? (51 States).	15.8–76.9	47.8	No Standard.
Permanency Composite 4: Placement Stability (51 States)	50–150	93.3	101.5 or higher.
Measure C4.1: Of all children who were served in foster care during FY 2004, and who were in foster care for at least 8 days but less than 12 months, what percent had two or fewer placement settings? (51 States).	55.0–99.6	83.3	No Standard.
Measure C4.2: Of all children who were served in foster care during FY 2004, and who were in foster care for at least 12 months but less than 24 months, what percent had two or fewer placement settings? (51 States).	27.0–99.8	59.9	No Standard.

TABLE A.—DATA INDICATORS FOR THE CHILD AND FAMILY SERVICES REVIEW—Continued

[Ranges, medians, and national standards for the Child and Family Services Review (CFSR) data indicators*]

Data indicators	Range	Median**	National standard**
Measure C4.3: Of all children who were served in foster care during FY 2004, and who were in foster care for at least 24 months, what percent had two or fewer placement settings? (51 States).	13.7–98.9	33.9	No Standard.

* The data shown are for the national standard target year of FY 2004. Each State will be evaluated against the standard on data relevant to its specific CFSR 12-month target period. The national standards will remain the same throughout the second round of the CFSR.

** The medians and the national standards for the safety and composite data indicators are based on an adjustment to the distribution using the sampling error. The medians and national standards for the composite data indicators are from a dataset that excluded counties in a State that did not have data for all measures within a particular composite. The range and medians for each individual measure reflect the distribution of all counties that had data for that particular measure, even if that county was not included in the overall composite calculation.

*** A State was excluded from the calculation of this composite because it did not submit FIPS codes in its AFCARS submissions.

TABLE B.—COEFFICIENTS (WEIGHTS) FOR INDIVIDUAL MEASURES IN THE CFSR DATA COMPOSITES

[Coefficients (weights) for individual measures]

Composites and Individual Measures*	Components and weights		
	Component A	Component B	Component C
	Timeliness of reunification	Permanency of reunification	Not applicable to this composite
Permanency Composite 1: Timeliness and Premanency of Reunification** (1,975 Counties):			
Measure C1.1: Of all children who were discharged from foster care to reunification in FY 2004, and who had been in foster care for 8 days or longer, what percent were reunified in less than 12 months from the date of the latest removal from home? (This includes the ''trial home visit adjustment.'') (51 States).	0.462	0.085	
Measure C1.2: Of all children who were discharged from foster care to reunification in FY 2004, and who had been in foster care for 8 days or longer, what was the median length of stay in months from the date of the latest removal from home until the date of discharge to reunification? (This includes the ''trial home visit adjustment.'') (51 States).	0.451	0.070	
Measure C1.3: Of all children who entered foster care for the first time in the 6-month period just prior to FY 2004, and who remained in foster care for 8 days or longer, what percent were discharged from foster care to reunification in less than 12 months from the date of latest removal from home? (This includes the ''trial home visit adjustment.'') (47 States).	0.295	−0.005	
Measure C1.4: Of all children who were discharged from foster care to reunification in the 12-month period prior to FY 2004, what percent re-entered foster care in less than 12 months from the date of discharge? (47 States).	0.129	1.025	

*The coefficients were determined from a national data set incorporating only those counties that had data for all of the individual measures included in a particular composite. This data set includes those ''counties'' constructed by combining small counties in a State to reach the requirement of at least 50 children served in foster care during FY 2004.

**Children are included in the count of reunifications if the reason for discharge reported to AFCARS is either ''reunify'' or ''live with relative.'' They are not included if the reason for discharge is guardianship, even if the guardian is a relative.

Composites and individual measures	Components and weights		
	Length of time in foster care to adoption	Progress toward adoption—children in foster care for 17 months or longer	Timeliness of adoptions for children who are legally free
Permanency Composite 2: Timeliness of Adoptions (1,512 Counties)*:			
Measure C2.1: Of all children who were discharged from foster care to a finalized adoption during FY 2004, what percent were discharged in less than 24 months from the date of the latest removal from home? (51 States)	0.533	−0.032	−0.026
Measure C2.2: Of all children who were discharged from foster care to a finalized adoption during FY 2004, what was the median length of stay in foster care in months from the date of latest removal from home to the date of discharge to adoption? (51 States)	0.551	0.106	−0.032
Measure C2.3: Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, what percent were discharged from foster care to a finalized adoption by the last day of FY 2004? The denominator for this measure excludes children who, by the end of FY 2004 had been discharged from foster care with a discharge reason of reunification, live with relative, or guardianship. (51 States)	−0.087	0.526	0.255

Composites and individual measures	Components and weights		
	Length of time in foster care to adoption	Progress toward adoption—children in foster care for 17 months or longer	Timeliness of adoptions for children who are legally free
Measure C2.4: Of all children in foster care on the first day of FY 2004 who were in foster care for 17 continuous months or longer, and who were not legally free for adoption prior to that day, what percent became legally free for adoption during the first 6 months of FY 2004? (Legally free means that there was a parental rights termination date reported to AFCARS for both mother and father.) The denominator for this measure excludes children who, by the last day of the first 6 months of FY 2004, were not legally free but had been discharged from foster care with a discharge reason of reunification, live with relative, or guardianship. (51 States)	0.140	0.699	−0.256
Measure C2.5: Of all children who became legally free for adoption during FY 2003 (i.e., there was a parental rights termination date reported to AFCARS for both mother and father), what percent were discharged from foster care to a finalized adoption in less than 12 months of becoming legally free? (47 States)	−0.030	−0.059	0.930

*The coefficients were determined from a national data set that incorporated only those counties that had data for all of the individual measures included in a particular composite. This data set includes those ''counties'' constructed by combining small counties in a particular State to reach the requirement of at least 50 children served in foster care during FY 2004.

Composites and individual measures	Component A	Component B	Component C
	Children discharged to permanent homes	Children discharged to emancipation	Not applicable to this composite
Permanency Composite 3: Achieving permanency for children in foster care for long periods of time (1,681 Counties)*:			
Measure C3.1: Of all children who were in foster care for 24 months or longer on the first day of FY 2004, what percent were discharged to a permanent home prior to their 18th birthday and by the end of the fiscal year? A child is considered discharged to a permanent home if the discharge reason is adoption, guardianship, reunification, or live with relative. (51 States).	0.545	0.137	No Standard.
Measure C3.2: Of all children who were discharged from foster care in FY 2004, and who were legally free for adoption at the time of discharge (i.e., there was a parental rights termination date reported to AFCARS for both mother and father), what percent were discharged to a permanent home prior to their 18th birthday? A child is considered discharged to a permanent home if the discharge reason is adoption, guardianship, reunification, or live with relative. (51 States).	0.746	−0.220	No Standard.
Measure C3.3: Of all children who either (1) were, prior to their 18th birthday, discharged from foster care in FY 2004 with a discharge reason of emancipation, or (2) reached their 18th birthday in FY 2004 while in foster care, what percent were in foster care for 3 years or longer? (51 States).	−0.108	0.979	No Standard.
	Placement stability	Not applicable for this composite	Not applicable for this composite
Permanency Composite 4: Placement stability (2,140 Counties)*:			
Measure C4.1: Of all children who were served in foster care during FY 2004, and who were in foster care for at least 8 days but less than 12 months, what percent had two or fewer placement settings? (51 States).	0.398		
Measure C4.2: Of all children who were served in foster care during FY 2004, and who were in foster care for at least 12 months but less than 24 months, what percent had two or fewer placement settings? (51 States).	0.417		
Measure C4.3: Of all children who were served in foster care during FY 2004, and who were in foster care for at least 24 months, what percent had two or fewer placement settings? (51 States).	0.400		

*The coefficients were determined from a national data set that incorporated only those counties that had data for all of the individual measures included in a particular composite. This data set includes those ''counties'' constructed by combining small counties in a particular State to reach the requirement of at least 50 children served in foster care during FY 2004.

[FR Doc. E7–808 Filed 1–22–07; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0279]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Bar Code Label Requirement for Human Drug and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 22, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Bar Code Label Requirement for Human Drug and Biological Products—(OMB Control Number 0910–0537)—Extension

In the **Federal Register** of February 26, 2004 (69 FR 9120), FDA issued a new rule that required human drug product and biological product labels to have bar codes. The rule required bar codes on most human prescription drug products and on over-the-counter (OTC) drug products that are dispensed under an order and commonly used in health care facilities. The rule also required machine-readable information on blood and blood components. For human prescription drug products and OTC drug products that are dispensed under an order and commonly used in health care facilities, the bar code must contain the National Drug Code number for the product. For blood and blood components, the rule specifies the minimum contents of the machine-readable information in a format approved by the Center for Biologics Evaluation and Research Director as blood centers have generally agreed upon the information to be encoded on the label. The rule is intended to help reduce the number of medication errors in hospitals and other health care settings by allowing health care professionals to use bar code scanning equipment to verify that the right drug (in the right dose and right route of administration) is being given to the right patient at the right time.

Most of the information collection burden resulting from the final rule, as calculated in table 1 of the final rule (69 FR 9120 at 9149), was a one-time burden that does not occur after the rule's compliance date of April 26, 2006. In addition, some of the information collection burden estimated in the final rule is now covered in other OMB-approved information collection packages for FDA. However, parties may continue to seek an exemption from the bar code requirement under certain, limited circumstances. Section 201.25(d) (21 CFR 201.25(d)) requires submission of a written request for an exemption and describes the contents of such requests. Based on the number of exemption requests submitted during 2004 and 2005, we estimate that approximately 2 waiver requests may be submitted annually, and that each exemption request will require 24 hours to complete. This would result in an annual reporting burden of 48 hours.

In the **Federal Register** of July 24, 2006 (71 FR 41817), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
201.25(d)	2	1	2	24	48
Total					48

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 16, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–916 Filed 1–22–07; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 22, 2007, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Ronald P. Jean, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3676, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512521. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 22, 2007, the committee will discuss, make recommendations and vote on a

premarket approval application for the Cormet 2000 Hip Resurfacing System, sponsored by Corin U.S.A. This system is intended for use in resurfacing hip arthroplasty for reduction or relief of pain and/or improved hip function in skeletally mature patients with non-inflammatory degenerative arthritis or inflammatory arthritis.

FDA intends to make background material available to the public no later than 1 business day before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at*http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 8, 2007. Oral presentations from the public will be scheduled for 30 minutes at the beginning of the committee deliberations and for 30 minutes near the end of the deliberations on February 22, 2007. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 31, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 1, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams at 301–827–7292 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 17, 2007.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E7–946 Filed 1–22–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Hydrogen Peroxide Solution for Control of Various Fungal and Bacterial Diseases in Fish; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of effectiveness, target animal safety, and environmental data that may be used in support of a new animal drug application (NADA) or supplemental NADA for use of a 35 percent solution of hydrogen peroxide by immersion for control of mortality in several life stages of certain freshwater-reared finfish species due to various fungal and bacterial diseases. The data, contained in Public Master File (PMF) 5639, were compiled by the United States Geological Survey, Biological Resources Section, Upper Midwest Environmental Sciences Center.

ADDRESSES: Submit NADAs or supplemental NADAs to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Joan Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Hydrogen peroxide solution used by immersion for control of mortality in several life stages of certain freshwater-reared finfish species due to various fungal and bacterial diseases is a new animal drug under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, hydrogen peroxide is subject to section 512 of the act (21 U.S.C. 360b) which requires that its uses be the subject of an approved NADA or supplemental NADA. Fish are a minor species under § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)).

The United States Geological Survey, Biological Resources Section, Upper Midwest Environmental Sciences Center, 2630 Fanta Reed Rd., La Crosse, WI 54603, has provided effectiveness and target animal safety data; and an environmental assessment (EA) for use of a 35 percent solution of hydrogen peroxide by immersion for control of mortality in certain freshwater-reared finfish species in several life stages due to various fungal and bacterial diseases. These data and the EA are contained in PMF 5639.

FDA has reviewed the EA, carefully considered the environmental impacts of the use of a 35 percent solution of hydrogen peroxide on freshwater finfish, and has concluded that the use will not have a significant impact on the human environment. A finding of no significant impact (FONSI) has been prepared and is also contained in PMF 5639.

Sponsors of NADAs or supplemental NADAs may, without further authorization, reference the PMF 5639 to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to reference to the PMF, animal drug labeling and other information needed for approval, such as: data concerning human food safety; and manufacturing methods, facilities, and controls. Persons desiring more information concerning PMF 5639 or requirements for approval of an NADA or supplemental NADA may contact Joan C. Gotthardt (see **FOR FURTHER INFORMATION CONTACT**).

In accordance with the freedom of information provisions of 21 CFR part 20, a summary of safety and effectiveness data provided in PMF 5639 to support approval of an application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, from 9 a.m. to 4 p.m., Monday through Friday. The EA and FONSI contained in PMF 5639 have also been placed in the docket.

Dated: January 11, 2007.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E7–947 Filed 1–22–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Establishment of Advisory Council on Blood Stem Cell Transplantation and Solicitation of Nominations for Membership

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice of establishment of the Advisory Council on Blood Stem Cell Transplantation and Solicitation of Nominations for Membership.

SUMMARY: Pursuant to Public Law 109–129, 42 U.S.C. 274k (section 379 of the Public Health Service Act, as amended) and the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Administrator, HRSA, announces the establishment of the Advisory Council on Blood Stem Cell Transplantation by the Secretary, HHS. The Council will advise the Secretary on proposed C.W. Bill Young Cell Transplantation Program policies and other such matters as the Secretary determines.

Duration of this Council is for two years unless renewed by the Secretary, HHS. This notice also requests nominations for membership on the Council.

DATES: Nominations for members must be received on or before February 22, 2007.

ADDRESSES: All nominations should be submitted to the Executive Secretary, Advisory Council on Blood Stem Cell Transplantation, Healthcare Systems Bureau, HRSA, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857. Federal Express, Airborne, or UPS, mail delivery should be addressed to Executive Secretary, Advisory Council on Blood Stem Cell Transplantation, Healthcare Systems Bureau, HRSA, at the above address.

FOR FURTHER INFORMATION CONTACT: Remy Aronoff, Executive Secretary, Advisory Council on Blood Stem Cell Transplantation, at (301) 443–3264 or e-mail *Remy.Aronoff@hrsa.hhs.gov* or Robert Baitty, Director, Blood Stem Cell Transplantation Program, Division of Transplantation, at (301) 443–2612 or e-mail *Robert.Baitty@hrsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Establishment of the Council implements a statutory requirement of the Stem Cell Therapeutic and Research Act of 2005 (Pub. L. 109–129). The Council is governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

The Advisory Council shall advise the Secretary and the Administrator, HRSA, on matters related to the activities of the C.W. Bill Young Cell Transplantation Program and the National Cord Blood Inventory Program.

The Council shall, as requested by the Secretary, discuss and make recommendations regarding the C.W. Bill Young Cell Transplantation Program (Program). It shall provide a consolidated, comprehensive source of expert, unbiased analysis and recommendations to the Secretary on the latest advances in the science of blood stem cell transplantation. The Council shall advise, assist, consult and make recommendations, at the request of the Secretary, on broad Program policy in areas such as the necessary size and composition of the adult donor pool available through the Program and the composition of the National Cord Blood Inventory, requirements regarding informed consent for cord blood donation, accreditation requirements for cord blood banks, the scientific factors that define a cord blood unit as high quality, public and professional education to encourage the ethical recruitment of genetically diverse donors and ethical donation practices, criteria for selecting the appropriate blood stem source for transplantation, Program priorities, research priorities, and the scope and design of the Stem Cell Therapeutic Outcomes Database. It also shall, at the request of the Secretary, review and advise on issues relating more broadly to the field of blood stem cell transplantation, such as regulatory policy including compatibility of international regulations, and actions that may be taken by the State and Federal Governments and public and private insurers to increase donation and access to transplantation. The Advisory Council also shall make recommendations regarding research on emerging therapies using cells from bone marrow and cord blood.

II. Structure

The Council shall consist of up to 25 members, including the Chair. Members of the Advisory Council shall be chosen to ensure objectivity and balance, and reduce the potential for conflicts of interest. The Secretary shall establish bylaws and procedures to prohibit any member of the Advisory Council who has an employment, governance, or financial affiliation with a donor center, recruitment organization, transplant center, or cord blood bank from participating in any decision that materially affects the center, recruitment organization, transplant center, or cord blood bank; and to limit the number of members of the Advisory Council with any such affiliation.

The members and chair shall be selected by the Secretary from outstanding authorities and representatives of marrow donor centers and marrow transplant centers; representatives of cord blood banks and participating birthing hospitals; recipients of a bone marrow transplant; recipients of a cord blood transplant; persons who require such transplants; family members of such a recipient or family members of a patient who has requested the assistance of the Program in searching for an unrelated donor of bone marrow or cord blood; persons with expertise in bone marrow and cord blood transplantation; persons with expertise in typing, matching, and transplant outcome data analysis; persons with expertise in the social sciences; basic scientists with expertise in the biology of adult stem cells; ethicists, hematology and transfusion medicine researchers with expertise in adult blood stem cells; persons with expertise in cord blood processing; and members of the general public.

The Council also shall include as nonvoting members representatives from the Division of Transplantation of the Health Resources and Services Administration, the Department of Defense Marrow Recruitment and Research Program operated by the Department of the Navy, the Food and Drug Administration and the National Institutes of Health. The Secretary may also appoint other non-voting ex officio members, or designees of such officials, as the Secretary deems necessary for the Council to effectively carry out its functions.

As necessary, subcommittees composed of members of the parent Council, may be established with the approval of the Secretary of HHS or his designee to perform specific functions within the Council's jurisdiction. The Department Committee Management Officer shall be notified upon establishment of each subcommittee, and shall be provided information on its name, membership, function, and estimated frequency of meetings.

Members shall be invited to serve for a term of 2 years, and (assuming the Council's term is extended) each such member may serve as many as 3 consecutive 2-year terms, except that such limitations shall not apply to the

Chair of the Council (or the Chair-elect) or to the member of the Council who most recently served as the Chair; and one additional consecutive 2-year term may be served by any member of the Council who has no employment, governance, or financial affiliation with any donor center, recruitment organization, transplant center, or cord blood bank. A member of the Council may continue to serve after the expiration of the term of such member until a successor is appointed. In order to ensure the continuity of the Council, the Council shall be appointed so that each year the terms of approximately one-third of the members of the Council expires. Any member of the Council who has an employment, governance, or financial affiliation with a donor center, recruitment organization, transplant center, or cord blood bank will be prohibited from participating in any decision that materially affects the donor center, recruitment organization, transplant center, or cord blood bank. The number of members with such affiliations on the Council shall be limited. Meetings shall be held up to 3 times per year at the call of the Designated Federal Official or designee who shall approve the agenda and shall be present at all meetings.

A vacancy on the Council shall be filled in the manner in which the original appointment was made and shall be subjected to any conditions that applied with respect to the original appointment. An individual chosen to fill a vacancy shall be appointed for the remainder of the term of the member replaced. The vacancy shall not affect the power of the remaining members to execute the duties of the Council.

All members of HRSA advisory committees shall adhere to the conflict of interest rules applicable to Special Government Employees as such employees are defined in 18 U.S.C. section 202(a). These rules include relevant provisions in 18 U.S.C. related to criminal activity, Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), and Executive Order 12674 (as modified by Executive Order 12731).

Management and support services shall be provided by the Director, Division of Transplantation, Healthcare Systems Bureau, HRSA.

III. Compensation

Members shall be paid at a rate of $200 for each day they are engaged in the performance of their duties as members of the Council. Members shall receive per diem and travel expenses as authorized by 5 U.S.C. 5703, as amended, for persons employed intermittently in the Government service. Members who are officers or employees of the United States Government shall not receive compensation for service on the Council.

IV. Nominations

HHS will consider nominations of all qualified individuals to ensure that the Advisory Council includes the areas of subject matter expertise noted above (see ''Structure''). Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the Advisory Council.

Nominations shall state that the nominee is willing to serve as a member of the Council. Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of the Council to permit evaluation of possible sources of conflicts of interest. In addition, nominees will be asked to provide detailed information concerning any employment, governance, or financial affiliation with any donor centers, recruitment organizations, transplant centers, and/or cord blood banks.

A nomination package should include the following information for each nominee: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (i.e., what specific attributes recommend him/her for service in this capacity), and the nominee's field(s) of expertise; (2) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (3) the name, return address, e-mail address, and daytime telephone number at which the nominator can be contacted.

HHS has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates. HHS also encourages geographic diversity in the composition of the Council.

All nomination information should be provided in a single, complete package within 30 days of the publication of this notice. All nominations for membership should be sent to the Executive Secretary of the Council at the address provided above.

Dated: January 16, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–891 Filed 1–22–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: February 5–6, 2007.

Closed: February 5, 2007, 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Open: February 6, 2007, 8:30 a.m. to 5 p.m.

Agenda: Discussions will focus on Fogarty International Center's early draft of the Strategic Plan.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Jean L. Flagg-Newton, PhD, Special Assistant to the Director, FIC, Fogarty International Center, National Institutes of Health, 9000 Rockville Pike, Building 31, Room B2C29, Bethesda, MD 20892, (301) 496–2968, *flaggnej@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on

this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nih.gov/fic/about/advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program, 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: January 17, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–262 Filed 1–22–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, K23 Application.

Date: February 12, 2007.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, 8109, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sonya Roberson, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8109, Bethesda, MD 20892, 301–594–1182, *robersos@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 16, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–263 Filed 1–22–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Date: February 6, 2007, 8 a.m. to 4:15 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: February 6, 2007, 4:15 p.m. to 5:30 p.m.

Agenda: Review of grant applications.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

This notice is being published less than 15 days prior to meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 17, 2007.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–264 Filed 1–22–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork

and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the certification of flood proof residential basements in Special Flood Hazard Areas.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), administered by the Federal Emergency Management Agency (FEMA), regulation 44 CFR 60.3, Floodplain Management Criteria for Flood-Prone Areas, ensures that buildings in communities participating in the NFIP, in Special Flood Hazard Areas (SFHAs), have their lowest floor elevations including basement at or above the Base Flood Elevation (the 100-year flood elevation). This requirement reduces the risks of flood hazards to new buildings in SFHAs and reduces insurance rates. However, FEMA regulation 44 CFR 60.6(c) allows communities to apply for an exception to permit and certify the construction of floodproofed residential basements in SFHAs. The certification must ensure that the community has demonstrated that that areas of special flood hazard, in which residential basements will be permitted, are subject to shallow and low velocity flooding and that there is adequate flood warning time to notify residents of impending flood. This certification allows the community to ensure that local floodplain management ordinances are met and allows property owners to receive a ''discounted'' flood insurance rate applicable to residential buildings with floodproofed basements.

Collection of Information

Title: Residential Basement Floodproofing Certificate.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0033.

Form Numbers: FEMA Form 81–78.

Abstract: FEMA Form 81–78 is only used in communities that have been granted an exception by FEMA to allow the construction of flood proof residential basements in Special Flood Hazard Areas, (SFHAs). Homeowners must have a registered professional engineer or architect complete FEMA Form 81–78 for development or inspection of a properly designed and constructed basement and certify that the basement design and methods of constructions are in accordance with floodplain management ordinances. In any case homeowners are responsible for the fees involved with these services. Homeowners also provide FEMA Form 81–8 to the insurance agent to receive discounted flood insurance under the NFIP.

Affected Public: Individuals of Households and Business or other for-profit.

Estimated Total Annual Burden Hours: 487.5 hours.

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, worksheet, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (A × B)	Total annual burden hours (A × B × C)
FEMA Form 81–78	150	1	3.25	150	487.5
Total	150	1	3.25	150	487.5

Estimated Cost: The average cost paid to the architect or engineer employed by a homeowner to complete this form is $325 per homeowner. The total annual cost to homeowners is estimated to be $48,750. The estimated wage rate for an architect or engineer to complete FEMA Form 81–78 is $13,023.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before March 26, 2007.

Interested persons should submit written comments to Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Mary Chang, Insurance Examiner, Mitigation Division at 202–646–2790 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: January 4, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–890 Filed 1–22–07; 8:45 am]

BILLING CODE 0110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3271–EM]

Colorado; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Colorado (FEMA–3271–EM), dated January 7, 2007, and related determinations.

EFFECTIVE DATE: January 7, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 7, 2007, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Colorado resulting from the record snow during the period of December 28–31, 2006, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Colorado.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures, including snow removal, under the Public Assistance program to save lives and to protect property and public health and safety. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. This emergency assistance will be provided for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs in the designated areas. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, Department of Homeland Security, under Executive Order 12148, as amended, Connee Lloyd, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Colorado to have been affected adversely by this declared emergency:

Otero County for emergency protective measures (Category B) under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management, and Director of FEMA.

[FR Doc. E7–883 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3271–DR]

Colorado; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Colorado (FEMA–3271–EM), dated January 7, 2007, and related determinations.

EFFECTIVE DATE: January 12, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Colorado is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 7, 2007:

Baca, Bent, Crowley, Prowers, and Pueblo Counties for emergency protective measures (Category B), including snow removal, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management, and Director of FEMA.

[FR Doc. E7–884 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3270–EM]

Colorado; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Colorado (FEMA–3270–EM), dated January 7, 2007, and related determinations.

EFFECTIVE DATE: January 7, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 7, 2007, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Colorado resulting from the record snow and near record snow during the period of December 18–22, 2006, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Colorado.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures, including snow removal, under the Public Assistance program to save lives and to protect property and public health and safety. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. This emergency assistance will be provided for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs in the designated areas. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that

pursuant to the authority vested in the Director, Department of Homeland Security, under Executive Order 12148, as amended, Connee Lloyd, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Colorado to have been affected adversely by this declared emergency:

Adams, Arapahoe, Boulder, Broomfield, Custer, Denver, Douglas, Elbert, Gilpin, Jefferson, Las Animas, Pueblo, and Washington Counties for emergency protective measures (Category B) under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–885 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3270–DR]

Colorado; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Colorado (FEMA–3270–EM), dated January 7, 2007, and related determinations.

EFFECTIVE DATE: January 12, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Colorado is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 7, 2007:

El Paso County for emergency protective measures (Category B), including snow removal, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management, and Director of FEMA.

[FR Doc. E7–888 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1609–DR]

Florida; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1609–DR), dated October 24, 2005, and related determinations.

EFFECTIVE DATE: January 5, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 5, 2007, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), in a letter to R. David Paulison, Director, Federal Emergency Management Agency, Department of Homeland Security, as follows:

I have determined that the damage in certain areas of the State of Florida resulting from Hurricane Wilma during the period of October 23 to November 18, 2005, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act).

Therefore, I amend my declaration of October 24, 2005, to authorize Federal funds for all categories of Public Assistance at 90 percent of total eligible costs, except assistance previously approved at 100 percent.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408) and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–882 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1664–DR]

Hawaii; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Hawaii (FEMA–1664–DR), dated October 17, 2006, and related determinations.

EFFECTIVE DATE: January 15, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 15, 2007.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management, and Director of FEMA.

[FR Doc. E7–889 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1675–DR]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1675–DR), dated January 7, 2007, and related determinations.

EFFECTIVE DATE: January 7, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 7, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from a severe winter storm during the period of December 28–31, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate, subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Cheyenne, Clark, Comanche, Decatur, Edwards, Ellis, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Jewell, Kearny, Kiowa, Lane, Logan, Meade, Morton, Ness, Norton, Osborne, Pawnee, Phillips, Rawlins, Rooks, Rush, Russell, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Thomas, Trego, Wallace, and Wichita Counties for Public Assistance Categories A and B (debris removal and emergency protective measures), including direct Federal assistance.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management, and Director of FEMA.

[FR Doc. E7–892 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1673–DR]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1673–DR), dated December 29, 2006, and related determinations.

EFFECTIVE DATE: January 8, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, under Executive Order 12148, as amended, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Thomas J. Costello as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public

Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management, and Director of FEMA.

[FR Doc. E7–879 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1674–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1674–DR), dated January 7, 2007, and related determinations.

EFFECTIVE DATE: January 7, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 7, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe winter storms during the period of December 19, 2006, through January 1, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate, subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d). Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Director, Department of Homeland Security, under Executive Order 12148, as amended, Michael Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster: Adams, Antelope, Blaine, Boone, Brown, Buffalo, Cedar, Chase, Cheyenne, Clay, Custer, Dawson, Dixon, Dundy, Fillmore, Franklin, Frontier, Furnas, Garden, Garfield, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Howard, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Merrick, Morrill, Nance, Nuckolls, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Rock, Seward, Sherman, Stanton, Valley, Wayne, Webster, Wheeler, and York Counties for Public Assistance Categories A and B (debris removal and emergency protective measures), including direct Federal assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management, and Director of FEMA.

[FR Doc. E7–878 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1659–DR]

New Mexico; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–1659–DR), dated August 30, 2006, and related determinations.

EFFECTIVE DATE: January 11, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New Mexico is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 30, 2006:

The Navajo Nation within San Juan County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–881 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1670–DR]

New York; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1670–DR), dated December 12, 2006, and related determinations.

EFFECTIVE DATE: January 11, 2007.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 12, 2006: Sullivan County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E7–880 Filed 1–22–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Meeting of the California Desert Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Law 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of BLM-administered public lands on Friday, March 9, 2007, from 7:30 a.m. to 5 p.m., and meet in formal session on Saturday, March 10 from 8 a.m. to 3 p.m. at the Ramada Inn, 1511 East Main Street, East Main & Interstate 15, Barstow, CA 92311.

The Council and interested members of the public will depart for the field tour at 7:30 a.m. from the main lobby of the Ramada Inn. The public is welcome to participate in the tour but should plan on providing their own transportation, lunch, and beverage.

Agenda topics for the formal session on Saturday will include updates by Council members and reports from the BLM District Manager and five field office managers. Additional agenda topics are being developed. Once finalized, the field tour and meeting agendas will be published in a news release prior to the meeting and posted on the BLM California state Web site at *http://www.blm.gov/ca/news/rac.html.*

SUPPLEMENTARY INFORMATION: All Desert District Advisory Council meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8 a.m. to 3 p.m., the meeting could conclude prior to 3 p.m. should the Council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: Stephen Razo, BLM California Desert District External Affairs (951) 697–5217.

Dated: January 16, 2007.

Steven J. Borchard,

District Manager.

[FR Doc. E7–895 Filed 1–22–07; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–PO]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Montana, Billings and Miles City Field Offices.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Montana Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held February 22, 2007 in Billings, MT beginning at 8 a.m. When determined, the meeting place will be announced in a news release. The public comment period will begin at approximately 11 a.m. and the meeting will adjourn at approximately 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301. Telephone: (406) 233–2831.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana.

At this meeting, topics to discuss include:

Field Manager Updates

The Miles City Field Office and Billings Field Office Updates

Subcommittee updates and working sessions

—and other topics the council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above.

Dated: January 11, 2007.

James A. Albano,

Field Manager.

[FR Doc. E7–894 Filed 1–22–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0043).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under ''30 CFR 250, Subpart F, Oil and Gas Well-Workover Operations.''

DATES: Submit written comments by March 26, 2007.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1010–0043 as an identifier in your message.

- E-mail MMS at *rules.comments@mms.gov.* Identify with Information Collection Number 1010–0043 in the subject line.
- *Fax:* 703–787–1093. Identify with Information Collection Number 1010–0043.
- *Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention:* Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0043'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart F, Oil and Gas Well-Workover Operations.

OMB Control Number: 1010–0043.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations ''to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein'' and to include provisions ''for the prompt and efficient exploration and development of a lease area.'' These authorities and responsibilities are among those delegated to the Minerals Management Service (MMS) to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases. This information collection request addresses the regulations at 30 CFR 250, Subpart F, Oil and Gas Well-Workover Operations and the associated supplementary Notices to Lessees and Operators (NTLs) intended to provide clarification, description, or explanation of these regulations.

MMS District Managers use the information collected to analyze and evaluate planned well-workover operations to ensure that operations result in personnel safety and protection of the environment. They use this evaluation in making decisions to approve, disapprove, or to require modification to the proposed well-workover operations. For example, MMS uses the information to:

- Review log entries of crew meetings to verify that safety procedures have been properly reviewed.
- Review well-workover procedures relating to hydrogen sulfide (H_2S) to ensure the safety of the crew in the event of encountering H_2S.
- Review well-workover diagrams and procedures to ensure the safety of well-workover operations.
- Verify that the crown block safety device is operating and can be expected to function and avoid accidents.
- Verify that the proposed operation of the annular preventer is technically correct and will provide adequate protection for personnel, property, and natural resources.
- Verify the reasons for postponing blowout preventer (BOP) tests, verify the state of readiness of the equipment and to ascertain that the equipment meets safety standards and requirements, ensure that BOP tests have been conducted in the manner and frequency to promote personnel safety and protect natural resources. Specific testing information must be recorded to verify that the proper test procedures were followed.
- Assure that the well-workover operations are conducted on well casing that is structurally competent.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR Part 2) and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public.'' No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On occasion, weekly, monthly, varies by section.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS lessees and operators.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 19,459 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 253	Reporting requirement	Hour burden
602	Request exceptions prior to moving well-workover equipment.	1.
602	Notify MMS of any rig mvoement within Gulf of Mexico (Form MMS–144).	Burden included in 1010–0150.

Citation 30 CFR 253	Reporting requirement	Hour burden
605; 613; 615(a), (e)(4); 616(d)	Request approval to begin subsea well-workover operations; submit Forms MMS–124 (include, if required, alternate procedures and equipment; stump test procedures plan) and MMS–125.	Burden included in 1010–0141.
606	Instruct crew members in safety requirements of operations to be performed; document meeting (weekly for 2 crews × 2 weeks per workover = 4).	1.
611	Perform operational check of traveling-block safety device; document results (weekly × 2 weeks per workover = 2).	1.
612	Request establishment/amendment/cancellation of field well-workover rules.	6.
614	Post number of stands of drill pipe or workover string and drill collars that may be pulled prior to filling the hole and equivalent well-control fluid volume.	0.25.
616(a)	Request exception to rated working pressure of the BOP equipment; request exception to annular-type BOP testing.	2.
616(a), (b), (f), (g)	Perform BOP pressure tests, actuations, inspections & certifications; record results; retain records 2 years following completion of workover activities (when installed; at a minimum every 7 days × 2 weeks per workover = 2).	7.
616(b)(2)	Test blind or blind-shear rams; document results (every 30 days during operations). (Note: this is part of BOP test when BOP test is conducted.).	1.
616(b)(2)	Record reason for postponing BOP system tests	0.5.
616(c)	Perform crew drills; record results (weekly for 2 crews × 2 weeks per workover = 4).	1.
617(b)	Pressure test, caliper, or otherwise evaluate tubing & wellhead equipment casing; submit results (every 30 days during prolonged operations).	6.
617(c)	Notify MMS if sustained casing pressure is observed on a well	0.5.
600–618	General departure and alternative compliance requests not specifically covered elsewhere in subpart F regulations.	2.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour cost'' burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure ''would constitute an unwarranted invasion of privacy.'' Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: January 11, 2007.

E.P. Danenberger,

Chief Office of Offshore Regulatory Programs.

[FR Doc. E7–941 Filed 1–22–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0106).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under ''30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities.''

DATES: Submit written comments by March 26, 2007.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1010–0106 as an identifier in your message.

- E-mail MMS at *rules.comments@mms.gov*. Identify with Information Collection Number 1010–0106 in the subject line.
- Fax: 703–787–1093. Identify with Information Collection Number 1010–0106.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0106'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

SUPPLEMENTARY INFORMATION: *Title:* 30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities.

Forms: MMS–1016, 1017, 1018, 1019, 1020, 1021, and 1022.

OMB Control Number: 1010–0106.

Abstract: Title I of the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), as amended by the Coast Guard Authorization Act of 1996 (Pub. L. 104–324), provides at section 1016 that oil spill financial responsibility (OSFR) for offshore facilities be established and maintained according to methods determined acceptable to the President. Section 1016 of OPA supersedes the offshore facility oil spill financial responsibility provisions of the Outer Continental Shelf (OCS) Lands Act Amendments of 1978. These authorities and responsibilities are among those delegated to the Minerals Management Service (MMS) under which MMS issues regulations governing oil and gas and sulphur operations in the OCS.

This information collection request addresses the regulations at 30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities, including any supplementary Notices to Lessees and Operators (NTLs) that provide clarification, description, or explanation of these regulations, and forms MMS–1016 through MMS–1022. We have made a few minor changes to headings on the forms. There are no data element changes.

The MMS will use the information collected under 30 CFR Part 253 to verify compliance with section 1016 of OPA. The information is necessary to confirm that applicants can pay for clean-up and damages from oil-spill discharges from Covered Offshore Facilities (COFs). The information will be used routinely: (a) To establish approval and eligibility of applicants for an Oil Spill Financial Responsibility (OSFR) certification; and (b) as a reference source for clean-up and damage claims associated with oil-spill discharges from COFs; the names, addresses, and telephone numbers of owners, operators, and guarantors; designated U.S. agents for service of process; and persons to contact. To collect most of the information, MMS developed standard forms. The forms and their purposes are:

Cover Sheet: The forms will be distributed in a package that includes a cover sheet that displays the required OMB Control Number, Expiration Date, and Paperwork Reduction Act statement. This cover sheet will accompany the forms as part of a package or will be included with any copies of a particular form that respondents may request.

Form MMS–1016, Designated Applicant Information Certification: The designated applicant uses this form to provide identifying information (company legal name, MMS qualification number and region, address, contact name and title, telephone and fax numbers) and to summarize the OSFR evidence. This form is required for each new or renewed OSFR certification application.

Form MMS–1017, Designation of Applicant: When there is more than one responsible party for a COF, they must select a designated applicant. Each responsible party, as defined in the regulations, must use this form to notify MMS of the designated applicant. This form is also used to designate the U.S. agent for service of process for the responsible party(ies) if claims from an oil-spill discharge exceed the amount evidenced by the designated applicant; identifies and provides pertinent information about the responsible party(ies); and lists the COFs for which the responsible party is liable for OSFR certification. The form identifies each COF by State or OCS region; lease, permit, right of use and easement or pipeline number; aliquot section; area name; and block number. This form must be submitted with each new OSFR application or with an assignment involving a COF in which there is at least one responsible party who is not the designated applicant for a COF.

Form MMS–1018, Self-Insurance or Indemnity Information: This form is used if the designated applicant is self-insuring or using an indemnity for OSFR evidence. As appropriate, either the designated applicant or the designated applicant's indemnitor completes the form to indicate the amount of OSFR coverage and effective and expiration dates. The form also provides pertinent information about the self-insurer or indemnitor and is used to designate a U.S. agent for service of process for claims up to the evidenced amount. This form must be submitted each time new evidence of OSFR is submitted using either self-insurance or an indemnification.

Form MMS–1019, Insurance Certificate: The designated applicant (representing himself as a direct purchaser of insurance) or his insurance agent or broker and the named insurers complete this form to provide OSFR evidence using insurance. The number of forms to be submitted will depend upon the number of layers of insurance to evidence the total amount of OSFR required. One form is required for each layer of insurance. The form provides pertinent information about the insurer(s) and designates a U.S. agent for service of process. This form must be submitted at the beginning of the term of the insurance coverage for the designated applicant's COFs or at the time COFs are added, with the scheduled option selected, to OSFR coverage.

Form MMS–1020, Surety Bond: Each bonding company that issues a surety

bond for the designated applicant must complete this form indicating the amount of surety and effective dates. The form provides pertinent information about the bonding company and designates a U.S. agent for service of process for the amount evidenced by the surety bond. This form must be submitted at the beginning of the term of the surety bond for the named designated applicant.

Form MMS–1021, Covered Offshore Facilities: The designated applicant submits this form to identify the COFs for which the OSFR evidence applies. The form identifies each COF by State or OCS region; lease, permit, right of use and easement or pipeline number; aliquot section; area name; block number; and potential worst case oil-spill discharge. This form is required to be submitted with each new or renewed OSFR certification application that includes COFs.

Form MMS–1022, Covered Offshore Facility Changes: During the term of the issued OSFR certification, the designated applicant may submit changes to the current COF listings, including additions, deletions, or changes to the worst case oil-spill discharge for a COF. This form must be submitted when identified changes occur during the term of an OSFR Certification.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public.'' No items of a sensitive nature are collected. Responses are mandatory.

Frequency: On an annual basis, except for changes to existing COF listings that could occur throughout the term of the OSFR Certification.

Estimated Number and Description of Respondents: Approximately 600 holders of leases, permits, and rights of use and easement in the OCS and in State coastal waters who will appoint approximately 200 designated applicants. Other respondents will be the designated applicants' insurance agents and brokers, bonding companies, and indemnitors. Some respondents may also be claimants.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 19,299 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 253	Reporting requirement	Hour burden
Various sections	The burdens for all general references to submitting evidence of OSFR are covered under the forms below.	
11(a)(1); 40; 41	Form MMS–1016—Designated Applicant Information Certification	1
11(a)(1); 40; 41	Form MMS–1017—Designation of Applicant	9
12	Request for determination of OSFR applicability	2
15	Notify MMS of change in ability to comply	1
15(f)	Provide claimant written explanation of denial	1
21; 22; 23; 24; 26; 27; 30; 40; 41; 43	Form MMS–1018 Self-Insurance or Indemnity Information	1
29; 40; 41; 43	Form MMS–1019—Insurance Certificate	120
31; 40; 41; 43	Form MMS–1020—Surety Bond	24
32	Proposal for alternative method to evidence OSFR (anticipate no proposals, but the regs provide the opportunity).	120
40; 41	Form MMS–1021—Covered Offshore Facilities	3
40; 41; 42	Form MMS–1022—Covered Offshore Facility Changes	1
Subpart F	Claims: MMS will not be involved in the claims process. Assessment of burden for claims against the Oil Spill Liability Trust Fund (30 CFR parts 135, 136, l37) should be responsibility of the U.S. Coast Guard).	
60(d)	Claimant request to determine whether a guarantor may be liable for a claim	2

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour cost'' burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of

customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure ''would constitute an unwarranted invasion of privacy.'' Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: January 11, 2007.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E7–942 Filed 1–22–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 6, 2007. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by February 7, 2007.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

COLORADO

Denver County

Stanley School—Montclair School, 1301 Quebec St., Denver, 07000038

IDAHO

Idaho County,

Campbell's Ferry, Frank Church River of No Return Wilderness, Riggins, 07000037

MARYLAND

Wicomico County

San Domingo School, 11526 Old School Rd, Sharpstown, 07000044

MISSOURI

Franklin County

Spaunhorst and Mayn Building, (Washington, Missouri MPS), 300–305 Jefferson St., Washington, 07000041

Barclay Building 3613–23 Broadway Blvd., Kansas City, 07000042

Kuehne—Schmidt Apartments, (Colonnade Apartment Buildings of Kansas City, MO MPS), 3737–39 and 3741–43 Main Sts., Kansas City, 07000040

Mainstreet Theatre, 1400 Main St., Kansas City, 07000043

Warren County

Southwestern Bell Repeater Station—Wright City, NE. corner of North Service Rd. and Bell Rd., Wright City, 07000039

NEW JERSEY

Cape May County

Rio Grande Station, 720 NJ 9, Lower Township, 07000047

Monmouth County

St. George's-by-the-River Episcopal Church, 7 Linoln Ave., Rumson, 07000045

Warren County

Blairstown Historic District, Main St., East Ave., Douglas St., Water St., Blair Place, Blairstown, 07000046

VIRGINIA

Accomack County

Pocomoke Farm, 7492 Monument Rd., VA 699, Sanford, 07000054

Bath County

Homestead Dairy Barns, USS 220, Warm Springs, 07000051

Yard, The, 381 Old Greenhouse Rd., Hot Springs, 07000050

King And Queen County

Marriott School, 450 Newtown Rd., St. Stevens Church, 07000052

Loudoun County

Sleepy Hollow Farm, 39902 Thomas Mill Rd., Leesburg, 07000048

Temple Hall, 15764 Temple Hall Ln., Leesburg, 07000053

Rockingham County

Kite Mansion, 17271 Spotswood Trail, Elkton, 07000049

[FR Doc. E7–852 Filed 1–22–07; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Civil Rights Division

[OMB Number 1190–0001]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

The Department of Justice (DOJ), CRT will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 207, page 62610 on October 26, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 22, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

(3) *Agency form number:* None.

(4) *Affected Public: Primary:* State, Local or Tribal Government. Brief Abstract: Jurisdictions specifically covered under the Voting Rights Act are required to obtain preclearance from the Attorney General before instituting changes affecting voting. They must convince the Attorney General that proposed voting changes are not racially discriminatory. The procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond. It is estimated that 4,727 respondents will complete each form within approximately 10.02 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 47,365 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 17, 2007.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E7–859 Filed 1–22–07; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0042]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 217, page 65837 on November 9, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 22, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* none. *Abstract:* The information contained in the statement of process is required to ensure compliance with the provisions of Public Law 104–132. This information will be used to ensure that plastic explosives contain a detection agent as required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 8 respondents, who will complete the required information within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 16 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 17, 2007.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E7–857 Filed 1–22–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 21, 2006, Cedarburg Pharmaceuticals, Inc., 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Sufentanil (9740)	II
Fentanyl (9801)	II
Remifentanil (9739)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than March 26, 2007.

Dated: January 16, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–850 Filed 1–22–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 20, 2006, Organix Inc., 240 Salem Street, Woburn, Massachusetts 01801, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in schedule II.

The company plans on manufacturing this controlled substance for sale to its customers. These customers will sell the drug in small quantities for research purposes or as drug standards for forensic laboratories.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, *Attention:* DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, *Attention:* DEA Federal Register Representative/ ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than March 26, 2007.

Dated: January 16, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–851 Filed 1–22–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8 a.m. to 4:30 p.m. on Monday, February 26, 2007. 8 a.m. to 4:30 p.m. on Tuesday, February 27, 2007.

Place: American Correctional Association, 206 North Washington Street, Suite 200, Alexandria, Virginia 22314, 1 (800) 222–5646.

Status: Open.

Matters to be Considered: Reports; Faith Based; Mental health; Prison Rape Elimination Act (PREA) Update; Agency reports; Quarterly Report by Office of Justice Programs.

Contact Person for More Information: Larry Solomon, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 07–255 Filed 1–22–07; 8:45 am]

BILLING CODE 4410–30–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information Pertaining to the Requirement To Be Submitted

1. *The title of the information collection:* NRC Form 314, Certificate of Disposition of Materials.

2. *Current OMB approval numbers:* 3150–0028.

3. *How often the collection is required:* The form is submitted once, when a licensee terminates its license.

4. *Who is required or asked to report:* Persons holding an NRC license for the possession and use of radioactive byproduct, source, or special nuclear material who are ceasing licensed activities and terminating the license.

5. *The estimated number of annual respondents:* 171.

6. *The number of hours needed annually to complete the requirement or request:* 85.5.

7. *Abstract:* NRC Form 314 furnishes information to NRC regarding transfer or other disposition of radioactive material by licensees who wish to terminate their licenses. The information is used by NRC as part of the basis for its determination that the facility has been cleared of radioactive material before the facility is released for unrestricted use.

Submit, by March 26, 2007, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to

properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney, U.S. Nuclear Regulatory Commission, T–5 F54, Washington, DC 20555–0001, by telephone at 301–415–7245, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*.

Dated at Rockville, Maryland, this 16th day of January 2007.

For the Nuclear Regulatory Commission.

Margaret A. Janney,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E7–902 Filed 1–22–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

Agency Holding the Meetings: Nuclear Regulatory Commission

DATE: Weeks of January 22, 29, February 5, 12, 19, 26, 2007

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 22, 2007

Monday, January 22, 2007

1:25 p.m.—Affirmation Session (Public Meeting) (Tentative)

a. Entergy Nuclear Vermont Yankee, LLC, & Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station), LBP–06–20 (9/22/06): Entergy Nuclear Generation Company & Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), LBP–06–23 (10/16/06) (Tentative.)

b. Exelon Generation Company, LLC (Early Site Permit for Clinton ESP) (Tentative).

1:30 p.m. Discussion of Security Issues (Closed–Ex. 1).

Tuesday, January 23, 2007

1:30 p.m.—Joint Meeting with Federal Energy Regulatory Commission on Grid Reliability (Public Meeting) (Contact: Mike Mayfield, 301 415–0561).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of January 29, 2007—Tentative

Monday, January 29, 2007

10:50 a.m.—Affirmation Session (Public Meeting) (Tentative)

a. Final Rulemaking to Revise 10 CFR 73.1, Design Basis Threat (DBT) Requirements (Tentative).

b. AmerGen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station) Docket No. 50–0219, Remaining Legal challenges to LBP–06–07 (Tentative).

c. Nuclear Management Co., LLC (Palisades Nuclear Plant, license renewal application); response to ''Notice'' relating to San Louis Obispo Mothers for Peace (Tentative).

d. System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP Site); response to NEPA/terrorism issue (Tentative).

e. Pacific Gas & Electric Co. (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI, response to the Supreme Court's potential denial of certiorari (Tentative).

Tuesday, January 30, 2007

10 a.m.—Discussion of Security Issues (Closed–Ex. 3).

Wednesday, January 31, 2007

9:30 a.m.—Discussion of Security Issues (Closed–Ex. 1 & 3). To be held at Department of Homeland Security Headquarters, Washington, DC.

Thursday, February 1, 2007

9:25 a.m.—Affirmation Session (Public Meeting) (Tentative).

a. USEC, Inc. (American Centrifuge Plant) (Tentative).

9:30 a.m.—Discussion of Management Issues (Closed–Ex. 2).

1:30 p.m.—Briefing on Strategic Workforce Planning and Human Capital Initiatives (Public Meeting) (Contact: Mary Ellen Beach, 301 415–6803).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 5, 2007—Tentative

There are no meetings scheduled for the Week of February 5, 2007.

Week of February 12, 2007—Tentative

Thursday, February 15, 2007

9:30 a.m.—Briefing on Office of Chief Financial Officer (OCFO) Programs, Performance, and Plans (Public Meeting) (Contact: Edward New, 301 415–5646).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of February 19, 2007—Tentative

There are no meetings scheduled for the Week of February 19, 2007.

Week of February 26, 2007—Tentative

Wednesday, February 28, 2007

9:30 a.m.—Periodic Briefing on New Reactor Issues (Public Meeting) (Contact: Donna Williams, 301 415–1322).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in

receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

January 18, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–279 Filed 1–19–07; 11:11 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (OMB control number 0420–0533))

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C, Chapter 35), the Peace Corps has submitted to the Office of Management and Budget (OMB) a request for approval of information collections, OMB Control Number 0420–0533, the Peace Corps Crisis Corps Volunteer Application Form. This is a renewal of an active information collection. The purpose of this information collection is necessary in order to identify prospective, interested, and available returned Peace Corps Volunteers who are completing their services for Crisis Corps Volunteer Service. The information is used to determine availability, suitability, and potential Crisis Corps placement applicants. The purpose of this notice is to allow for public comment on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; 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; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

A copy of the information collection may be obtained from Ms. Mary Angelini, Director of the Crisis Corps, Peace Corps, 1111 20th Street, NW., Room 7305, Washington, DC 20526. Ms. Angelini may be contacted by telephone at 202–692–2250. Comments on the form should also be addressed to the attention of Ms. Angelini and should be received on or before march 26, 2007.

Information Collection Abstract

Title: Peace Corps' Crisis Corps Volunteer Application Form.

Need for and Use of this Information: The Peace Corps/Crisis Corps need this information in order to identify prospective, interested, and available returned Peace Corps Volunteers and Volunteers who are completing their service for Crisis Corps Volunteer service. The information is used to determine availability, suitability, and potential for Crisis Corps placement of applicants.

Respondents: Returned Peace Corps Volunteers (RPCVs) who have successfully completed their service and Volunteers currently completing their service who are interested in applying for Peace Corps/Crisis Corps service.

Respondent's Obligation to Reply: Voluntary, but required to obtain benefits.

Burden on the Public:

a. *Annual reporting burden:* 42 hours.

b. *Annual record keeping burden:* 0 hours.

c. *Estimated average burden per response:* 5 minutes.

d. *Frequency of response:* one time.

e. *Estimated number of likely respondents:* 507.

f. *Estimated cost to respondents:* $2.26.

Dated: This notice is issued in Washington, DC on December 20, 2006.

Wilbert Bryant,

Associate Director for Management.

[FR Doc. 07–254 Filed 1–22–07; 8:45 am]

BILLING CODE 6051–01–M

POSTAL SERVICE

No FEAR Act Notice

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) requires that each Federal agency provide notice to all employees, former employees, and applicants for employment about the rights and remedies available to them under the anti-discrimination laws and whistleblower protection laws that apply to them. This document fulfills the Postal Service™'s requirement under the regulations promulgated by the Office of Personnel Management to publish the initial notice of such rights and remedies in the **Federal Register**.

DATES: This notice is effective January 23, 2007.

FOR FURTHER INFORMATION CONTACT: Lynn Martin, National EEO Compliance and Appeals Programs by telephone 202–268–3830; by e-mail at *lynn.martin@usps.gov*.

SUPPLEMENTARY INFORMATION: The ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' Public Law 107–174, (No FEAR Act) was enacted by Congress on May 15, 2002, for the purpose of, *inter alia*, holding Federal agencies accountable for violations of antidiscrimination and whistleblower protection laws. Sections 101(1) and 101(6) of the Act state that ''Federal agencies cannot be run effectively if those agencies practice or tolerate discrimination,'' and that ''notifying Federal employees of their rights under discrimination and whistleblower laws should increase Federal agency compliance with the law.'' Section 202 of the Act requires that written notification be provided to Federal employees, former Federal employees, and applicants for Federal employment of the rights and protections available to them under the applicable Federal anti-discrimination and whistleblower protection laws. Under section 204 of the No FEAR Act, the Office of Personnel Management (OPM) promulgated regulations to carry out the notification requirements of the Act. This initial notice is being published in accordance with the final OPM regulations at 5 CFR 724.202. This notice specifically describes the anti-discrimination laws and regulations and the whistleblower protection regulations that apply to Postal Service employees. It also describes the methods to be used by Postal Service employees to file complaints under the applicable laws and regulations.

No FEAR Act Notice

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, Summary. 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 the United States Postal Service (Postal Service) to provide this notice to Postal Service employees, former Postal Service employees and applicants for Postal

Service employment to inform you of the rights and protections available to you under the Federal antidiscrimination laws and whistleblower protection regulations.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant 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 against Postal Service employees and applicants on these bases is prohibited by one or more of the following statutes and regulations: 29 U.S.C. 206(d), 631, 633a, 791, 42 U.S.C. 2000e–16, *Employee and Labor Relations Manual* (ELM) 665.23, 666.12.

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 the Postal Service Equal Employment Opportunity (EEO) office using the central telephone number 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 the Postal Service. See, *e.g.* 29 CFR 1614. The central telephone number is: 888–EEO–USPS (888–336–8777), *Deaf and hard of hearing call*: 800–877–8339, (Federal Relay Service).

If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact the EEO office as noted above, within the time period noted above, or give notice of intent to sue to the 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 pursue a discrimination complaint by filing a grievance through the Postal Service's administrative or negotiated grievance procedures, if such procedures apply and are available. If those procedures do not apply or are not available, you may file a written complaint including as much specific information on the alleged violation as possible with the: Vice President Labor Relations, Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–4100.

Whistleblower Protection

A Postal Service 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 or 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 whistleblower protected disclosure is prohibited by ELM 666.18. If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint with: Postal Service Office of Inspector General Hotline, 1735 N. Lynn Street, Arlington, VA 22209–2005; or via telephone through the toll free Office of Inspector General Hotline at 888–USPS–OIG (888–877–7644). Deaf and hard of hearing may use the TTY telephone number 866–OIG–TEXT (866–644–8398). You may also contact the Office of Inspector General Hotline through e-mail at *hotline@uspsoig.gov*.

Retaliation for Engaging in Protected Activity

The Postal Service cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination laws or whistleblower protection regulations 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 sections of this notice or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, the Postal Service retains the right, where appropriate, to discipline a Postal Service employee for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection regulations up to and including removal. Nothing in the No FEAR Act alters existing laws or permits the Postal Service to take unfounded disciplinary action against a Postal Service employee or to violate the procedural rights of a Postal Service employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act refer to Public Law 107–174 and the Postal Service No FEAR Act Web page *http://www.usps.com/nofearact.*

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.

Neva R. Watson

Attorney, Legislative.

[FR Doc. E7–849 Filed 1–22–07; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27662; 812–13234]

MFS Series Trust X, et al.; Notice of Application

January 17, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (''Act'') and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered open-end investment companies in the same group of investment companies to enter into a special servicing agreement (''Special Servicing Agreement'').

APPLICANTS: MFS Series Trust X, on behalf of its series, MFS Aggressive Growth Allocation Fund, MFS Conservative Allocation Fund, MFS Emerging Markets Debt Fund, MFS Emerging Markets Equity Fund, MFS Floating Rate High Income Fund, MFS Growth Allocation Fund, MFS International Diversification Fund, MFS International Growth Fund, MFS International Value Fund and MFS Moderate Allocation Fund; MFS Series Trust XII, on behalf of its series, MFS Lifetime Retirement Income Fund, MFS Lifetime 2010 Fund, MFS Lifetime 2020 Fund, MFS Lifetime 2030 Fund and MFS Lifetime 2040 Fund; MFS Series Trust I, on behalf of its series, MFS New Discovery Fund, MFS Research International Fund, MFS Strategic Growth Fund and MFS Value Fund; MFS Series Trust III, on behalf of its series, MFS High Income Fund; MFS Series Trust IV, on behalf of its series,

MFS Mid Cap Growth Fund and MFS Money Market Fund; MFS Series Trust V, on behalf of its series, MFS International New Discovery Fund and MFS Research Fund; MFS Series Trust IX, on behalf of its series, MFS Bond Fund, MFS Inflation-Adjusted Bond Fund, MFS Intermediate Investment Grade Bond Fund, MFS Limited Maturity Fund and MFS Research Bond Fund; MFS Series Trust XI, on behalf of its series, MFS Mid Cap Value Fund; MFS Series Trust XIII, on behalf of its series, MFS Government Securities Fund; Massachusetts Financial Services Company (''MFS''); MFS Fund Distributors, Inc. (''MFD''); and each existing or future registered open-end management investment company or series thereof that is part of the same ''group of investment companies'' as MFS Series Trust X, MFS Series Trust XII, MFS Series Trust I, MFS Series Trust III, MFS Series Trust IV, MFS Series Trust V, MFS Series Trust IX, MFS Series Trust XI and MFS Series Trust XIII (the ''Trusts'') under Section 12(d)(1)(G)(ii) of the Act and (i) Is advised by MFS or any entity controlling, controlled by, or under common control with MFS, or (ii) for which MFD or any entity controlling, controlled by, or under common control with MFD serves as principal underwriter (such investment companies or series thereof, together with the Trusts and their series, the ''Funds'').[1]

FILING DATES: The application was filed on September 15, 2005, and amended on January 12, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 12, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, Massachusetts Financial Services Company, 500 Boylston Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: John Yoder, Senior Counsel, at (202) 551–6878, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. MFS is an investment adviser registered under the Investment Advisers Act of 1940. MFS serves as investment adviser to the Funds. MFD is registered as a broker-dealer under the Securities Exchange Act of 1934 and serves as distributor of the Funds.

2. The Trusts are Massachusetts business trusts registered under the Act as open-end management investment companies. The Trusts currently offer 48 series, 10 of which are ''Top-Tier Funds'' [2] and 21 of which are ''Underlying Funds.'' [3] The Top-Tier Funds will invest substantially all of their assets in the Underlying Funds.[4] The Top-Tier Funds and certain of the Underlying Funds currently offer multiple classes of shares in reliance on rule 18f–3 under the Act.

3. MFS and the Trusts propose to enter into a Special Servicing Agreement that would allow an Underlying Fund to bear the expenses of a Top-Tier Fund (other than advisory fees, rule 12b–1 fees and class-specific administrative service fees). Under the Special Servicing Agreement, each Underlying Fund will bear expenses of a Top-Tier Fund in proportion to the estimated benefits to the Underlying Fund arising from the investment in the Underlying Fund by the Top-Tier Fund (''Underlying Fund Benefits'').

4. Applicants state that the Underlying Fund Benefits are expected to result primarily from the incremental increase in assets resulting from investment in the Underlying Fund by the Top-Tier Fund and the large asset size of each shareholder account that represents an investment by the Top-Tier Fund relative to other shareholder accounts. A shareholder account that represents a Top-Tier Fund will experience fewer shareholder transactions and greater predictability of transaction activity than other shareholder accounts. As a result, the shareholder servicing costs to any Underlying Fund for servicing one account registered to a Top-Tier Fund will be significantly less than the cost to that same Underlying Fund of servicing the same pool of assets contributed by a large group of shareholders owning relatively small accounts in one or more Underlying Funds. In addition, by reducing Top-Tier Fund expenses, the Special Servicing Agreement may lead to increased assets being invested in the Top-Tier Funds, which in turn would lead to increased assets being invested in the Underlying Funds, which could enable the Underlying Funds to control and reduce their expense ratios because their operating expenses will be spread over a larger asset base.

5. No Fund will enter into a Special Servicing Agreement unless the Special Servicing Agreement: (1) Precisely describes the services provided to the Top-Tier Fund and the fees for those services charged to the Top-Tier Fund that may be paid by the Underlying Fund (''Underlying Fund Payments''); (2) provides that no affiliated person of the Top-Tier Funds, or affiliated person of such person, will receive, directly or indirectly, any portion of the Underlying Fund Payments, except for bona fide transfer agent services approved by the board of trustees (''Board'') of the Underlying Fund, including a majority of trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Independent Trustees''); (3) provides that the Underlying Fund Payments may not exceed the amount of actual expenses incurred by the Top-Tier Funds; (4) provides that no Underlying Fund will reimburse transfer agent expenses of a Top-Tier Fund, including

[1] All entities that currently intend to rely on the order have been named as Applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[2] ''Top-Tier Funds'' refers to MFS Aggressive Growth Allocation Fund, MFS Conservative Allocation Fund, MFS Growth Allocation Fund, MFS International Diversification Fund, MFS Moderate Allocation Fund, MFS Lifetime Retirement Income Fund, MFS Lifetime 2010 Fund, MFS Lifetime 2020 Fund, MFS Lifetime 2030 Fund, MFS Lifetime 2040 Fund and any other Fund that invests substantially all of its assets in the Underlying Funds (as defined below).

[3] ''Underlying Funds'' refers to MFS Emerging Markets Debt Fund, MFS Emerging Markets Equity Fund, MFS Floating Rate High Income Fund, MFS International Growth Fund, MFS International Value Fund, MFS New Discovery Fund, MFS Research International Fund, MFS Strategic Growth Fund, MFS Value Fund, MFS High Income Fund, MFS Mid Cap Growth Fund, MFS Money Market Fund, MFS International New Discovery Fund, MFS Research Fund, MFS Bond Fund, MFS Inflation-Adjusted Bond Fund, MFS Intermediate Investment Grade Bond Fund, MFS Limited Maturity Fund, MFS Research Bond Fund, MFS Mid Cap Value Fund, MFS Government Securities Fund and any other Fund.

[4] The Top-Tier Funds will not be Underlying Funds and no Top-Tier Fund will invest in another Top-Tier Fund.

sub-accounting expenses and other out-of-pocket expenses, at a rate in excess of the average per account transfer agent expenses of the Underlying Fund, including sub-accounting expenses and other out-of-pocket expenses, expressed as a basis point charge (for purposes of calculating the Underlying Fund's average per account transfer agent expense the Top-Tier Fund's investment in the Underlying Fund will be excluded); and (5) has been approved by the Fund's Board, including a majority of the Independent Trustees, as being in the best interests of the Fund and its shareholders and not involving overreaching on the part of any person concerned.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act provide that an affiliated person of, or a principal underwriter for, a registered investment company, or an affiliate of such person or principal underwriter, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the Commission has issued an order approving the arrangement. MFS, as investment adviser, is an affiliated person of each of the Underlying Funds and Top-Tier Funds, which in turn could be deemed to be under common control of MFS and therefore affiliated persons of each other. The Top-Tier Funds and the Underlying Funds also may be affiliated persons by virtue of a Top-Tier Fund's ownership of more than 5% of the outstanding voting securities of an Underlying Fund. Consequently, the Special Servicing Agreement could be deemed to be a joint transaction among the Top-Tier Funds, the Underlying Funds and MFS.

2. Rule 17d–1 under the Act provides that, in passing upon a joint arrangement under the rule, the Commission will consider whether participation of the investment company in the joint enterprise or joint arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

3. Applicants request an order under section 17(d) and rule 17d–1 to permit them to enter into the Special Servicing Agreement. Applicants state that participation by the Top-Tier Funds, the Underlying Funds and MFS in the proposed Special Servicing Agreement is consistent with the provisions, policies and purposes of the Act, and that the terms of the Special Servicing Agreement and the conditions set forth below will ensure that no participant participates on a basis less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. No Fund will enter into a Special Servicing Agreement unless the Special Servicing Agreement: (a) Precisely describes the services provided to the Top-Tier Funds and the Underlying Fund Payments; (b) provides that no affiliated person of the Top-Tier Funds, or affiliated person of such person, will receive, directly or indirectly, any portion of the Underlying Fund Payments, except for bona fide transfer agent services approved by the Board of the Underlying Fund, including a majority of the Independent Trustees; (c) provides that the Underlying Fund Payments may not exceed the amount of actual expenses incurred by the Top-Tier Funds; (d) provides that no Underlying Fund will reimburse transfer agent expenses of a Top-Tier Fund, including sub-accounting expenses and other out-of-pocket expenses, at a rate in excess of the average per account transfer agent expenses of the Underlying Fund, including sub-accounting expenses and other out-of-pocket expenses, expressed as a basis point charge (for purposes of calculating the Underlying Fund's average per account transfer agent expense the Top-Tier Fund's investment in the Underlying Fund will be excluded); and (e) has been approved by the Fund's Board, including a majority of the Independent Trustees, as being in the best interests of the Fund and its shareholders and not involving overreaching on the part of any person concerned.

2. In approving a Special Servicing Agreement, the Board of an Underlying Fund will consider, without limitation: (a) The reasons for the Underlying Fund's entering into the Special Servicing Agreement; (b) information quantifying the Underlying Fund Benefits; (c) the extent to which investors in the Top-Tier Fund could have purchased shares of the Underlying Fund; (d) the extent to which an investment in the Top-Tier Fund represents or would represent a consolidation of accounts in the Underlying Funds, through exchanges or otherwise, or a reduction in the rate of increase in the number of accounts in the Underlying Funds; (e) the extent to which the expense ratio of the Underlying Fund was reduced following investment in the Underlying Fund by the Top-Tier Fund and the reasonably foreseeable effects of the investment by the Top-Tier Fund on the Underlying Fund's expense ratio; (f) the reasonably foreseeable effects of participation in the Special Servicing Agreement on the Underlying Fund's expense ratio; and (g) any conflicts of interest that MFS, any affiliated person of MFS, or any other affiliated person of the Underlying Fund may have relating to the Underlying Fund's participation in the Special Servicing Agreement.

3. Prior to approving a Special Servicing Agreement on behalf of an Underlying Fund, the Board of the Underlying Fund, including a majority of the Independent Trustees, will determine that: (a) The Underlying Fund Payments under the Special Servicing Agreement are expenses that the Underlying Fund would have incurred if the shareholders of the Top-Tier Fund had instead purchased shares of the Underlying Fund through the same broker-dealer or other financial intermediary; (b) the amount of the Underlying Fund Payments is less than the amount of Underlying Fund Benefits; and (c) by entering into the Special Servicing Agreement, the Underlying Fund is not engaging, directly or indirectly, in financing any activity which is primarily intended to result in the sale of shares issued by the Underlying Fund.

4. In approving a Special Servicing Agreement, the Board of a Fund will request and evaluate, and MFS will furnish, such information as may reasonably be necessary to evaluate the terms of the Special Servicing Agreement and the factors set forth in condition 2 above, and make the determinations set forth in conditions 1 and 3 above.

5. Approval by the Fund's Board, including a majority of the Independent Trustees, in accordance with conditions 1 through 4 above, will be required at least annually after the Fund's entering into a Special Servicing Agreement and prior to any material amendment to a Special Servicing Agreement.

6. To the extent Underlying Fund Payments are treated, in whole or in part, as a class expense of an Underlying Fund, or are used to pay a class-based expense of a Top-Tier Fund, conditions 1 through 5 above must be met with respect to each class of a Fund as well as the Fund as a whole.

7. Each Fund will maintain and preserve the Board's findings and determinations set forth in conditions 1 and 3 above, and the information and considerations on which they were based, for the duration of the Special

Servicing Agreement, and for a period not less than six years thereafter, the first two years in an easily accessible place.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–905 Filed 1–22–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55103; File No. SR–CHX–2006–39]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participant Fees and Credits

January 12, 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 December 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. 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 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 (''Fee Schedule'') to include changes in the fees charged for orders routed through the NMS Linkage Plan[5] to The NASDAQ Stock Market (''Nasdaq''), the National Stock Exchange (''NSX''), the Boston Equities Exchange (''BeX'') and the Philadelphia Stock Exchange (''PHLX''). The text of this proposed rule change is available at the CHX, on the CHX'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

The Exchange's Fee Schedule, among other things, identifies the fees that are charged to participants on account of outbound NMS Linkage Plan orders. Section E.6 of the Fee Schedule applies to orders that are Matching System-eligible[6] and therefore are routed from the Matching System to other market centers. Section E.8 of the Fee Schedule applies to orders that have not yet migrated to the Matching System and therefore are routed from the Exchange's pre-new NTM facilities.

When an outbound NMS Linkage Plan order is executed on another NMS Linkage participant market, that market will directly invoice the CHX for a transaction fee, in an amount that may not exceed the transaction fee that it would charge its own member for such an execution. The CHX is then responsible for payment of such invoice. Sections E.6 and E.8 of the Fee Schedule permit the CHX to collect a corresponding fee from the CHX participant that generated the outbound NMS Linkage Plan order. The CHX believes that it is appropriate to establish outbound NMS Linkage fee rates that reasonably correspond to the respective transaction fee rates being charged by the executing markets. Accordingly, it is submitting changes to Sections E.6 and E.8 of the Fee Schedule, to reflect recent developments regarding applicable transaction fees assessed by Nasdaq, NSX, PHLX, and BeX on account of NMS Linkage Plan executions.[7] Specifically, the proposal would change the outbound fee for NMS Linkage orders routed to Nasdaq (in issues other than exchange-traded funds (''ETFs'')) from $.0015/share to $.0030/share, effective January 1, 2007. The proposal would also change the outbound fee for NMS Linkage orders routed to NSX and PHLX to $.0030/share for orders in all securities (ETFs and all other securities). Finally, the proposal would change the outbound fee for NMS Linkage orders routed to BeX to $.0028/share for orders in all securities (ETFs and all other securities).[8]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act[9] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and is consistent with the allocation of dues, fees and other charges utilized by other self-regulatory organizations that have implemented trading platforms similar to the CHX new trading model.

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 due, fee

[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. 54548 (September 29, 2006), 71 FR 59159 (October 6, 2006) (SR–CHX–2006–28) (approving exchange-to-exchange billing procedures under the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (''Linkage Plan'')); Securities Exchange Act Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006) (approving Linkage Plan).

[6] *See* Securities Exchange Act Release No. 54550 (September 29, 2006), 71 FR 59563 (October 10, 2006) (SR–CHX–2006–05) (approving rules to implement a new trading model (''NTM'') that allows Exchange participants to interact in a fully-automated Matching System).

[7] *See* Nasdaq Head Trader Alert #2006–199 (November 30, 2006); Securities Exchange Act Release No. 55041 (January 4, 2007), 72 FR 1356 (January 11, 2007) (SR–NSX–2006–17); Securities Exchange Act Release No. 54941 (December 14, 2006), 71 FR 77079 (December 22, 2006) (SR–PHLX–2006–70); and Securities Exchange Act Release No. 54795 (November 20, 2006), 71 FR 68850 (November 28, 2006) (SR–BSE–2006–44).

[8] BeX has implemented a fee that charges $.0028/share for taking liquidity, subject to a maximum of .3% of the quotation price per share, for securities with a share price less than $1.00. The CHX's systems cannot currently calculate that type of fee cap and, for that reason, the CHX is not currently proposing that cap as part of its fees for routing orders to BeX.

[9] 15 U.S.C. 78f(b)(4).

or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder.[11] 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 No. SR–CHX–2006–39 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–2006–39. 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–2006–39 and should be submitted on or before February 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–907 Filed 1–22–07; 8:45 am]

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[10] 15 U.S.C. 78f(b)(4).

[11] 17 CFR 200.30–3(a)(12).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55108; File No. SR–NASD–2006–101]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Provide for the Payment of a $200 Honorarium Per Case for Each Arbitrator Who Considers Contested Motions for the Issuance of Subpoenas

January 16, 2007.

I. Introduction

On August 23, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend IM–10104 of the NASD Code of Arbitration Procedure (''Code'') to provide for the payment of a $200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas. On November 13, 2006, NASD filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 8, 2006.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description

The purpose of the proposed rule change is to provide for the payment of a $200 honorarium per case for each arbitrator who considers contested motions for the issuance of subpoenas. NASD previously amended IM–10104, to provide arbitrators with an honorarium of $200 to decide discovery-related motions without a hearing session.[5] The revised rule, however, does not address whether a contested motion concerning a subpoena constitutes a discovery-related motion. As a result, NASD has received questions regarding the appropriate payment, if any, for arbitrators who decide subpoena issues. These questions have focused on whether, under the rule, arbitrators should be paid to decide contested motions requesting the issuance of a subpoena.

The issue of whether arbitrators should receive an honorarium for deciding contested subpoena motions has become even more significant with the Commission's recent approval of amendments to NASD Rule 10322 which, among other changes, permit only arbitrators to issue subpoenas in NASD arbitrations.[6]

In proposing the current rule change, NASD recognized that arbitrators may spend a considerable amount of time and effort deciding contested subpoena motions[7] and stated it believes that arbitrators should be compensated for this work. NASD anticipated that if its proposed changes to Rule 10322 were approved, under most circumstances, the chairperson would be the only arbitrator considering subpoena requests based on the documents supplied by the parties. If the entire panel decided a contested motion, each arbitrator who participates in the subpoena ruling would receive an honorarium of $200. The $200 honorarium paid to an arbitrator would provide payment for all contested subpoena motions in a case (*i.e.*, the honorarium would be paid on a per case basis, regardless of the number of contested subpoena motions considered by an arbitrator or panel during the case).[8] Furthermore, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NASD clarified provisions of the proposed rule change.

[4] *See* Exchange Act Release No. 54857 (Dec. 1, 2006), 71 FR 71213 (Dec. 8, 2006).

[5] *See* Exchange Act Release No. 51931 (June 28, 2005) (File No. SR–NASD–2005–052), 70 FR 38989 (July 6, 2005).

[6] *See* Exchange Act Release No. 55038 (Jan. 3, 2007) (File No. SR–NASD–2005–079). Previously, Rule 10322 allowed arbitrators and any counsel of record to the proceedings to issue subpoenas as provided by law.

[7] For purposes of this rule, a contested motion is defined as a motion to issue a subpoena, the draft subpoena, a written objection from the party opposing the issuance of the subpoena, and any other documents supporting a party's position. Arbitrators will not be entitled to receive the honorarium if a motion for a subpoena is uncontested.

[8] This differs from other discovery-related motions, for which an arbitrator receives an honorarium for each motion considered. *See* IM–

maximum amount that would be paid by the parties, collectively, for any one case would be $600, irrespective of any changes to the composition of the panel.[9] NASD believes that structuring the honorarium in this manner will limit the arbitration costs for parties while at the same time compensating arbitrators for the time that they spend considering contested subpoena requests.

III. Discussion and Findings

The Commission finds that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)[10] and 15A(b)(6)[11] of the Exchange Act, which require, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls, and 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. The Commission believes that the proposed rule change is consistent with the provisions of the Exchange Act noted above because the rule change provides that the panel will have the ability to allocate the honorarium for deciding a discovery-related motion equitably among the parties.[12] Moreover, the Commission believes the proposed rule change will encourage arbitrators to decide contested subpoena requests without scheduling a prehearing conference, thereby expediting the arbitration process for parties.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act[13] that the proposed rule change (SR–NASD–2006–101), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–864 Filed 1–22–07; 8:45 am]

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10104(e). If the panel has received the honorarium for considering a contested subpoena request and subsequently receives a number of new contested subpoena requests, however, the chairperson may call a prehearing conference to hear and decide these matters, for which the participating arbitrator(s) would receive the normal prehearing honorarium. *See* IM–10104(a) and (b).

[9] In situations where more than three different arbitrators consider contested subpoena requests, NASD will pay the additional honorarium. For example, if all three members of a panel have decided a contested subpoena request and the chairperson is thereafter replaced by another arbitrator, NASD would pay the $200 honorarium to the replacement chairperson for deciding any later contested subpoena requests, because the parties already would have incurred $600 in costs relating to the requests. Likewise, if there have been three different chairpersons in the same proceeding, each of whom has considered a contested subpoena request, NASD would pay the $200 honorarium should a fourth chairperson consider a contested subpoena request. NASD does not anticipate that either of these situations will occur frequently.

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78o–3(b)(6).

[12] In approving this proposed rule change, as amended, 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).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55095; File No. SR–NSCC–2006–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Amend Its Rules and Procedures With Respect to Clearing Fund Collateral

January 12, 2007.

I. Introduction

On October 3, 2006, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on October 25, 2006, amended[1] proposed rule change SR–NSCC–2006–11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] Notice of the proposal was published in the **Federal Register** on December 6, 2006.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change as amended.

II. Description

NSCC is modifying its rules regarding Clearing Fund collateral requirements in order to improve liquidity and minimize risk for NSCC and its members. NSCC is also making certain technical corrections to the text of Rule 4 to conform the rule to actual practice.[4]

Under NSCC's Rules,[5] members are required to make deposits to the Clearing Fund. The amount of each member's required deposit (''Required Deposit'') is fixed by NSCC in accordance with one or more formulas. Presently, a member's Required Deposit may be satisfied with a cash deposit, and a portion of a member's Required Deposit may be evidenced by an open account indebtedness secured by Qualifying Bonds and/or one or more irrevocable letters of credit issued under certain guidelines established within NSCC's Rules.[6] Currently, NSCC haircuts the value that Qualifying Bonds receive when used to meet a member's Clearing Fund requirement and will not allow a letter of credit to be used if by doing so more than twenty percent of NSCC's total Clearing Fund would consist of letters of credit issued by that approved letter of credit issuing bank. Each member is entitled to any Clearing Fund interest earned or paid on Qualifying Bonds and cash deposits.

NSCC is modifying its rules to: (1) Expand the types of instruments which NSCC may accept as Qualifying Bonds (''Eligible Clearing Fund Securities'') securing a member's open account Clearing Fund indebtedness and establish concentration requirements with regard to their use; (2) create a correlating range of haircuts to be applied to these expanded types of Eligible Clearing Fund Securities; and (3) eliminate letters of credit as a generally acceptable form of collateral securing the member's open account Clearing Fund indebtedness.

A. Revised Clearing Fund Components

(1) Cash

The current Clearing Fund minimum cash deposit requirement will remain unchanged: Each member must contribute a minimum of $10,000 with the first forty percent but no less than $10,000 of a member's Required Deposit being in cash.[7]

(2) Securities

NSCC is replacing the term Qualifying Bonds[8] with a new set of definitions for

[1] The amendment was not substantive.

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 54822 (November 28, 2006), 71 FR 70820.

[4] For example, the reference in Rule 4, Section 1 to the ''market value'' of Qualifying Bonds has been corrected to accurately reference the ''collateral value'' of Eligible Clearing Fund Securities.

[5] Rule 4 (Clearing Fund), Procedure XV (Clearing Fund Formula and Other Matters), and Appendix 1 (Version 2 of Procedure XV—Limited Applicability).

[6] Mutual Fund/Insurance Service Members are not permitted to use Qualifying Bonds or irrevocable letters of credit to satisfy their Required Deposits.

[7] *See supra* note 6.

[8] ''Qualifying Bonds'' is currently defined in Rule 4 as unmatured bonds that are either direct obligations of or obligations guaranteed as to principal and interest by the United States or its agencies.

Eligible Clearing Fund Securities. These securities will be unmatured bonds which are either an Eligible Clearing Fund Agency Security, Eligible Clearing Fund Mortgage-Backed Security, or Eligible Clearing Fund Treasury Security.[9] An Eligible Clearing Fund Agency Security will be defined as a direct obligation of those U.S. agencies or government sponsored enterprises as NSCC may designate from time to time that satisfies such criteria set forth in notices issued by NSCC from time to time. An Eligible Clearing Fund Mortgage-Backed Security will be defined as a mortgage-backed pass through obligation issued by those U.S. agencies or government sponsored enterprises as NSCC may designate from time to time that satisfies such criteria set forth in notices issued by NSCC from time to time. An Eligible Clearing Fund Treasury Security will be defined as a direct obligation of the U.S. government that satisfies the criteria set forth in notices issued by NSCC from time to time.

(3) Security Concentration Provisions

NSCC is also establishing security concentration provisions for Clearing Fund deposits. As is currently required, each member must contribute a minimum of $10,000 with the first forty percent but no less than $10,000 of a member's Required Deposit being in cash.[10] The remainder of a member's deposit may be secured by the pledge of Eligible Clearing Fund Securities in any combination of Eligible Clearing Fund Treasury Securities, Eligible Clearing Fund Agency Securities, and/or Eligible Clearing Fund Mortgage-Backed Securities, subject to the following two limitations. First, any deposits of Eligible Clearing Fund Agency Securities or Eligible Clearing Fund Mortgage-Backed Securities in excess of twenty-five percent of the member's Required Deposit will be subject to an additional haircut equal to twice the percentage noted in the haircut schedule. Second, no more than twenty percent of a member's Required Deposit secured by pledged Eligible Clearing Fund Agency Securities may be of a single issuer.[11]

(4) Letters of Credit and Other Adequate Assurances

The provisions in NSCC's Rules that pertain to Letter of Credit Issuers are being modified to reflect that letters of credit are no longer a generally accepted form of Clearing Fund collateral.[12] Effective April 1, 2007 (the regular expiration date of letters of credit), members that have letters of credit posted as collateral (other than members, if any, that have been required to post letters of credit for legal risk) will be required to replace the portion of the Clearing Fund collateralized by letters of credit with either cash or Eligible Clearing Fund Securities.

(5) Implementation Timeframes

The foregoing rule changes will become effective thirty days after an Important Notice is issued to members informing them that NSCC's systems are ready to accommodate such changes. The corresponding changes to NSCC's rules will be made at that time. On April 1, 2007, changes pertaining to letters of credit will be made to NSCC's rules.

III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[13] Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[14] The Commission finds that NSCC's rule change is consistent with this requirement because by revising its rules governing the acceptable forms of Clearing Fund collateral deposits to increase the liquidity of its Clearing Fund and to minimize risk to NSCC and its members, the proposed rule change should better enable NSCC to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.[15]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (File No. SR–NSCC–2006–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–865 Filed 1–22–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55102; File No. SR–NYSEArca–2006–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto to Trade iShares® Lehman Bond Funds Pursuant to Unlisted Trading Privileges

January 12, 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 20, 2006, the NYSE Arca, Inc. (the ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange submitted Amendment No. 1 to the proposed rule change on January 8, 2007, which replaces the original filing in its entirety. On January 12, 2007, the Exchange submitted Amendment No. 2 to the proposed rule change.[3] The

[9] Initial eligibility criteria for each type of Eligible Clearing Fund Security will be announced to members in an Important Notice prior to the effective date of these proposed rule changes. Any future changes to the eligibility criteria will also be announced to members in Important Notices in advance of such changes becoming effective.

[10] *See supra* note 6.

[11] No member may post as collateral Eligible Clearing Fund Agency Securities for which it is the issuer. However, a member may pledge Eligible Clearing Fund Mortgage-Backed Securities for which it is the issuer subject to a premium haircut. That haircut shall be fourteen percent as an initial matter, and if the member also exceeds the twenty-five percent concentration limit, the haircut shall be twenty-one percent.

[12] NSCC has found that in practice letters of credit are not as liquid as cash and securities, and therefore potentially pose more risk to NSCC and its members when accepted by NSCC as Clearing Fund collateral. NSCC will, however, reserve the right to require letters of credit from members in those instances where a particular member has been found, by NSCC in its discretion, to present legal risk.

[13] 15 U.S.C. 78s(b).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 clarified that Amendment No. 1 replaced the original filing in its entirety and

Commission is publishing this notice to solicit comment on the proposal, as amended, from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through NYSE Arca Equities, has proposed to trade shares (''Shares'') of the following Index Funds (''Funds'') pursuant to unlisted trading privileges (''UTP'') based on NYSE Arca Equities Rule 5.2(j)(3): (1) iShares® Lehman Short Treasury Bond Fund; (2) iShares Lehman 3–7 Year Treasury Bond Fund; (3) iShares Lehman 10–20 Year Treasury Bond Fund; (4) iShares Lehman 1–3 Year Credit Bond Fund; (5) iShares Lehman Intermediate Credit Bond Fund; (6) iShares Lehman Credit Bond Fund; (7) iShares Lehman Intermediate Government/Credit Bond Fund; and (8) iShares Lehman Government/Credit Bond Fund. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nysearca.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

Under NYSE Arca Equities Rule 5.2(j)(3), the Exchange may propose to list or trade pursuant to UTP ''Investment Company Units'' (''ICUs''). The Exchange proposes to trade pursuant to UTP the Shares of the Funds under NYSE Arca Equities Rule 5.2(j)(3).[4] The Commission has approved a proposed rule change by the New York Stock Exchange LLC (the ''NYSE'') to list and trade the Shares of the Funds.[5]

The Funds will be based on the following indexes, respectively: (1) Lehman Brothers Short U.S. Treasury Index; (2) Lehman Brothers 3–7 Year U.S. Treasury Index; (3) Lehman Brothers 10–20 Year U.S. Treasury Index; (4) Lehman Brothers 1–3 Year U.S. Credit Index; (5) Lehman Brothers Intermediate U.S. Credit Index; (6) Lehman Brothers U.S. Credit Index; (7) Lehman Brothers Intermediate U.S. Government/Credit Index; and (8) Lehman Brothers U.S. Government/Credit Index.

The indexes are referred to herein collectively as ''Indexes'' or ''Underlying Indexes,'' which are described in detail in the NYSE Proposal. Each Fund is an ''index fund'' that seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of its Underlying Index developed by Lehman.

Availability of Information Regarding iShares and the Underlying Index

Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Tape System (''CTS''). The NYSE Proposal states that, on each business day the list of names and amount of each security constituting the current Deposit Securities[6] of the Fund Deposit[7] and the Balancing Amount[8] effective as of the previous business day will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per iShare basis (the ''Intra-day Optimized Portfolio Value'' or ''IOPV'') will be calculated by an independent third party (the ''Value Calculator''), such as Bloomberg L.P., every 15 seconds during the Exchange's regular trading hours and disseminated every 15 seconds on the Consolidated Tape. Because NSCC does not disseminate the new basket amount to market participants until approximately 6 p.m. to 7 p.m. ET, an updated IOPV is not possible to calculate during the Exchange's late trading session (4:15 p.m. to 8 p.m. ET).

The NYSE Proposal indicates that the NYSE intends to disseminate a variety of data with respect to each Fund on a daily basis by means of the Consolidated Tape Association and CQ High Speed Lines; information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit[9] will be made available each trading day.

The Underlying Indexes are calculated once each trading day, and are available from major market data vendors. The NAV for each Fund will be calculated and disseminated daily in a number of places, including iShares.com and on the Consolidated Tape. In the NYSE Proposal, the NYSE stated that it will receive a representation from the Advisor to the Funds that the NAV will be calculated and made available to all market participants at the same time.

In addition, the Web site for the iShare® Trust (''Trust''), which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each Fund: (a) The prior business day's NAV and the mid-point of the bid-ask price and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

UTP Trading Criteria

The Exchange represents that it will cease trading the Shares of a Fund if: (a) The listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12; or (b) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable. UTP trading in the Shares is also governed by the trading halts provisions of NYSE Arca Equities Rule 7.34 relating to temporary interruptions in the calculation or wide dissemination of the Intraday Indicative Value (''IOPV'') or the value of the underlying index.

revised the statutory basis section of the proposed rule change.

[4] NYSE Arca Equities Rule 5.2(j)(3)(A)(i)(a) allows the listing and trading of ICUs issued by a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio or securities.

[5] *See* Securities Exchange Act Release No. 54916 (December 12, 2006), 71 FR 76008 (December 19, 2006) (SR–NYSE–2006–70) (the ''NYSE Proposal'').

[6] Deposit Securities are the in-kind deposit of a designated portfolio of securities, which constitute a substantial replication, or a portfolio sampling representation, of the securities in the relevant Fund's Underlying Index.

[7] The Fund Deposit represents the minimum initial and subsequent investment amount for a Creation Unit.

[8] Balancing Amount, together with the Deposit Securities, constitute the ''Fund Deposit.''

[9] Shares of the Funds will be issued on a continuous offering basis in groups of 50,000 to 100,000 iShares (as specified for each Fund), or multiples thereof. These ''groups'' of shares are called ''Creation Units.''

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. until 8 p.m. ET, even if the IOPV is not disseminated from 4:15 p.m. to 8 p.m. ET.[10] The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising an Underlying Index of a Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule [11] or by the halt or suspension of trading of the underlying securities. See ''UTP Trading Criteria'' above for specific instances when the Exchange will cease trading the Shares.

Shares will be deemed ''Eligible Listed Securities,'' as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System (''ITS'') Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

Surveillance

The Exchange will utilize its existing surveillance procedures applicable to ICUs to monitor trading of the Funds. Surveillance procedures applicable to trading in the proposed Shares are comparable to those applicable to other ICUs currently trading on the Exchange. The Exchange represents that these surveillance procedures are adequate to properly monitor the trading of the Funds. The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a),[12] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IOPV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds.[13] The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also disclose that the NAV for the Shares will be calculated shortly after 4 p.m. ET each trading day.

The Commission has granted the Funds an exemption from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (''1940 Act'').[14] Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations made and all conditions contained in the Funds' application for orders under the 1940 Act.[15]

In connection with the trading of the Funds, the Exchange would inform ETP Holders in an Information Circular of the special characteristics and risks associated with trading the Funds, including how the Funds are created and redeemed, the prospectus or product description delivery requirements applicable to the Funds, applicable Exchange rules, how information about the value of the underlying index is disseminated, and trading information.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [16] in general and Section 6(b)(5) of the Act [17] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

In addition, the proposed rule change is consistent with Rule 12f–5 [18] under the Act because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

[10] The Exchange relies on the listing market to monitor dissemination of the IOPV during the Exchange's core trading session (9:30 a.m. to 4:15 p.m. ET). Currently the official index sponsors for the Funds' indexes do not calculate updated index values during the Exchange's late trading session; however, if the index sponsors did so in the future, the Exchange will not trade this product unless such official index value is widely disseminated.

[11] *See* NYSE Arca Equities Rule 7.12.

[12] NYSE Arca Equities Rule 9.2(a) (''Diligence as to Accounts'') provides that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, with a limited exception, prior to the execution of a transaction recommended to a non-institutional customer, ETP Holders shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. *See* Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

[13] *See In the Matter of iShares, Inc.*, Investment Company Act Release No. 25623 (June 25, 2002), which permits dealers to sell Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations and conditions set forth in the order.

[14] 15 U.S.C. 80a–24(d).

[15] *See In the Matter of iShares, Inc.*, Investment Company Act Release No. 25623 (June 25, 2002).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 17 CFR 240.12f–5.

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 neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2006–63 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–NYSEArca–2006–63. 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 offices 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–NYSEArca–2006–63 and should be submitted on or before February 13, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[20] 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 Commission believes that this proposal will benefit investors by increasing competition among markets that trade Shares of the Funds.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[21] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[22] The Commission notes that it previously approved the listing and trading of the Shares on the NYSE.[23] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[24] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be an equity security, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[25] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the Consolidated Quotation System. Furthermore, a Value Calculator disseminates the value of IOPV every 15 seconds. Because of the importance of this information, if a Value Calculator ceases to maintain or to calculate the value of the IOPV or if the value of the index ceases to be widely available, NYSE Arca Equities Rule 7.34 would require the Exchange to cease trading the Shares.

Finally, the Commission notes that, if the Shares should be delisted by NYSE, the original listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to address any concerns associated with the trading of the Shares on a UTP basis.

2. The Exchange will distribute an information circular to its ETP Holders prior to the commencement of trading of the Shares on the Exchange that explains the terms, characteristics, and risks of trading the Shares.

3. The Exchange will require ETP Holders to deliver a prospectus to investors purchasing newly issued Shares and will note this prospectus delivery requirement in the information circular.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on NYSE is consistent with the Act.[26] The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional

[19] 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).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78*l*(f).

[22] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[23] *See* NYSE Proposal, *supra* note 5.

[24] 17 CFR 240.12f–5.

[25] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[26] *See* NYSE Proposal, *supra* note 5.

competition in the market for the Shares.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–NYSEArca–2006–63), as modified by Amendment Nos. 1 and 2, be and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–870 Filed 1–22–07; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10784]

Kansas Disaster #KS–00015

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 Kansas (FEMA–1675–DR) , dated 01/07/2007.

Incident: Severe Winter Storm.

Incident Period: 12/28/2006 through 12/31/2006.

Effective Date: 01/07/2007.

Physical Loan Application Deadline Date: 03/08/2007.

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 01/07/2007, 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:

Cheyenne, Clark, Comanche, Decatur, Edwards, Ellis, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Hamilton, Haskell, Hodgeman, Jewell, Kearny, Kiowa, Lane, Logan, Meade, Morton, Ness, Norton, Osborne, Pawnee, Phillips, Rawlins, Rooks, Rush, Russell, Scott, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Thomas, Trego, Wallace, Wichita

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 10784.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–896 Filed 1–22–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10783]

Nebraska Disaster #NE–00011

AGENCY: 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 Nebraska (FEMA–1674–DR), dated 01/07/2007.

Incident: Severe Winter Storms.

Incident Period: 12/19/2006 through 01/01/2007.

Effective Date: 01/07/2007.

Physical Loan Application Deadline Date: 03/08/2007.

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 01/07/2007, 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:

Adams, Antelope, Blaine, Boone, Brown, Buffalo, Cedar, Chase, Cheyenne, Clay, Custer, Dawson, Dixon, Dundy, Fillmore, Franklin, Frontier, Furnas, Garden, Garfield, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Holt, Howard, Kearney, Keith, Keya Paha, Kimball, Knox, Lincoln, Logan, Loup, Madison, Merrick, Morrill, Nance, Nuckolls, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Rock, Seward, Sherman, Stanton, Valley, Wayne, Webster, Wheeler York

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 10783.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–897 Filed 1–22–07; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Document No. 2007–SSA–0004]

The Ticket To Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Quarterly Meeting.

DATES: February 8, 2007—9 a.m. to 5 p.m. February 9, 2007—8:30 a.m. to 12 p.m.

ADDRESSES: Atlanta Marriott Marquis, 265 Peachtree Center Avenue Atlanta, GA 30303. *Phone:* 404–521–0000.

SUPPLEMENTARY INFORMATION:

Type of meeting: On February 8–9, 2007, the Ticket to Work and Work Incentives Advisory Panel (the ''Panel'') will hold a quarterly meeting open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

meeting of the Ticket to Work and Work Incentives Advisory Panel. Section 101(f) of Pub. L. 106–170 establishes the Panel to advise the President, the Congress, and the Commissioner of SSA on issues related to work incentive programs, planning, and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings and presentations on matters of interest, conduct full Panel deliberations on the implementation of the Act and receive public testimony.

The Panel will meet in person commencing on Thursday, February 8, 2007, from 9 a.m. until 5 p.m. The quarterly meeting will continue on Friday, February 9, 2007, from 8:30 a.m. until 12 p.m.

Agenda: The full agenda will be posted at least one week before the start of the meeting on the Internet at *http://www.ssa.gov/work/panel/meeting_information/agendas.html*, or can be received, in advance, electronically or by fax upon request. Public testimony will be heard on Thursday, February 8, 2007, from 4 to 5 p.m. Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule a time slot. Members of the public must schedule a time slot in order to comment. In the event public comments do not take the entire scheduled time period, the Panel may use that time to deliberate or conduct other Panel business. Each individual providing public comment will be acknowledged by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute, verbal presentation.

Full written testimony on the Implementation of the Ticket to Work and Work Incentives Program, no longer than five (5) pages, may be submitted in person or by mail, fax or e-mail on an ongoing basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Ms. Tinya White-Taylor, at *Tinya.White-Taylor@ssa.gov* or by calling (202) 358–6420.

Contact Information: Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the staff by:

- Mail addressed to the Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.
- Telephone contact with Tinya White-Taylor at (202) 358–6420.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov*.

Dated: January 9, 2007.

Chris Silanskis,

Designated Federal Officer.

[FR Doc. E7–904 Filed 1–22–07; 8:45 am]

BILLING CODE 4191–02–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting; No. 07–01

TIME AND DATE: 9 a.m. (CST), January 25, 2007. Fogelman Conference Center, University of Memphis, 330 DeLoach Street, Memphis, Tennessee 38152.

STATUS: Open.

Agenda

Old Business

Approval of minutes of November 30, 2006, Board Meeting.

New Business

1. President's Report.
2. Chairman's Report.

A. Board Committee membership appointments.

3. Report of the Finance, Strategy, and Rates Committee.

A. Two-Part Real Time Pricing Arrangements for a directly served customer.

4. Report of the Operations, Environment, and Safety Committee.

A. TVA Board Practice on delegation of authority on capital expenditures.

B. TVA Board Practice on approval of fuels, power trading, and related contracts.

5. Report of the Audit and Ethics Committee.

6. Report of the Corporate Governance Committee.

A. Appointment of assistant secretaries.

7. Information Item.

A. Board approved framework for settlement of Johns Manville class action lawsuit, which is subject to court approval.

FOR MORE INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

January 18, 2007.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 07–286 Filed 1–19–07; 12:11 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 12, 2007

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–26869.
Date Filed: January 11, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC23 Europe-South East Asia, Resolutions and Specified Fares Tables, (Memo 0245).
Technical Correction: TC23/123 Europe-South East Asia, Specified Fares Tables.
For Information only (Memo 0248).
Minutes: TC23 Europe-South East Asia, (Memo 0251).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26897.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Japan-Korea, Resolutions & Specified Fares Tables, (Memo 1028).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26898.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Japan, Korea-South East Asia, Except between, Korea (Rep. of) and Guam, Northern Mariana Islands Resolutions & Specified Fares Tables, (Memo 1029).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26899.

Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Japan, Korea-South East Asia, between Korea (Rep. of) and Guam, Northern Mariana Islands Resolutions & Specified Fares Tables, (Memo 1030).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26900.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Within South East Asia, except between Malaysia and Guam, Resolutions & Specified Fares Tables, (Memo 1031).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26901.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Within South East Asia, from Malaysia to Guam, Resolutions & Specified Fares Tables, (Memo 1032).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26902.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Areawide Resolutions, (Memo 1033).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26903.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 South East Asia-South West Pacific, Except between Malaysia and American Samoa, Resolutions & Specified Fares Tables, (Memo 1034).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26905.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 South East Asia-South West Pacific, between Malaysia and American Samoa, Resolutions & Specified Fares Tables, (Memo 1035).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26906.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Japan, Korea-South West Pacific, except between Korea (Rep. of) and American Samoa, Resolutions & Specified Fares Tables, (Memo 1036).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26907.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Japan, Korea-South West Pacific, between Korea (Rep. of) and American Samoa, Resolutions & Specified Fares Tables, (Memo 1037).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26908.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Within South West Pacific, except between French Polynesia and American Samoa, Resolutions & Specified Fares Tables, (Memo 1038).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26909.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Within South West Pacific, between French Polynesia and American Samoa, Resolutions & Specified Fares Tables, (Memo 1039).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26910.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 South Asian Subcontinent—South West Pacific, Resolutions & Specified Fares Tables, (Memo 1040).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26911.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Within South Asian Subcontinent, Resolutions & Specified Fares Tables, (Memo 1041).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26912.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Japan, Korea-South Asian Subcontinent, Resolutions & Specified Fares Tables, (Memo 1042).
Intended effective date: 1 April 2007.

Docket Number: OST–2007–26913.
Date Filed: January 12, 2007.
Parties: Members of the International Air Transport Association.
Subject:
TC3 South East Asia-South Asian Subcontinent, Resolutions & Specified Fares Tables, (Memo 1043).
Intended effective date: 1 April 2007.

Renee V. Wright,
Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–915 Filed 1–22–07; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Agency Information Collection; Activity Under OMB Review; Survey of State Funding for Public Transportation

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) described below is being forwarded to the Office of Management and Budget (OMB) for approval for a new information collection related to state funding of public transit. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** notice, with a 60-day comment period soliciting comments on the following collection of information, was published on November 11, 2006 (70 FR 51409) and the comment period ended on January 12, 2007. The 60-day notice produced no comments.

DATES: Written comments should be submitted by February 22, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. June Taylor Jones, Passenger Travel Program Manager, Room 3430, RITA, BTS, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone (202) 366–4743, Fax (202) 493–0568 or e-mail *june.jones@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Survey of State Funding for Public Transportation.
Type of Request: Approval of a new information collection.
OMB Control Number: New.
Affected Public: State DOT offices and the District of Columbia DOT.
Number of Respondents: 51.
Number of Responses: 51.
Total Annual Burden: 102 hours (Average estimate of 2 hours to complete the survey for each of 51 respondents resulting in a total of 102 hours).

Abstract: The Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU; H.R. 3, Section 5601) requires the BTS to provide ''data, statistics, and analysis to transportation decision-makers'' and to ensure that the statistics ''are designed to support transportation decision-making by the Federal Government, State and local governments, metropolitan planning organizations, transportation-related associations, the private sector (including the freight community), and the public.'' The Survey of State Funding for Public Transportation provides data that are used to create an annual summary report of state funding for transit in the 50 states and the District of Columbia. Each state DOT will provide the source of funding for transit programs (e.g., gas tax, sales tax, license fees), the programs funded (e.g., bus operations, rail operations), the amount of funding per program, the eligible uses for the funding (capital expenses, operating expenses, both), and how funds are distributed (discretionary, formula-based). The information in this report is widely used and is requested by Congress, state legislatures and local governing bodies. The information is useful in showing state comparisons in types of public transportation programs as well as commitment to fund public transportation capital and operating costs.

ADDRESSES: The agency seeks public comments on its proposed information collection. Comments should address whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: RITA Desk Officer.

Issued in Washington, DC on this 17th day of January, 2007.

William Bannister,

Assistant Director, Office of Advanced Studies, Research and Advanced Technology Administration, Bureau of Transportation Statistics, U.S. Department of Transportation.

[FR Doc. E7–912 Filed 1–22–07; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–46–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–46–89 (T.D. 8641), Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions (§§ 1.597–2 and 1.597–4, 1.597–6 and 1.597–7).

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown at (202) 622–6688, or *Carolyn.N.Brown@irs.gov*, or Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Acquisition of Certain Financial Institutions; Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.

OMB Number: 1545–1300.

Regulation Project Number: FI–46–89.

Abstract: Recipients of Federal financial assistance (FFA) must maintain an account of FFA that is deferred from inclusion in gross income and subsequently recaptured. This information is used to determine the recipient's tax liability. Also, tax not subject to collection must be reported and information must be provided if certain elections are made.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and the Federal Government.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 4 hours, 24 minutes.

Estimated Total Annual Burden Hours: 2,200.

The Following Paragraph Applies to All of the Collections of Information Covered by This Notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments Are Invited On: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 11, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–853 Filed 1–22–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–104691–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–104691–97 (TD 8910), Electronic Tip Reports (§§ 31.6053–1 and 31.6053–4).

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Electronic Tip Reports.

OMB Number: 1545–1603.

Regulation Project Number: REG–104691–97.

Abstract: The regulations provide rules authorizing employers to establish electronic systems for use by their tipped employees in reporting tips to their employer. The information will be used by employers to determine the amount of income tax and FICA tax to withhold from the tipped employee's wages.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 300,000.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 600,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments Are Invited On: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–854 Filed 1–22–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EG–109704–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulations, REG–109704–97 (TD 8471), HIPAA Mental Health Parity Act (§ 54.9812).

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carolyn N. Brown at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: HIPPAA Mental Health Parity Act.

OMB Number: 1545–1577.

Regulation Project Number: Reg–109704–97.

Abstract: The regulations provide guidance for group health plans with mental health benefits about requirements relating to parity in the dollar limits imposed on mental health benefits and medical/surgical benefits.

Current Actions: There are no changes being made to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, state, local or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 7,053.

Estimated Time per Respondent: 28 min.

Estimated Total Annual Burden Hours: 3,280.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments Are Invited On: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 11, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–855 Filed 1–22–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8875

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8875, Taxable REIT Subsidiary Election.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, at (202) 622–6688, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxable REIT Subsidiary Election.

OMB Number: 1545–1721.

Form Number: 8875.

Abstract: A corporation and a REIT use Form 8875 to jointly elect to have the corporation treated as a taxable REIT subsidiary as provided in section 856(l).

Current Actions: There are no changes being made to the form at this time.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 7 hr., 40 min.

Estimated Total Annual Burden Hours: 7,660.

The Following Paragraph Applies to All of the Collections of Information Covered by This Notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–856 Filed 1–22–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–18

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–18, Average Area Purchase Price Safe Harbors and Nationwide Purchase Prices under section 143.

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carolyn N. Brown at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Average Area Purchase Price Safe Harbors and Nationwide Purchase Prices under section 143.

OMB Number: 1545–1877.

Revenue Procedure Number: Revenue Procedure 2004–18.

Abstract: Revenue Procedure 2004–18 provides issuers of qualified mortgage bonds, as defined in section 143(a) of the Internal Revenue Code, and issuers of mortgage credit certificates, as defined in section 25(c), with (1) nationwide average purchase prices for residences located in the United States, and (2) average area purchase price safe harbors for residences located in statistical areas in each state, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, the Virgin Islands, and Guam.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local and tribal governments.

Estimated Number of recordkeepers: 60.

Estimated Time Per recordkeeper: 15 minutes.

Estimated Total Annual Burden Hours: 15.

The following Paragraph Applies to All of the Collections of Information Covered by This Notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information

displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments Are Invited On: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–863 Filed 1–22–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2001–20

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2001–20, Voluntary Compliance on Alien Withholding Program (''VCAP'').

DATES: Written comments should be received on or before March 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carolyn N. Brown at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Voluntary Compliance on Alien Withholding Program (''VCAP'').

OMB Number: 1545–1735.

Revenue Procedure Number: Revenue Procedure 2001–20.

Abstract: The revenue procedure will improve voluntary compliance of colleges and universities in connection with their obligations to report, withhold and pay taxes due on compensation paid to foreign students and scholars (nonresident aliens). The revenue procedure provides an optional opportunity for colleges and universities which have not fully complied with their tax obligations concerning nonresident aliens to self-audit and come into compliance with applicable reporting and payment requirements.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 495.

Estimated Time Per Respondent: 700 hours.

Estimated Total Annual Burden Hours: 346,500.

The Following Paragraph Applies to All of the Collections of Information Covered by This Notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments Are Invited On: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–866 Filed 1–22–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—CRA Sunshine

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before March 26, 2007.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send

an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Celeste Anderson, Senior Project Manager, Compliance and Consumer Protection, (202) 906–7990, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: CRA Sunshine.

OMB Number: 1550–0105.

Form Number: N/A.

Regulation requirement: 12 CFR part 533.

Description: This submission covers an extension of OTS's currently approved information collection contained in 12 CFR part 533. The submission involves no change to the regulations or to the information collection requirements.

The information collection requirements contained in the regulations are as follows:

Section 533.6(b)(1) requires each nongovernmental entity or person (NGEP) and each insured depository institution or affiliate (IDI) that enters into a covered agreement to make a copy of the covered agreement available to any individual or entity upon request.

Section 533.6(c)(1) requires each NGEP that is a party to a covered agreement to provide within 30 days after receiving a request from the relevant supervisory agency (1) a complete copy of the agreement; and (2) in the event the NGEP seeks confidential treatment of any portion of the agreement under FOIA, a copy of the agreement that excludes information for which confidential treatment is sought and an explanation justifying the request.

Sections 533.6(d)(1)(i) and 5336(d)(1)(ii) require each IDI within 60 days of the end of each calendar quarter to provide each supervisory agency with either (1) a complete copy of each covered agreement entered into by the IDI or affiliate during the calendar quarter; and in the event the IDI seeks confidential treatment of any portion of the agreement under FOIA, a copy of the agreement that excludes information for which confidential treatment is sought and an explanation justifying the request; or (2) a list of all covered agreements entered into by the IDI or affiliate during the calendar quarter.

Section 533.6(d)(2) requires an IDI or affiliate to provide any relevant supervisory agency with a complete copy and public version of any covered agreement, if the IDI submits a list of their covered agreements pursuant to section 533.6(d)(1)(ii).

Section 533.7(b) requires each NGEP and IDI that is a party to a covered agreement to file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

Section 533.7(f)(2)(ii) requires an IDI that receives an annual report from a NGEP pursuant to section 533.7(f)(2)(i) to file the report with the relevant supervisory agency or agencies on behalf of the NGEP within 30 days.

Section 533.4(b) requires an IDI that is party to a covered agreement that concerns any activity described in section 533.4(a) of a CRA affiliate to notify each NGEP that is a party to the agreement that the agreement concerns a CRA affiliate.

Current Actions

The current estimate is based on the actual number of IDIs or their affiliates that reported covered agreements to the agencies in 2004 and 2005. The number of NGEP respondents is based on an assumption that one NGEP is a party to each covered agreement.

Type of Review: Renewal.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 12 IDI; 1 NGEP.

Estimated Number of Responses: 842.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 439 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: January 18, 2007.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E7–936 Filed 1–22–07; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 72, No. 14

Tuesday, January 23, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Publication of Changes to Freight Carrier Registration Program and the MTMC Freight Rules Publication 1C on Intransit Visibility of Motor Shipments Through Electronic Data Interchange

Correction

In notice document 07–144 beginning on page 2265 in the issue of Thursday, January 18, 2007, make the following corrections:

(1) On page 2265, in the third column, under the **ADDRESSES** heading, in the last line, ''*bernard@sddc.army.mil.*'' should read ''*bernardl@sddc.army.mil.*''.

(2) On page 2266, in the first column, under the *Exemptions* heading, in the first line, ''—Shipments other than monitor.'' should read ''—Shipments other than motor.''.

(3) On the same page, in the same column, under the *System* heading, in the first line, ''FTN'' should read ''GTN''.

(4) On the same page, in the same column, under the *Miscellaneous* heading, in the fifth line, ''ITN'' should read ''GTN''.

(5) On the same page, in the same column, under the same heading, in the 12th and 13th lines, the Web site is corrected to read as follows: *http://www.sddc.army.mil/sddc/Content/Pub2494/TPA/pdf.*

(6) On the same page, in the second column, in the first line, ''original date'' should read ''arrival date''.

[FR Doc. C7–144 Filed 1–22–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

[Docket No. BPD GSRS 06-03]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds—Securities Eligible for Purchase in Legacy Treasury Direct

Correction

In rule document 07–209 beginning on page 2192 in the issue of Thursday, January 18, 2007, make the following corrections:

(1) On page 2192, in the third column, under the heading **Procedural Requirements**, in the first paragraph, in the last line, ''U.S.C. 533(a)(2)'' should read ''U.S.C. 553(a)(2)''

§356.4 [Corrected]

(2) On page 2193, in the first column, in §356.4, in the fifth and sixth lines, ''may obtain'' should read ''maintain''.

(3) On the same page, in the same column, in §356.4(c), in the sixth line, ''beheld'' should read ''be held''.

[FR Doc. C7–209 Filed 1–22–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
January 23, 2007

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Area Sources: Polyvinyl Chloride and Copolymers Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals: Zinc, Cadmium, and Beryllium; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0510; FRL–8257–4]

RIN 2060–AN45

National Emission Standards for Hazardous Air Pollutants for Area Sources: Polyvinyl Chloride and Copolymers Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals: Zinc, Cadmium, and Beryllium

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rules.

SUMMARY: EPA is issuing national emission standards for hazardous air pollutants (NESHAP) for four area source categories. These final NESHAP include emissions limits and/or work practice standards that reflect the generally available control technologies (GACT) and/or management practices in each of these area source categories.

DATES: These final rules are effective on January 23, 2007. The incorporation by reference of certain publications listed in these rules is approved by the Director of the Federal Register as of January 23, 2007.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0510. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Nizich, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–2825, fax number (919) 541–3207, e-mail address: *nizich.sharon@epa.gov*.

SUPPLEMENTARY INFORMATION:

Outline

The information presented in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by these final standards include:

Category	NAICS code [1]	Examples of regulated entities
Industry:		
Polyvinyl chloride and copolymers production.	325211	Area source facilities that polymerize vinyl chloride monomer to produce vinyl chloride and/or copolymer products.
Primary copper smelting	331411	Area source facilities that produce copper from copper sulfide ore concentrates using pyrometallurgical techniques.
Secondary copper smelting	[2] 331423	Area source facilities that process copper scrap in a blast furnace and converter or use another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap.
Primary nonferrous metals—zinc, cadmium, and beryllium.	331419	Area source facilities that produce zinc, zinc oxide, cadmium, or cadmium oxide from zinc sulfide ore concentrates using pyrometallurgical techniques and area source facilities that produce beryllium metal, alloy, or oxide from beryllium ore.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.
[2] This final rule applies only to secondary copper smelters and does not apply to copper, brass, and bronze ingot makers or remelters that may also be included under this NAICS code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in 40 CFR 63.11140 of subpart DDDDDD (NESHAP for Polyvinyl Chloride and Copolymers Production Area Sources), 40 CFR 63.11146 of subpart EEEEEE (NESHAP for Primary Copper Smelting Area Sources), 40 CFR 63.11153 of subpart FFFFFF (NESHAP for Secondary Copper Smelting Area Sources), or 40 CFR 63.11160 of subpart GGGGGG (NESHAP for Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium

Area Sources). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 26, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background Information for Final Area Source Standards

Sections 112(c)(3) and 112(k)(3)(B) of the CAA instruct EPA to identify not less than 30 HAP which, as a result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and to list sufficient area source categories [1] to ensure that sources representing 90 percent or more of the emissions of each of the 30 listed HAP (''area source HAP'') are subject to regulation. Sierra Club sued EPA, alleging a failure to complete standards for the source categories listed pursuant to CAA sections 112(c)(3) and (k)(3)(B) within the timeframe specified by the statute. *See Sierra Club* v. *Johnston*, No. 01–1537, (D.D.C.). On March 31, 2006, the court issued an order requiring EPA to promulgate standards under CAA section 112(d) for those area source categories listed pursuant to CAA sections 112(c)(3) and (k)(3)(B).

Among other things, the order requires that, by December 15, 2006, EPA complete standards for four of the listed area source categories. On October 6, 2006 (71 FR 59302) we proposed NESHAP for the following four listed area source categories that we have selected to meet the December 15, 2006 deadline: (1) Primary Copper Smelting; (2) Secondary Copper Smelting; (3) Polyvinyl Chloride and Copolymers Production; and (4) Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium. These final NESHAP complete the required regulatory action for four area source categories.

Under CAA section 112(d)(5), the Administrator may, in lieu of standards requiring maximum achievable control technology (MACT) under section 112(d)(2), elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.'' Under section 112(d)(5), the Administrator has the discretion to use generally available control technology (GACT) or management practices in lieu of MACT. As mentioned in the proposed NESHAP for these four area source categories, we have decided not to issue MACT standards and concluded that requirements that provide for the use of GACT or generally available management practices are appropriate for these four source categories (71 FR 59302, 59304, October 6, 2006).

III. Summary of Final Rules and Changes Since Proposal

A. NESHAP for Polyvinyl Chloride and Copolymers Production Area Sources

As proposed, we are adopting the requirements in 40 CFR part 61, subpart F that apply to polyvinyl chloride (PVC) plants as the NESHAP for the Polyvinyl Chloride and Copolymer Production area source category. The only change since the proposed rule is that this final rule does not adopt either the startup, shutdown, and malfunction (SSM) requirements in 40 CFR 63.6(e)(3) or the preconstruction notification requirements in 40 CFR 63.5. As discussed in more detail in section IV.B of this preamble, under the construct of part 61 standards, sources must comply with the standards at all times, including periods of SSM. Because in this final rule we are adopting the part 61 standards for PVC plants as the area source standard, separate requirements governing SSM are not necessary. We have also determined that the preconstruction notification requirements at 40 CFR 63.5 are not necessary because a comparable preconstruction notification is already required under the part 61 General Provisions (40 CFR part 61, subpart A), which apply to this NESHAP.

1. Applicability and Compliance Dates

This final rule applies to both new and existing PVC and copolymer plants that are area sources of HAP. The owner or operator of an existing source must comply with all the requirements of this area source NESHAP by January 23, 2007. The owner or operator of a new source must comply with this area source NESHAP by January 23, 2007 or at startup, whichever is later.

2. Emissions Limits and Work Practice Standards

The Polyvinyl Chloride and Copolymers Production area source category was listed for its contribution to the emissions of the area source HAP vinyl chloride. As proposed, we are adopting the requirements in 40 CFR part 61, subpart F that are applicable to PVC plants as the NESHAP for the Polyvinyl Chloride and Copolymer Production area source category. These requirements in subpart F include numerical emissions limits for reactors; strippers; mixing, weighing, and holding containers; monomer recovery systems; emissions sources following the stripper(s); and reactors used as strippers. In addition, they include emissions limits and work practice requirements that apply to discharges from manual vent valves on a PVC reactor and relief valves in vinyl chloride service, fugitive emissions sources, and equipment leaks. Subpart F also requires a new or existing source to comply with the requirements at 40 CFR part 61, subpart V for the control of equipment leaks. As discussed in the proposal preamble, we have determined that these requirements represent GACT for sources in this area source category.

3. Compliance Requirements

We are including in this NESHAP the monitoring, testing, recordkeeping, and reporting requirements in 40 CFR part 61, subpart F. This final NESHAP requires a vinyl chloride continuous emissions monitoring system (CEMS) for the regulated emissions sources (except for sources following the stripper) and for any control system to which reactor emissions or fugitive

[1] Under section 112(a) of the Clean Air Act, an area source is defined as a stationary source that is not a major source. A major source is defined as a stationary source or a group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP.

emissions must be ducted. Plants using a stripper to comply with this NESHAP must also determine the daily average vinyl chloride concentration for each type of resin. The owner or operator must submit quarterly reports containing information on emissions or resin concentrations that exceed the applicable limits. Records are required to demonstrate compliance, including a daily operating log for each reactor. Plants are required to comply with the testing, monitoring, recordkeeping, and reporting requirements in the part 61 General Provisions (40 CFR part 61, subpart A). For the reasons discussed in sections III.A and IV.B of this preamble, this final NESHAP does not require that the owner or operator comply with the SSM requirements at 40 CFR 63.6(e)(3) and the preconstruction notification requirements at 40 CFR 63.5.

4. Exemption From Title V Permit Requirements

Section 502(a) of the CAA provides that EPA may exempt one or more area sources from the requirements of title V if EPA finds that compliance with such requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on such area sources. EPA must determine whether to exempt an area source from title V at the time we issue the relevant section 112 standard (40 CFR 70.3(b)(2)). For the reasons discussed in the preamble to the proposed rule, we are exempting PVC and copolymers production area sources from the requirements of title V. PVC and copolymers production area sources are not required to obtain title V permits solely as a function of being the subject of the NESHAP; however, if they were otherwise required to obtain title V permits, such requirement(s) would not be affected by this exemption. We received no comments on our proposal to exempt PVC and copolymer production area sources from the requirements of title V.

B. NESHAP for Primary Copper Smelting Area Sources

The Primary Copper Smelting area source category was listed for its contribution to the emissions of the area source HAP arsenic, cadmium, chromium, lead, and nickel. As discussed in more detail in section IV.C of this preamble, the major change since the proposed rule is that we established a subcategory of primary copper smelters that use the batch converting technology and developed separate standards for this subcategory. At the time of the proposed rule, we were not aware of any area sources using the batch converting technology. Since then, we received comments indicating that there may or will be primary copper smelting area sources that use the batch converting technology. Because batch technology is quite different from the continuous converting technology we used to develop the proposed standards for the Primary Copper Smelting area source category in terms of process operation, emissions points, and achievable levels of control, we believe that the proposed standards do not represent GACT for existing primary copper smelting area sources that use the batch converting technology. Accordingly, we developed a separate standard for existing sources that use the batch converting technology, and we developed that standard based on the title V permit of one batch converting facility that we have determined to be effectively controlling its HAP emissions by complying with its permit terms and conditions.

In response to comments, we also made several changes to the proposed rule for primary copper smelters that do not use the batch converting technology. As explained in the preamble to the proposed rule, we have determined that certain terms and conditions in the title V permit of the only area source primary smelter of which we are aware provide effective control of HAP emissions and represent GACT for these sources. We made changes in the proposed rule to more accurately capture the relevant terms and conditions in this existing area source's title V permit. Specifically, we clarified that capture and control systems are not required for anode casting and holding operations; that the sampler required for existing sources is a continuous PM sampler; that the emissions limit is expressed as PM less than 10 microns in aerodynamic diameter (PM10) rather than PM; and that a single gas collection system could serve multiple process vessels.

As discussed in section IV.B of this preamble, we allow new and existing sources to comply with either the SSM requirements in 40 CFR 63.6(e)(3) or the detailed SSM requirements in the final rule that were developed from the existing sources' title V permits, which are substantially equivalent to the SSM requirements in 40 CFR part 63.

1. Applicability and Compliance Dates

This final rule applies to each new or existing primary copper smelter that is an area source of HAP. The owner or operator of an existing affected source must comply by January 23, 2007. The owner or operator of a new affected source must comply by January 23, 2007 or upon initial startup, whichever is later. An affected source is new if construction or reconstruction of the affected source was commenced on or after October 6, 2006.

2. Emissions Limits and Work Practice Standards

As previously mentioned, we have developed separate standards for existing sources that use the batch converting technology and for those that do not. However, the standards for new sources apply to all new area source primary copper smelters irrespective of the converting technology utilized.

Under this final rule, the owner or operator of an existing area source using any converting technology is required to control HAP emissions from copper concentrate drying, copper concentrate smelting, copper matte drying and grinding, copper matte converting, and copper anode refining. As discussed in the proposal preamble, we are using PM as a surrogate for HAP metals. Gases and fumes generated by these processes must be captured and vented through one or more PM control devices. For existing primary copper smelters that do not use the batch converting process, the total emissions of PM10 from the captured gas streams from all of these processes is limited to 89.5 pounds per hour (lb/hr) as determined on a 24-hour average basis.

For existing primary copper smelters using the batch converting technology, the exhaust gases from each smelter vessel and each converter must be collected and sent to a PM control device and to a sulfuric acid plant. A secondary gas collection system must be installed on each smelting vessel and converter, and PM emissions from the secondary capture and control system must not exceed 0.02 grains per dry standard cubic foot (gr/dscf). The PM emissions from each copper concentrate dryer must not exceed 0.022 gr/dscf.

Similarly, the owner or operator of a new area source using any converting technology must control HAP emissions from all primary copper smelting processes, including but not limited to those processes mentioned above that are applicable to the new source's smelter design. Gases and fumes generated by these processes at a new source must be captured and vented through one or more PM control devices. We are requiring a new source to achieve a facility input-based emissions rate for total PM no greater than a daily (24-hour) average of 0.6 pounds per ton (lb/ton) of copper concentrate feed charged to the smelting vessel.

This final rule for new area source primary copper smelters also requires a secondary gas system for each smelting

vessel and converting vessel that collects the gases and fumes released during the molten material transfer operations and conveys the collected gas stream to a control device. Capture systems that collect gas and fumes and convey them to a control device also are required for operations in the anode refining. These capture and control requirements apply to all new and existing area sources using any copper smelting technology.

3. Compliance Requirements

In this final rule, we have adopted the testing, monitoring, operation and maintenance, recordkeeping, and reporting requirements for PM emissions that are in the title V permits of the existing area source smelters. Compliance with the emissions limit for existing area sources not using the batch converting technology is based on the daily average PM_{10} emissions measured by a continuous PM sampler. For smelters using the batch conversion technology, compliance is based on performance tests at least every 2.5 years and continuous monitoring using continuous opacity monitoring systems (COMS) for electrostatic precipitators and bag leak detection systems for baghouses.

The operation and maintenance requirements in this final rule for existing sources using any converting technology are based on the existing sources' title V permits. At all times, the owner or operator must to the extent practicable, maintain and operate any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. In addition, all pollution control equipment must be installed, maintained, and operated properly. Instructions from the vendor or established maintenance practices that maximize pollution control must be followed. Maintenance records must be made available to the permitting authority upon request.

This final rule allows any new or existing source to meet the SSM requirements specified in this final rule or the SSM requirements in 40 CFR 63.6(e)(3). The SSM requirements that are specified in this final rule were developed from the existing sources' title V permit requirements, and we believe these requirements are equally applicable to new and existing area sources irrespective of the converting technology used. Sources may nevertheless choose to comply with the SSM provisions in 40 CFR 63.6(e)(3), in lieu of the SSM requirements specified in this final rule. The SSM provisions in this final rule require that all malfunctions be reported within two working days of the event. The report must include a description of the malfunction, steps taken to mitigate emissions, and corrective actions taken. In addition, the owner or operator must show through signed contemporaneous logs or other relevant evidence that: (1) A malfunction occurred and the probable cause can be identified, (2) the facility was being operated properly at the time the malfunction occurred, and (3) all reasonable steps were taken to minimize emissions that exceeded the emission standards. A malfunction or emergency does not include events caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

The owner or operator of an existing area source using any copper smelting technology must comply with notification requirements in 40 CFR 63.9 of the General Provisions (40 CFR part 63, subpart A). In the notification of compliance status required in 40 CFR 63.9(h), the owner or operator may certify initial compliance with the emissions limit based on monitoring data collected during a previous compliance test. The owner or operator also must certify initial compliance with the work practice standards.

The owner or operator of a new primary copper smelter must install, operate, and maintain a CEMS to measure and record PM concentrations and gas stream flow rates for each emissions source subject to the emissions limit. The standard requires that the PM CEMS meet EPA Performance Specification 11 (40 CFR part 60, appendix B). A device to measure and record the weight of the copper concentrate feed charged to the smelting furnace each day also is required. The owner or operator must continuously monitor PM emissions, determine and record the daily (24-hour) value for each day, and calculate and record the daily average pounds of total PM per ton of copper concentrate feed charged to the smelting furnace. A monthly summary report of the daily averages of PM per ton of copper concentrate feed charged to the smelting vessel also is required. All notification, monitoring, testing, operation and maintenance, recordkeeping, and reporting requirements of the part 63 General Provisions apply to the owner or operator of a new source. This final rule allows a new source to meet the specific SSM requirements that were developed from the title V permit requirements for existing sources or the SSM requirements in 40 CFR 63.6(e)(3).

C. NESHAP for Secondary Copper Smelting Area Sources

We did not receive any comments on our determination of GACT for secondary copper smelters, and we are promulgating the standard as proposed without any changes.

1. Applicability and Compliance Dates

This final rule applies to each new secondary copper smelter that is an area source of HAP. The owner or operator of a new affected source is required to comply by January 23, 2007 or upon initial startup, whichever is later.

2. Emissions Limit and Work Practice Standards

This final rule does not include requirements for existing area sources of secondary copper smelters. As we explained in the preamble to the proposed rule, currently there are no existing major or area sources of secondary copper smelters. Therefore, there is not any, nor would there ever be, an existing secondary copper smelter that would be subject to this rule. In this circumstance, we are not issuing standards for existing area sources of secondary copper smelters. However, this final rule contains requirements for new area sources of secondary copper smelters. The Secondary Copper Smelting area source category was listed for its contribution to the emissions of the area source HAP cadmium, lead and dioxin. We have established requirements for new sources in this category to ensure that any potential emission of these area source HAP from future secondary copper smelting area sources will be appropriately controlled.

We are requiring that the owner or operator of any new secondary copper smelter operate a capture and control system for PM emissions from any process operation that melts copper scrap, alloys, or other metals or that processes molten material. Emissions of PM from the control device must not exceed 0.002 gr/dscf. The owner or operator must also prepare and follow a written plan for the selection, inspection, and pretreatment of copper scrap to minimize, to the extent practicable, the amount of oil and plastics in the scrap that is charged to smelting or melting furnaces. As we explained in the proposal preamble, we are using PM as a surrogate for establishing standards for metal HAP, which are cadmium and lead in this case. The United Nations Environmental Programme (UNEP) has also recommended using control devices with high efficiency PM removal to reduce dioxin emissions. The pollution

prevention measure described above (i.e., presorting and pretreating materials) is another UNEP recommendation for reducing dioxin emissions. We have determined that these requirements represent GACT for new sources of secondary copper smelters and requested comments on this determination in the proposed rule. We did not receive any comments on this determination.

3. Compliance Requirements

Fabric filters (baghouses) are expected to be needed to meet the NESHAP emissions limit. Consequently, the monitoring requirements include bag leak detection systems when baghouses are used. For additional information on bag leak detection systems that operate on the triboelectric effect, see ''Fabric Filter Bag Leak Detection Guidance'', U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, September 1997, EPA–454/R–98–015, NTIS publication number PB98164676. This document is available from the National Technical Information Service (NTIS), 5385 Port Royal Road, Springfield, VA 22161. The owner or operator must prepare a written plan for the selection, inspection, and pretreatment of copper scrap and keep records to document conformance with the requirements in the written plan. If a control device other than a baghouse is used, the owner or operator must submit a monitoring plan to the permitting authority for approval. The monitoring plan must include performance test results showing compliance with the PM emissions limit, a plan for operation and maintenance of the control device, a list of operating parameters that will be monitored, and operating parameter limits that were established during the performance test.

The owner or operator must conduct a performance test to demonstrate initial compliance with the PM emissions limit and report the results in the notification of compliance status required by 40 CFR 63.9(h) of the General Provisions. If a baghouse is used, the PM concentration is to be determined using EPA Method 5 (for negative pressure baghouses) or Method 5D (for positive pressure baghouses) in 40 CFR part 60, appendix A. Repeat performance tests are required every 5 years to demonstrate compliance with the PM emissions limit. All requirements of the part 63 General Provisions apply to the owner or operator of a new source, including the notification, monitoring, testing, operation and maintenance, SSM, recordkeeping, and reporting requirements.

D. NESHAP for Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium Area Sources

1. NESHAP for Primary Zinc Production

In this final rule, we have adopted a limit in grains per dry standard cubic foot (gr/dscf) for certain melting furnaces at existing zinc production area sources in addition to the proposed pound per hour (lb/hr) limits for these furnaces at existing sources. This gr/dscf limit is the limit that we proposed for the same furnaces at new sources. Both the gr/dscf limit and the lb/hr limits reflect the level of emission control that can be achieved based on the technology we identified as GACT for these furnaces (i.e., a well-operated and well-maintained baghouse). However, whereas the lb/hr limits were based on the specific operations at the two existing sources of which we are aware, the gr/dscf emission limit is not operation specific and can apply to these furnaces at any primary zinc production area source irrespective of its operation. For this reason, we proposed this gr/dscf emissions limit for these furnaces at new sources. In this final rule, we similarly allow an existing source to meet this gr/dscf limit for these furnaces. This final rule provides existing sources the option of meeting either the lb/hr limits or the gr/dscf limit for these furnaces. We believe that including both the lb/hr and gr/dscf limits in this final rule will ensure effective control of these furnaces at all existing primary zinc production area sources in the event that there are facilities other than the two we know and with very different operations from the two known sources.

In addition, as discussed in section IV.B of this preamble, we allow new and existing sources to comply with either the SSM requirements in 40 CFR 63.6(e)(3) or with the detailed SSM requirements in the final rule that were developed from the existing sources' title V permits, which are substantially equivalent to the SSM requirements in part 63.

Applicability and compliance dates. This final rule applies to each new or existing primary zinc production facility that is an area source of HAP. The owner or operator of an existing affected source must comply by January 23, 2007. The owner or operator of a new affected source must comply by January 23, 2007 or upon initial startup, whichever is later.

Emissions limits and work practice standards. Primary zinc production facilities were included as part of the Primary Nonferrous Metals area source category due to their contributions to the emissions of the area source HAP arsenic, cadmium, lead, manganese, and nickel, all of which are metal HAP. As we mentioned in the proposal preamble, cadmium is produced as a by-product of zinc smelting processes. There are no primary cadmium smelters in the United States. Accordingly, the requirements for area sources of zinc production in this final rule also address emissions associated with any cadmium production at these zinc production facilities.

As previously mentioned, we are using PM as a surrogate for establishing standards for metal HAP. Under this final rule, the owner or operator of an area source of zinc production is required to exhaust roaster off-gases to PM removal equipment and a sulfuric acid plant. Bypassing the sulfuric acid plant during charging of the roaster is prohibited.

Emissions limits apply to the different types of melting furnaces at primary zinc production facilities. For existing sources, this NESHAP limit PM emissions to 0.93 lb/hr for zinc cathode melting furnaces; 0.1 lb/hr for furnaces that melt zinc dust, chips, and off-specification zinc materials; and 0.228 lb/hr for the combined exhaust from furnaces that melt zinc scrap and alloys. As an alternative to the lb/hr limits for these furnaces at existing sources, the owner or operator may elect to meet a limit of 0.005 gr/dscf. For new sources, the PM limit is 0.005 gr/dscf for the furnaces mentioned above. Other PM limits are 0.014 gr/dscf for anode casting furnaces and 0.015 gr/dscf for cadmium melting furnaces at new and existing sources.

Emissions limits also apply to any sintering machine at a new or existing area source facility. If there is a sintering machine, the owner or operator must comply with the PM limit at 40 CFR 60.172 and the opacity limit at 40 CFR 60.174(a) of the new source performance standard (NSPS) for primary zinc smelters (40 CFR part 60, subpart Q).

Compliance requirements. We are adopting for existing area sources certain monitoring, recordkeeping, and reporting requirements in the title V permits of the two existing facilities that relate to PM emissions control. The owner or operator of an existing area source must monitor baghouse pressure drop, perform routine baghouse maintenance, and keep records to document compliance. In addition, we are requiring repeat performance tests (at least once every 5 years) for existing sources. This final rule also requires a continuous opacity monitoring system (COMS) for any sintering machine in accordance with 40 CFR 60.175.

The owner or operator of an existing area source must comply with initial notification requirements in 40 CFR 63.9 of the General Provisions. In the notification of compliance status required by 40 CFR 63.9(h), the owner or operator may certify initial compliance with the HAP emissions limits based on the results of a PM performance test for each of the regulated emissions sources conducted within the past 5 years. The owner or operator must also certify initial compliance with the work practice standards.

If an existing source has not conducted a performance test to demonstrate compliance with the emissions limits for a furnace, the facility must conduct a test according to the requirements at 40 CFR 63.7 using EPA Method 5 (40 CFR part 60, appendix A) to determine the PM concentration or an alternative method previously approved by the permitting authority. For a sintering machine, the owner or operator must conduct a performance test according to the procedures in 40 CFR 60.176(b) using EPA Method 5 to determine the PM concentration and EPA Method 9 (40 CFR part 60, appendix B) to determine the opacity of emissions.

The operation and maintenance requirements in the final rule for existing sources are based on the sources' title V permits. The owner or operator must maintain all equipment covered under the subpart in such a manner that the performance or operation of the equipment does not cause a deviation from the applicable requirements. A maintenance record must be kept for each item of air pollution control equipment. At a minimum, this record must show the dates of performing maintenance and the nature of preventative maintenance activities.

This final rule allows any existing source to meet the specific SSM requirements that were developed from the title V permit requirements for existing sources or the SSM requirements in 40 CFR 63.6(e)(3). The specific SSM provisions in this final rule require that all malfunctions be reported within two working days of the event. The report must include a description of the malfunction, steps taken to mitigate emissions, and corrective actions taken. In addition, the owner or operator must show through signed contemporaneous logs or other relevant evidence that: (1) A malfunction occurred and the probable cause can be identified, (2) the facility was being operated properly at the time the malfunction occurred, and (3) all reasonable steps were taken to minimize emissions that exceeded the emission standards. A malfunction or emergency does not include events caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

As required in the existing permits, the owner or operator must submit a notification to the permitting authority of any deviation from the requirements of this final NESHAP. The notification must describe the probable cause of the deviation and any corrective actions or preventative measures taken. Existing facilities are also required to submit semiannual monitoring reports which clearly describe any deviations. Records of baghouse maintenance, all required monitoring data, and support information also are required. The owner or operator of an existing area source must also comply with the notification requirements in 40 CFR 63.9 of the General Provisions.

The owner or operator of a new area source is required to install and operate a bag leak detection system for each baghouse used to comply with a PM emissions limit. For additional information on bag leak detection systems that operate on the triboelectric effect, see ''Fabric Filter Bag Leak Detection Guidance'', U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, September 1997, EPA–454/R–98–015, NTIS publication number PB98164676. This document is available from the National Technical Information Service (NTIS), 5385 Port Royal Road, Springfield, VA 22161. In addition, we are requiring repeat PM performance tests (once every 5 years) for each furnace at a new source. The owner or operator must also install, operate, and maintain a COMS for each sintering machine according to EPA Performance Specification 1 (40 CFR part 60, appendix B).

The owner or operator of a new affected source must demonstrate initial compliance with the applicable emissions limits by conducting a performance test according to the requirements at 40 CFR 63.7 and using EPA 5 or 5D (40 CFR part 60, appendix A), as applicable, to determine the PM concentration. An initial performance test is also required for a sintering machine according to the methods and procedures in 40 CFR 60.176(b). All of the notification, testing, monitoring, operation and maintenance, recordkeeping, and reporting requirements of the part 63 General Provisions apply to a new area source. This final rule allows a new source to meet the specific SSM requirements in this final rule or the SSM requirements in 40 CFR 63.6(e)(3).

2. NESHAP for Primary Beryllium Production Area Sources

The only change since proposal is that this final rule does not adopt the SSM requirements in 40 CFR 63.6(e)(3) and the preconstruction notification requirements in 40 CFR 63.5. As discussed in more detail in section IV.B of this preamble, we have determined that the SSM requirements are not necessary for standards under part 61 that must be met at all times, and the preconstruction notification is already required under the part 61 General Provisions.

Applicability and compliance dates. For this final rule, we are adopting all of the requirements in the National Emission Standard for Beryllium at 40 CFR part 61, subpart C. The owner or operator of an existing area source must comply with this NESHAP by January 23, 2007. The owner or operator of a new area source must comply by January 23, 2007 or at startup, whichever is later.

Emissions limits. Primary beryllium production facilities were included as part of the Primary Nonferrous Metals area source category due to their contributions to the emissions of the area source HAP arsenic, cadmium, lead, manganese, and nickel, all of which are metal HAP. As discussed in the proposal preamble, we are using beryllium as a surrogate for HAP metals. We are adopting the 40 CFR part 61, subpart C standard as the requirements for both new and existing primary beryllium production facilities in this final rule. The part 61, subpart C standard limits emissions from extraction plants (i.e., primary beryllium production facilities) to 10 grams (0.022 lb) of beryllium over a 24-hour period. Alternatively, the owner or operator of a beryllium production facility may request to meet an ambient concentration limit instead of the emissions limit. As discussed in the preamble to the proposed rule, the part 61 standard is highly effective in controlling PM and metal HAP emissions from the only existing beryllium production facility known to us at the time of the proposal. We have determined that these requirements reflect GACT for area sources of beryllium production. We did not receive any comments on this determination.

Compliance requirements. This final rule requires the owner or operator to comply with the testing, monitoring, recordkeeping, and reporting requirements in 40 CFR part 61, subpart

C. An owner or operator subject to the ambient concentration limit must operate air sampling sites to continuously monitor the concentrations of beryllium in the ambient air according to an EPA-approved plan.

The owner or operator must comply with recordkeeping requirements in 40 CFR part 61, subpart C, as well as the testing, monitoring, recordkeeping, and reporting requirements in the part 61 General Provisions in 40 CFR part 61, subpart A. For the reasons discussed in section IV.B of this preamble, this final rule does not require that the owner or operator comply with the requirements for SSM plans and reports in 40 CFR 63.6(e)(3) or the preconstruction notification requirements in 40 CFR 63.5.

IV. Summary of Comments and Responses

A. Existing Area Source Facilities

At proposal, we stated that we did not know of any existing sources in the Polyvinyl Chloride and Copolymer area source category, and we requested comments on whether there are or ever will be any area sources in this area source category. We also stated that currently there is only one area source of primary copper production in operation in the United States and that there are no primary beryllium production area sources.

Comment: One commenter informed us of an area source PVC plant in Alabama. In addition, two commenters stated that there are a few (at least three) PVC plants that they believe may qualify as area sources. According to the commenters, these were once major sources that have reduced HAP emissions significantly or that are currently shut down but are expected to start up again with significantly less emissions than from previous operations as major sources. The commenters requested that EPA clarify the meaning of ''potential to emit'' in its definition of an ''area source'' in the proposed rule, as well as the proposed rule's applicability to plants that have obtained or, for the ones that are not currently operating, will obtain permits that limit emissions to levels below the major source thresholds. In addition, the commenters requested clarification of the proposed rule's applicability to PVC plants co-located at chemical complexes that are major sources.

One commenter notified us of an area source primary beryllium plant in Utah. The commenter sought clarification of the proposed rule's applicability to a primary beryllium plant that is a major source because of perchloroethylene emissions and that may become an area source in the future by eliminating the use of perchloroethylene.

We also received comments that there are two operating primary copper smelters that are area sources rather than just one, as EPA stated in the proposed rule. The company operating this second source reported that it was an area source (synthetic minor) based on a determination by the permitting authority. The company also stated that it is planning to restart a primary copper smelter in Texas that has been shutdown and under ''care and maintenance'' for several years. This facility will incorporate feedstock limitations to remain below major source thresholds, and the company expects that this facility will qualify as an area source when the renewed permits are issued. The commenter sought clarification of the applicability of the proposed rule to the two primary copper smelters described above.

Response: Section 112(a) of the CAA defines the terms ''major source'' and ''area source.'' An ''area source'' is defined as any stationary source that is not a major source. In the proposed rule, we included a definition for ''area source'' and that definition attempted to summarize the statutory definitions of ''major source'' and ''area source.'' Commenters sought clarification of the meaning of the term ''potential to emit'' contained in the proposed definition of ''area source.'' Based on the comment, it appears that the proposed definition of ''area source'' has caused confusion. Because the proposed definition of ''area source'' was merely intended to summarize the statutory definitions of ''major source'' and ''area source'' and is redundant of the definition of ''area source'' contained in the General Provisions (40 CFR part 63, subpart A), we have decided not to finalize the proposed ''area source'' definition. Instead, as noted in the NESHAP for each of these four area source categories, the definitions of ''major source,'' ''area source,'' and ''potential to emit'' in 40 CFR 63.2 apply to this final rule.[2] To the extent the commenters have questions as to whether their facility is a major source or an area source, EPA cannot answer these site-specific applicability questions in the context of this national rulemaking. We refer the commenters to the definitions of ''major source,'' ''area source,'' and ''potential to emit'' found in 40 CFR 63.2, and recommend that the commenters consult with the relevant permitting authority or submit a request for an applicability determination to the EPA regional office in the region where the source is located.

In addition, we want to clarify that a plant that is co-located with other facilities that together qualify as a major source is part of that major source and not an area source.

B. Part 63 General Provisions

Comment: One commenter representing the two beryllium plants objected to the part 63 SSM requirements in the proposed NESHAP for the Primary Beryllium Production area source category. The commenter stated that these two beryllium plants are already subject to 40 CFR part 61, subpart C, which EPA has adopted in this final rule, as well as the SSM requirements in State implementation plans (SIP), State laws, and title V permits. According to the comment, because these plants are subject to a strict ambient air standard for beryllium under the part 61 NESHAP, which requires that the plants monitor continuously and meet the required limits under all conditions, the part 63 SSM requirements are not necessary. Commenters representing facilities in the PVC industry provided similar comments. In addition, they stated that by requiring compliance with part 61 and the SSM provisions in 40 CFR 63.6, the proposed rule would impose two different SSM schemes in one standard. It would also impose more burdensome reporting and recordkeeping obligations on the lower emitting (area) sources.

Representatives of two primary copper companies also stated that the SSM requirements are unnecessary and duplicative of existing requirements and should be deleted. Their title V permits contain existing functionally equivalent

[2] In 1995, the Court of Appeals for the District of Columbia Circuit reviewed the definition of ''potential to emit'' (PTE) contained in 40 CFR in 40 CFR 63.2 (*National Mining Ass'n* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995)). In July 2005, the D.C. Circuit remanded the definition to EPA to the extent the definition required that physical or operational limitations be ''federally enforceable'' (*National Mining Ass'n* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995)). The court did not vacate the 40 CFR part 63 regulations and therefore the definition of ''potential to emit'' in 40 CFR part 63 remains in place. EPA is currently in the process of developing a proposed rule that responds to the court's remand. EPA has a transitional policy that relates to PTE. See ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)'' (Jan. 25, 1995), available at *http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/ptememo.pdf*. EPA has extended the transition policy several times. See ''Third Extension of January 25, 1995 Potential to Emit Transition Policy'' (December 20, 1999), available at *http://www.epa.gov/Region7/programs/artd/air/title5/t5memos/4thext.pdf*. Under the Third Extension, sources can rely on State-only enforceable PTE limits until we finalize our response to the remand.

SSM provisions, including requirements for timely notification and reporting.

Response: We agree that the SSM requirements in the 40 CFR part 63 General Provisions need not be included in the NESHAP for the PVC and Copolymer Production and the Primary Beryllium Production area source categories, both of which adopted the relevant part 61 standards for these categories. Under the construct of the part 61 standards, sources must comply with the standards at all times, including periods of SSM. Therefore, separate requirements governing SSM are not necessary. Accordingly, we have revised the proposed rule to eliminate the part 63 SSM requirements for new and existing primary beryllium and PVC plants.

We also examined the SSM requirements that are in title V permits for other source categories. The primary copper smelters and primary zinc production plants have similar requirements in their permits. Our review indicates that these requirements are substantially equivalent to the part 63 SSM requirements. For example, the title V permits for these plants require that all malfunctions be reported within two working days of the event. The report must include a description of the malfunction, steps taken to mitigate emissions, and corrective actions taken. In addition, the permittee must show through signed contemporaneous logs or other relevant evidence that: (1) A malfunction occurred and the permittee can identify the probable cause, (2) the facility was being operated properly at the time the malfunction occurred, and (3) all reasonable steps were taken to minimize emissions that exceeded the emission standards or other requirements of the permit. The permit also makes it clear that a malfunction or emergency does not include events caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

Based on the comments and our review of title V permits, we are including in this final rule alternative SSM requirements that we have formulated based on our review of the title V permits mentioned above. Under this final rule, a new or existing primary copper smelter or primary zinc production facility may choose to meet the SSM requirements in 40 CFR 63.6(e)(3) or the alternative SSM requirements provided in this final rule.

This final rule also includes operation and maintenance requirements for existing sources that are based on the permits. For primary copper smelters, the owner or operator must to the extent practicable, maintain and operate any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. In addition, all pollution control equipment must be installed, maintained, and operated properly. Instructions from the vendor or established maintenance practices that maximize pollution control must be followed. All necessary equipment control and operating devices, such as pressure gauges, ampere meters, volt meters, flow rate indicators, temperature gauges, continuous emissions monitoring systems, etc., must be installed, operated properly and easily accessible to compliance inspectors. A copy of all manufacturers' operating instructions for pollution control equipment and pollution emitting equipment must be maintained at the facility site. These instructions must be available to all employees who operate the equipment and must be made available to the permitting authority upon request. Maintenance records must be made available to the permitting authority upon request.

Comment: One commenter stated that we should not adopt the preconstruction notification requirements in the part 63 General Provisions (40 CFR part 63, subpart A) because they were unnecessary and duplicate the very similar requirements already in the part 61 General Provisions (40 CFR part 61, subpart A). EPA should not impose the additional burden of submitting and processing two duplicative applications and should just rely on the provisions already in the part 61 General Provisions.

Response: We agree that if a preconstruction notification is submitted under the part 61 General Provisions (40 CFR 61.07), it is not necessary to submit another preconstruction notification under the part 63 General Provisions. We have revised the proposed rule to reflect this change.

Comment: One commenter stated that EPA should not incorporate any of the part 63 General Provisions into area source standards that adopt the part 61 NESHAP. These provisions, including those in 40 CFR 63.1 (Applicability), are already addressed in the part 61 General Provisions and enhanced by SIP requirements and title V permits.

Response: We have previously addressed the SSM requirements and preconstruction notifications for facilities subject to part 61 standards. The only other section of the part 63 General Provisions that we have included for these sources deals with applicability in 40 CFR 63.1 (§§ 63.1(a)(1) through (10), 63.1(b)(1), 63.1(c), and 63.1(d)). The provisions on applicability impose no burden on the facility and provide clarity and useful information related to the applicability of standards under part 63. Consequently, the final rule includes portions of § 63.1 from the part 63 General Provisions.

C. Primary Copper Smelters

Comment: Two commenters identified two primary copper smelters as area sources in addition to the one smelter identified as an area source in the proposal preamble. One of these smelters is operating, and the company stated that the facility is an area source (i.e., a synthetic minor source). The other smelter has been shut down for several years, but it is in the process of obtaining permits to re-start and expects to be an area source. Both of these smelters use the batch converting process, whereas the smelter that was identified as an area source at proposal and was the basis for GACT uses flash continuous converting technology. The company pointed to the process descriptions in the proposal preamble that noted the numerous differences in the two technologies. The company suggested that their two smelters fit into a separate subcategory (batch converting technology) and should have rule requirements based on that technology. The requirements in the proposed rule are not appropriate for their smelters because the proposed rule is based on the flash continuous converting technology.

Response: The commenters asserted that there are two area source primary copper smelters that use the batch converting technology. As we described in the proposal preamble (71 FR 59308, October 6, 2006), there are numerous differences in process operation, emissions points, and achievable levels of control. We believe that our proposed standard for existing sources, which is based on flash continuous converting technology, would not be appropriate for existing sources of primary copper smelting that use the batch converting technology and that separate standards are needed to address the different technology used by these existing smelters. Solely for purposes of this analysis, we accept, as true, the commenter's assertion that there are existing area source facilities that use batch processing. As explained above, to the extent the commenter has any question as to whether the smelters identified above are major or area sources, they should consult with the relevant permitting authority or submit

a request for an applicability determination to the EPA regional office in the region where the source is located.

In developing the requirements for sources using the batch converting technology, we reviewed the title V permit of the currently operating source identified in the comment. The emissions from this facility are controlled as a result of its title V permit requirements to capture and control emissions of PM. The vast majority of the gases from the smelting furnace and converter are collected by a primary capture system, sent to control equipment to remove PM, and then processed in a sulfuric acid plant. Fugitive emissions are collected by a secondary capture system and sent to a baghouse for control of PM emissions. We determined that these current permit requirements represent GACT for existing primary copper smelters using the batch converting process and have included these requirements in this final rule as the requirements for existing primary copper smelting area sources that use batch converting technology.

According to these requirements, plants that use batch converting technology must operate primary capture systems on each smelting vessel and each copper converter. Secondary capture systems must be installed to capture emissions from tapping copper matte and slag from the smelting vessel and emissions from charging, skimming, pouring, and holding when the converter mouth is partially rotated out from the primary collection hood. All of the collected gases must be routed to an emissions control system. In addition, emissions from the primary collection system for the smelting vessel and converter must be routed to a sulfuric acid plant after PM removal.

Emissions from each copper concentrate dryer must be controlled and must not exceed 0.022 gr/dscf. Emissions from secondary capture systems that are not vented to a sulfuric acid plant must not exceed 0.02 gr/dscf.

We also examined the monitoring requirements in the title V permit of this primary smelter using the batch technology and found that they would ensure that control devices are working properly on a continuous basis. We therefore included these monitoring requirements in this final rule as requirements for primary copper smelting area sources that use the batch converting technology. Under these requirements, a COMS meeting Performance Specification 1 (40 CFR part 60, appendix B) must be installed on each electrostatic precipitator. If the 24-hour rolling average opacity exceeds 15 percent, the plant must investigate the cause of the problem and take corrective action. Each baghouse must be equipped with and monitored by a bag leak detection system to ensure proper operation. We have also required performance tests every 2.5 years to determine compliance with PM limits.

Comment: A commenter representing the primary copper plant that was the basis for GACT stated that EPA did not properly capture the facility's title V permit requirements in some cases. The commenter supplied additional details and clarifications. Clarification is needed for the requirements for anode casting and holding operations, the emissions limit should not be referred to as ''smelter wide'' but as the limit for the main stack, the limit should be expressed as PM_{10} rather than PM, and the continuous PM sampler should not be referred to as a CEMS. The commenter also asked that EPA modify the proposed rule to clearly state that a single secondary gas collection system can capture and control emissions from multiple processing vessels (i.e., each vessel does not have to have its own separate collection system). The commenter also requested more flexibility in the monitoring requirements so that the permitting authority could approve improved monitoring technology should it become available in the future.

Response: We agree with the commenter and will make most of the suggested changes. The facility's title V permit was the basis for our GACT determination, and we intended that the proposed area source rule incorporate the permit requirements of this well-controlled facility. We understand that in some cases, a gas collection system may be applied to multiple process vessels, and we have included this clarification in this final rule. We understand that flexibility in monitoring is important, especially as improved monitoring techniques become commercially available and demonstrated in metallurgical operations. That said, it is not necessary to revise the proposed rule to allow a facility to request approval of an alternative monitoring method because the procedure for making such requests is contained in 40 CFR 63.8, which applies to the NESHAP for the Primary Copper Smelting area source category in this final rule.

Comment: One commenter noted that the new source standard for primary copper was based on the newer flash continuous converter technology and would not be appropriate for new plants using the batch converting technology. The commenter stated that continuous converting has more limited applicability to ore concentrates that have high impurities levels than does batch converting. The commenter stated that because a new smelter could use either of the technologies, the emission standards for new sources should be reflective of the performance of either of these technologies. This can be achieved by providing flexibility in the emission limits that are adopted. The commenter recommended that the standard for new smelters using the batch converting technology be based on the best performing existing facility with the technology. In addition, a provision should be made to allow an alternate emissions limit to be authorized by either EPA or the permitting authority that is equally protective.

Response: The emissions limit that we proposed for new primary copper smelters is in lb/ton of copper concentrate feed and is applied on a facility wide basis. The format and requirements of the standard can be applied to and achieved by a facility using any primary copper smelting technology if it is well controlled. The format of the standard also provides flexibility because multiple process vessels can have different levels of emissions as long as they collectively meet the overall lb/ton limit. The limit has been demonstrated as achievable by an existing area source that uses a continuous converting process. Unlike existing sources, new sources using any smelting technology have the opportunity to incorporate state-of-the-art capture and control systems into their design, construction, and operation. Based on our engineering experience with capture and control systems that have been applied to primary copper processes and also those that have been applied to similar processes in other metallurgical industries, we believe that the emissions limit for new sources can be achieved by primary copper smelters using any processing technology, including both the continuous and batch converting processes. The standard for new primary copper smelters represents a level of control that is generally available for new sources. Consequently, we chose to promulgate the limit as proposed as GACT for new primary copper smelters.

Comment: Three commenters objected to the requirement of using a PM CEMS for monitoring at new primary copper smelter area sources. Although improvements in PM CEMS have been made as they continue to be developed, there is not sufficient operating history

to prove its feasibility for continuous monitoring at primary copper smelters.

Response: The PM CEMS have been demonstrated in many different applications, including processes with exhaust gases similar to those from primary copper smelters (e.g., at electric utilities where the temperatures and exhaust gas compositions are similar). The commenters did not provide any information that the exhaust gases from primary copper smelting are uniquely different. We have included PM CEMS as the monitoring technology for new sources in this final rule.

D. Primary Zinc Smelters

Comment: One commenter asked if the proposed rule was meant to apply to any zinc refinery that processes any amount of zinc sulfide concentrate. If so, what is the timeframe for using zinc sulfide concentrate and its percentage of the feed that qualifies a facility as a primary zinc smelter? Is EPA really trying to regulate zinc refineries, which produce cathodes in a cathode melting furnace and use zinc sulfide concentrate as a feed material, and not regulate thermal zinc smelters, who do not produce cathodes and do not currently use zinc sulfide concentrate?

Response: The commenter is correct in that this final rule applies to any area source facility that produces zinc products from any amount of zinc sulfide ore concentrates using pyrometallurgical processes (i.e., a ''primary zinc smelter''). This final rule does not apply to thermal zinc smelters if they do not process zinc sulfide concentrate. (Facilities processing only zinc scrap and residues containing zinc would be classified as secondary zinc smelters.) If a facility meets the definition of primary zinc smelter and is an area source on the compliance date, it is subject to this final rule. If the facility is not processing zinc sulfide concentrate but subsequently begins processing it, meets the definition of primary zinc smelter, and is an area source, it is subject to this final rule when it begins processing the zinc sulfide concentrate. Under these facts, such a facility would be subject to the standards for new sources if construction or reconstruction of the primary zinc smelter (the affected source) commenced on or after October 6, 2006.

We are not making a distinction between zinc refineries and thermal zinc smelters as described by the commenter. Either type of facility is subject to this final rule if it is an area source and meets the definition of primary zinc smelter.

Comment: One commenter noted that the proposed rule requires demonstrating compliance by stack testing within 180 days after the compliance date. Their plant has a process that is not operating, it is subject to the rule, but it may not restart until more than 180 days after the compliance date. As the proposed rule reads, they would have to demonstrate compliance by a stack test even though the process is not operating.

Response: We have clarified the proposed rule to indicate that if a process subject to this final rule is not operating on the compliance date and subsequently starts up, compliance testing must be performed within 180 days after startup of the process.

Comment: One commenter noted that the proposed rule requires that initial compliance must be demonstrated ''for each furnace at your facility.'' A zinc smelter may have other types of furnaces that are not subject to emission limits. The commenter assumes that this requirement will have no impact on these furnaces.

Response: The commenter is correct. We have clarified the proposed rule to state that initial compliance must be demonstrated ''for each furnace at your facility that is subject to an emissions limit under this subpart.''

Comment: One commenter stated that the emissions limit of 0.005 gr/dscf for certain furnaces at new sources is greater than the emissions limit for the same furnaces at existing sources. The commenter suggested that the greater of the two values be applied in this case to provide a level playing field for new and existing sources.

Response: We disagree with the comment that the emissions limit of 0.005 gr/dscf for certain furnaces at new sources is greater than the emissions limits for the same furnaces at existing sources. The emissions limit of 0.005 gr/dscf for new sources is applied to the exhaust vent of a zinc cathode melting furnace; scrap zinc melting furnace; furnace melting zinc dust, zinc chips, and other materials containing zinc; and alloy melting furnace. For existing sources, the limits are 0.1 lb/hr from the exhaust vent of a furnace that melts zinc dust, zinc chips, and/or other materials containing zinc; and 0.228 lb/hr from the vent for the combined exhaust from a furnace melting zinc scrap and an alloy furnace. Although the limits for the furnaces mentioned above are expressed in different formats for new and existing sources, both formats reflect the level of emission control that can be achieved based on the technology we identified as GACT for these furnaces (i.e., a well-operated and well-maintained baghouse). However, whereas the lb/hr limits for the above-noted furnaces in the proposed rule were based on the specific operations at the two existing sources of which we are aware, the gr/dscf emission limit is not operation specific and can apply to these furnaces at any primary zinc production area source. We have therefore adopted the gr/dscf limit in addition to the proposed lb/hr limit, and sources can meet either the limit expressed in lb/hr or the limit expressed in gr/dscf.

E. Basis for Area Source Standards

Comment: We received a comment from the National Association of Clean Air Agencies (NACAA) expressing concern with EPA's establishment of area source standards under section 112 of the CAA by adopting existing Federal and/or State area source standards. In the comment, the NACAA stated that the existence of State and local regulations does not relieve EPA of its obligation to establish area source standards under the CAA. The NACAA expressed concern that some States cannot have requirements more stringent than those of the Federal government and may, therefore, be required to change their regulations of area sources to be consistent with EPA's area source standards. The NACAA stated that, if the permit requirements that make these sources ''well controlled'' are not contained within the Federal rule, the nonfederal rules could be relaxed. The NACAA further stated that, in the absence of Federal requirements, there would be nothing to prevent ''backsliding'' by these sources.

The NACAA was particularly concerned with EPA's proposed PVC rule, which adopted the part 61 standards for PVC plants. According to the NACAA, the part 61 standards for PVC plants are outdated and inappropriate as a model for GACT. The NACAA submitted with its comment a recommendation for the standards for area sources of PVC plants. The NACAA previously recommended these limits to EPA as the MACT standards for major sources of PVC plants. The NACAA believes the submittal contains valuable information for EPA in developing PVC regulations for area sources as well.

Response: We have traditionally reviewed operating permits and current standards in the standards development process, and we used this approach in developing the NESHAP for the four area source categories in this final rule. The NACAA did not explain why it would be inappropriate for EPA to adopt existing Federal, State or local standards that EPA has determined to be

effective in controlling HAP emissions. Contrary to the commenter's assertions, EPA is setting final area source standards for the four source categories at issue in this rule. The emissions limits and/or work practice standards in each of the four NESHAP in this final rule have been reviewed, determined by EPA to be the appropriate standards for the relevant area source category, and established by EPA in this final rule as the Federal requirements for that category pursuant to section 112 of the CAA.

It is conceivable that for those States with laws that preclude the State from issuing regulations that are more stringent than EPA's regulations, a State may need to change its existing area source regulation in response to this final rule. However, the NACAA has not identified any existing State regulation that would require modification in this regard. Further, as previously mentioned, we established the area source standards in this final rule based on GACT, which may or may not be reflected by more stringent State or local requirements. The NACAA also asserted that the part 61 standards for PVC plants are outdated and inappropriate as GACT for area source PVC plants. NACAA's statement was apparently based on the fact that the part 61 standards were issued prior to the 1990 Amendments to the Clean Air Act and were based on risk. However, the fact that these are risk-based standards are not per se evidence that they do not reflect GACT for area sources of PVC plants. We believe that the record supports our determination as to what constitutes GACT for the four categories at issue here.

Moreover, we reviewed the information submitted by the commenter that contained their ''presumptive'' determination of MACT that they issued as guidance to State and local agencies. These recommended limits were based on the best-controlled plants, most if not all of which are major sources.[3] We believe that these recommended limits may represent MACT or something beyond MACT, but we do not believe that they are appropriate for these particular area source categories. As previously mentioned, we have decided to establish the standards for the PVC and Copolymer Production area source category based on GACT. We do not believe that NACAA's recommended limits represent GACT for area sources of PVC plants. Because we expect PVC plants to be operating in accordance with the part 61 standards for PVC plants, we believe that these standards represent a level of control that is generally available and is therefore a reasonable representation of GACT for area sources in this source category.

Comment: One commenter stated that area source standards are not needed for primary beryllium plants. All of these plants, including major and area sources, are already subject to NESHAP under 40 CFR part 61. In addition, the proposed area source standard will not achieve any reduction in HAP emissions. A second commenter stated that absent EPA's statutory obligation to establish standards for area sources, there would be no need to regulate PVC and copolymer plants because they are already governed by the existing NESHAP. However, the commenter recognizes EPA's obligation to regulate PVC and copolymer area sources and supports the adoption of the part 61 NESHAP as the area source standard.

Response: The second commenter has captured the issue and provides the response to the first commenter: EPA has a statutory obligation to establish area source NESHAP for primary beryllium plants.

F. Compliance Date

Comment: Two commenters stated that requiring compliance on the date of publication of the final rule in the **Federal Register** does not allow sufficient time for existing sources to develop a SSM plan.

Response: We believe that we have addressed the commenter's concern regarding existing sources' abilities to develop SSM plans by the compliance date. With respect to primary copper smelting and primary zinc production area sources, this final rule allows existing sources in these two area source categories to address SSM according to the relevant requirements in their title V permits, which do not require a SSM plan. As previously discussed in our response to the comments on the necessity of the part 63 SSM requirements (section IV.B of this preamble), we have reviewed the SSM requirements in the title V permits for the existing sources of primary copper smelting and primary zinc production area sources and have determined that these provisions are adequate to replace the SSM requirements in the General Provisions, which require a SSM plan. See 40 CFR 63.6(e)(3). We have therefore included in the final NESHAP for primary copper smelting and primary zinc production area sources requirements that are based on these title V permit terms and conditions. To provide flexibility, sources can comply with the SSM requirements specified in this final rule or comply with the provisions contained in the General Provisions at 40 CFR 63.6(e). Accordingly, the existing sources in these two area source categories are not required to develop SSM plans and may instead continue to follow their title V permit requirements regarding SSM.

In addition, as previously mentioned, we are not requiring SSM plans and reports in 40 CFR 63.6(e)(3) for area source PVC plants and beryllium production facilities. Because the NESHAP for these source categories in this final rule adopt part 61 standards, which require compliance at all times, specific provisions governing SSM are unnecessary. For all of the reasons stated above, we believe that the concern expressed in this comment has been addressed.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The NESHAP for Polyvinyl and Copolymers Production Area Sources do not impose any new information collection burden. New and existing plants that are area sources are required to comply with the same testing, monitoring, reporting, and recordkeeping requirements as those in the National Emission Standards for Vinyl Chloride (40 CFR part 61, subpart F), to which these area sources are currently subject, and the information collection requirements in the part 61 NESHAP General Provisions (40 CFR part 61, subpart A), which are incorporated into the NESHAP. The OMB has previously approved the information collection requirements in 40 CFR part 61, subpart F, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0071, EPA Information Collection Request (ICR) number 0186.10.

A copy of the OMB-approved ICR for the National Emission Standards for

[3] It is not clear whether the one polyvinyl chloride area source plant known to the National Association of Clean Air Agencies (NACAA) was among the plants that the NACAA analyzed in developing the recommended limits.

Vinyl Chloride may be obtained from Susan Auby, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672.

The requirements for primary beryllium production facilities in the NESHAP for Primary Nonferrous Metals Area Sources do not impose any new information collection burden. New and existing plants that are area sources are required to comply with the same testing, monitoring, recordkeeping, and reporting requirements as those in the National Emission Standards for Beryllium (40 CFR part 61, subpart C), to which these area sources are currently subject, and the information collection requirements in the part 61 General Provisions (40 CFR part 61, subpart A), which are incorporated into the NESHAP for these sources. The OMB has previously approved the information collection requirements in 40 CFR part 61, subpart C, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0092, EPA ICR number 0193.08.

A copy of the OMB-approved ICR for the National Emission Standards for Beryllium may be obtained from Susan Auby, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672.

The information requirements in the NESHAP for Polyvinyl Chloride and Copolymers Production Area Sources, Primary Copper Smelting Area Sources, Secondary Copper Smelting Area Sources, and Primary Nonferrous Metals—Zinc, Cadmium, and Beryllium Area Sources have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information collection requirements for primary copper smelting and primary zinc production are based on the current title V permitting requirements for existing sources and the information collection requirements in the part 63 General Provisions (40 CFR part 63, subpart A), most of which are incorporated into the NESHAP for new sources. The ICR document includes the burden estimates for all applicable General Provisions. These recordkeeping and reporting requirements are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

The PM testing, monitoring, recordkeeping, and reporting requirements with which existing primary copper smelting and primary zinc smelting area sources must comply are the same as the requirements that are in these facilities' current title V operating permits. The only new information collection requirements that apply to these area sources consist of initial notifications. There are no existing secondary copper smelting facilities, and there are no requirements for existing secondary copper smelting area sources.

Any new primary zinc production facility, primary copper smelter, or secondary copper smelter area source is subject to all information collection requirements in the part 63 General Provisions. No costs or burden hours are estimated for new primary copper smelters, secondary copper smelters, or primary zinc production area sources because no new sources are estimated during the 3-year period of the ICR. No new sources have been constructed in more than 10 years, no new construction has been announced, and we have no indication there will be any new sources in the next 3 years.

The annual burden for this information collection (including all four source categories) averaged over the first 3 years of this ICR is estimated to total 23 labor hours per year at a cost of $1,948 for the three existing primary copper smelting area sources and 15.4 labor hours per year at a cost of $1,305 for the two existing primary zinc smelting area sources. No capital/startup costs or operation and maintenance costs are associated with the requirements.

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendments for the approved information collection requirements contained in the final rules.

C. Regulatory Flexibility Act

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

For the purposes of assessing the impacts of the area source NESHAP on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses at 13 CFR 121.201 (less than 1,000 employees for primary copper smelting and less than 750 employees for PVC and copolymers production, secondary copper smelting, and primary nonferrous metals manufacturing); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these final rules on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by these final rules are small businesses. We have determined that existing small businesses in these area source categories will not incur any adverse impacts on existing area sources of PVC and copolymer production facilities, primary copper smelters, and non-ferrous metal production facilities because the rules do not create any new requirements or burdens other than minimal notification requirements. There will be no adverse impacts on existing secondary copper area sources because there are no existing sources in the category. Although these final NESHAP contain emission control

requirements for new area sources in all four source categories, we are not aware of any new sources being constructed now or planned in the near future, and consequently, we did not estimate any impacts for new sources.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. These final rules are designed to harmonize with existing State or local requirements. In addition, we have deleted the proposed requirements for SSM plans and reports.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The estimated expenditures for the private sector in any one year are less than $2,500. Thus, the final rules are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the final rules do not significantly or uniquely affect small governments. The final rules contain no requirements that apply to such governments, impose no obligations upon them, and will not result in expenditures by them of $100 million or more in any one year or any disproportionate impacts on them. Therefore, the final rules are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

These final rules do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. These final rules impose requirements on owners and operators of specified area sources and not State and local governments. Thus, Executive Order 13132 does not apply to these final rules.

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

Executive Order 13175 (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' These final rules do not have tribal implications, as specified in Executive Order 13175. They will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. These final rules impose requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to these final rules.

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

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These final rules are not subject to the Executive Order. They are based on control technology and not on health or safety risks.

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

These final rules are not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that these final rules are not likely to have any adverse energy effects because energy requirements would remain at existing levels. No additional pollution controls or other equipment that consume energy are required by these final rules.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS

bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This rule involves technical standards. The EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, and 9 in 40 CFR part 60, appendix A; and Performance Specifications 1 and 11 in 40 CFR part 60, appendix B. The search identified one VCS as an acceptable alternative to EPA Method 3B. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' is cited in two of these final rules for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Method 3B.

The standard ASTM D6216 (1998), ''Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications,'' was designated an acceptable alternative for the design specifications given in EPA's Performance Specification 1. As a result, EPA incorporated ASTM D6216–98 by reference into Performance Specification 1 as the design specifications for opacity monitors in August 2000.

The search for emissions measurement procedures identified 13 other VCS. The EPA determined that these 13 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in these final rules were impractical alternatives to EPA test methods for the purposes of the rules. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the 13 methods are in the docket for these rules.

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

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing these final rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). These final rules will be effective on January 23, 2007.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: December 11, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

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

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

Subpart A—[Amended]

■ 2. Section 63.14 is amended by revising paragraph (i)(1) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) * * *

(1) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for §§ 63.309(k)(1)(iii), 63.865(b), 63.3166(a)(3), 63.3360(e)(1)(iii), 63.3545(a)(3), 63.3555(a)(3), 63.4166(a)(3), 63.4362(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), 63.9323(a)(3), 63.11148(e)(3)(iii), 63.11155(e)(3), 63.11162(f)(3)(iii) and (f)(4), 63.11163(g)(1)(iii) and (g)(2), and Table 5 of subpart DDDDD of this part.

* * * * *

■ 3. Part 63 is amended by adding subpart DDDDDD to read as follows:

Subpart DDDDDD—National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources

Sec.

Applicability and Compliance Dates

§ 63.11140 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a plant specified in 40 CFR 61.61(c) that produces polyvinyl chloride (PVC) or copolymers and is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is the collection of all equipment and activities in vinyl chloride service necessary to produce PVC and copolymers. An affected source does not include portions of your PVC and copolymers production operations that meet the criteria in 40 CFR 61.60(b) or (c).

(1) An affected source is existing if you commenced construction or reconstruction of the affected source before October 6, 2006.

(2) An affected source is new if you commenced construction or reconstruction of the affected source on or after October 6, 2006.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

§ 63.11141 What are my compliance dates?

(a) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions in this subpart by January 23, 2007.

(b) If you own or operate a new affected source, you must achieve compliance with the applicable provisions in this subpart by the dates in paragraphs (b)(1) and (2) of this section.

(1) If you start up a new affected source on or before January 23, 2007, you must achieve compliance with the

applicable provisions in this subpart not later than January 23, 2007.

(2) If you start up a new affected source after January 23, 2007, you must achieve compliance with the provisions in this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11142 What are the standards and compliance requirements for new and existing sources?

You must meet all the requirements in 40 CFR part 61, subpart F, except for 40 CFR 61.62 and 40 CFR 61.63.

Other Requirements and Information

§ 63.11143 What General Provisions apply to this subpart?

(a) All the provisions in 40 CFR part 61, subpart A, apply to this subpart.

(b) The provisions in 40 CFR part 63, subpart A, applicable to this subpart are specified in paragraphs (b)(1) and (2) of this section.

(1) § 63.1(a)(1) through (10).

(2) § 63.1(b) except paragraph (b)(3), § 63.1(c), and § 63.1(e).

§ 63.11144 What definitions apply to this subpart?

The terms used in this subpart are defined in the CAA; 40 CFR 61.02; 40 CFR 61.61; and § 63.2 for terms used in the applicable provisions of part 63, subpart A, as specified in § 63.11143(b).

§ 63.11145 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative means of emissions imitation under 40 CFR 61.12(d).

(2) Approval of a major change to test methods under 40 CFR 61.13(h). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under 40 CFR 61.14(g). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under 40 CFR 61.10. A ''major change to recordkeeping/reporting'' is defined in § 63.90.

■ 4. Part 63 is amended by adding subpart EEEEEE to read as follows:

Subpart EEEEEE—National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources

Sec.

Applicability and Compliance Dates

Standards and Compliance Requirements

Other Requirements and Information

Applicability and Compliance Dates

§ 63.11146 What are the applicability provisions and compliance dates?

(a) You are subject to this subpart if you own or operate a primary copper smelter that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new or existing affected source. The affected source is each primary copper smelter.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source before October 6, 2006.

(2) An affected source is new if you commenced construction or reconstruction of the affected source on or after October 6, 2006.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) If you own or operate an area source subject to this subpart, you must obtain a permit under 40 CFR part 70 or 40 CFR part 71.

(e) If you own or operate an existing affected source, you must achieve compliance with the applicable provisions of this subpart by January 23, 2007.

(f) If you own or operate a new affected source, you must achieve compliance with the applicable provisions of this subpart by the dates in paragraphs (f)(1) and (2) of this section.

(1) If you startup a new affected source on or before January 23, 2007, you must achieve compliance with the applicable provisions of this subpart not later than January 23, 2007.

(2) If you startup a new affected source after January 23, 2007, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11147 What are the standards and compliance requirements for existing sources not using batch copper converters?

(a) *Emissions limits and work practice standards.* (1) You must not discharge to the atmosphere through any combination of stacks or other vents captured process exhaust gases from the copper concentrate dryers, smelting vessels, converting vessels, matte drying and grinding plants, secondary gas systems, and anode refining department that contain particulate matter less than 10 microns in aerodynamic diameter (PM_{10}) in excess of 89.5 pounds per hour (lb/hr) on a 24-hour average basis.

(2) You must operate a capture system that collects the gases and fumes released during the transfer of molten materials from smelting vessels and converting vessels and conveys the collected gas stream to a control device.

(3) You must operate one or more capture systems that collect the gases and fumes released from each vessel used to refine blister copper, remelt anode copper, or remelt anode scrap and convey each collected gas stream to a control device. One control device may be used for multiple collected gas streams.

(b) *Compliance requirements.* For purposes of determining compliance with the emissions limit in paragraph (a)(1) of this section, you must comply with the requirements in paragraphs (b)(1) through (7) of this section.

(1) You must calibrate, maintain and operate a system to continuously measure emissions of particulate matter (PM) from the smelter's main stack.

(2) All PM collected by the smelter main stack continuous PM sampling system is reported as PM_{10} unless you

demonstrate to the satisfaction of the permitting authority that, due to an infrequent event, the measured PM contains a large fraction of particles greater than 10 microns in diameter.

(3) To determine the mass emissions rate, the PM_{10} concentration as determined by the smelter main stack continuous PM sampling system is multiplied by the volumetric flow rate for the smelter main stack and any necessary conversion factors.

(4) Compliance with the PM_{10} emissions limit is demonstrated based on the average mass PM_{10} emissions rate for each 24-hour period.

(5) The results of the PM monitoring and calculated average mass PM_{10} emissions rate for each 24-hour period must be recorded and the records maintained for at least 5 years. Collected data must be available for inspection when the required laboratory analysis is completed.

(6) You must submit to the permitting authority by the 20th day of each month a report summarizing the 24-hour average mass PM_{10} emissions rates for the previous month.

(7) You may certify initial compliance with the emissions limit in paragraph (a)(1) of this section based on the results of PM sampling conducted during the previous month.

(c) *Operation and maintenance requirements.* (1) At all times, including periods of startup, shutdown, and malfunction, you must to the extent practicable, maintain and operate any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the permitting authority which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(2) All pollution control equipment must be installed, maintained, and operated properly. Instructions from the vendor or established maintenance practices that maximize pollution control must be followed. All necessary equipment control and operating devices, such as pressure gauges, amp meters, volt meters, flow rate indicators, temperature gauges, continuous emission monitors, etc., must be installed, operated properly, and easily accessible to compliance inspectors. A copy of all manufacturers' operating instructions for pollution control equipment and pollution emitting equipment must be maintained at your facility site. These instructions must be available to all employees who operate the equipment and must be made available to the permitting authority upon request. Maintenance records must be made available to the permitting authority upon request.

(3) You must document the activities performed to assure proper operation and maintenance of the air pollution control equipment and monitoring systems or devices.

(4) Except as provided in paragraph (c)(5) of this section, in the event of an emergency situation the owner or operator must comply with the requirements in paragraphs (c)(4)(i) through (iii) of this section. For the purposes of complying with this paragraph, an emergency situation is any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility owner or operator that requires immediate corrective action to restore normal operation, and that causes the affected source to exceed an applicable emissions limitation under this subpart, due to unavoidable increases in emissions attributable to the emergency. An emergency must not include noncompliance to the extent it is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(i) During the period of the emergency, you must implement all reasonable steps to minimize levels of emissions that exceed the emissions standards or other applicable requirements in this subpart.

(ii) You must document through signed contemporaneous logs or other relevant evidence that an emergency occurred and you can identify the probable cause, your facility was being operated properly at the time the emergency occurred, and the corrective actions taken to minimize emissions as required by paragraph (c)(4)(i) of this section.

(iii) You must submit a notice of the emergency to the permitting authority within two working days of the time when emissions limitations were exceeded due to the emergency (or an alternate timeframe acceptable to the permitting authority). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(5) As an alternative to the requirements in paragraph (c)(4) of this section, you must comply with the startup, shutdown, and malfunction requirements in 40 CFR 63.6(e)(3).

(d) *Deviations.* You must submit written notification to the permitting authority of any deviation from the requirements of this subpart, including the probable cause of such deviations and any corrective actions or preventative measures taken. You must submit this notification within 14 days of the date the deviation occurred.

(e) *Reports.* You must submit semiannual monitoring reports to your permitting authority. All instances of deviations from the requirements of this subpart must be clearly identified in the reports.

(f) *Records.* (1) You must retain records of all required monitoring data and support information. Support information includes all calibration and maintenance records, all original strip charts or appropriate recordings for continuous monitoring instrumentation, and copies of all reports required by this subpart. For all monitoring requirements, the owner or operator must record, where applicable, the date, place, and time of sampling or measurement; the date analyses were performed; the company or entity that performed the analyses; the analytical techniques or methods used; the results of such analyses; and the operating conditions existing at the time of sampling or measurement.

(2) You must maintain records of the activities performed to assure proper operation and maintenance of the air pollution control equipment and monitoring systems or devices. Records of these activities must be maintained for at least 5 years.

§ 63.11148 What are the standards and compliance requirements for existing sources using batch copper converters?

(a) *Emissions limits and work practice standards.* (1) For each copper concentrate dryer, you must not discharge to the atmosphere from the dryer vent any gases that contain total particulate matter (PM) in excess of 0.022 grains per dry standard cubic foot (gr/dscf).

(2) You must exhaust the process off gas from each smelting vessel to a control device according to the requirements in paragraphs (a)(2)(i) and (ii) of this section.

(i) During periods when copper ore concentrate feed is charged to and smelted to form molten copper matte and slag layers in the smelting vessel, you must exhaust the process off gas from the smelting vessel to a gas cleaning system controlling PM and to a sulfuric acid plant prior to discharge to the atmosphere.

(ii) During periods when no copper ore concentrate feed is charged to or molten material tapped from the smelting vessel but the smelting vessel

remains in operation to temporarily hold molten material in the vessel before resuming copper production, you must exhaust the process off gas from the smelting vessel to an electrostatic precipitator or baghouse prior to discharge to the atmosphere.

(3) You must control the process emissions released when tapping copper matte or slag from a smelting vessel according to paragraphs (a)(3)(i) and (ii) of this section.

(i) You must operate a capture system that collects the gases and fumes released when copper matte or slag is tapped from the smelting vessel. The design and placement of this capture system must be such that the tapping port opening, launder, and receiving vessel (e.g., ladle, slag pot) are positioned within the confines or influence of the capture system's ventilation draft during those times when the copper matte or slag is flowing from the tapping port opening.

(ii) You must not cause to be discharged to the atmosphere from the capture system used to comply with paragraph (a)(3)(i) of this section any gases that contain total PM in excess of 0.022 gr/dscf.

(4) For each batch copper converter, you must meet the requirements in paragraphs (a)(4)(i) through (iv) of this section.

(i) You must operate a primary capture system that collects the process off gas vented when one or more batch copper converters are blowing. If you operate a batch copper converter that does not use a ''U''-shaped side flue located at one end of the converter, then the capture system design must include use of a primary hood that covers the entire mouth of each batch copper converter vessel when the copper converter is positioned for blowing. The capture system may use multiple intake and duct segments through which the ventilation rates are controlled independently of each other.

(ii) If you operate a batch copper converter that does not use a ''U''-shaped side flue located at one end of the converter, then you must operate a secondary capture system that collects gases and fumes released from the batch copper converter when the converter mouth is rotated out partially or totally from within the confines or influence of the primary capture system's ventilation draft during charging, skimming, pouring, or holding. The capture system design must use additional hoods (e.g., sliding secondary hoods, air curtain hoods) or other capture devices (e.g., building evacuation systems). The capture system may use multiple intake and duct segments through which the ventilation rates are controlled independently of each other, and individual duct segments may be connected to separate PM control devices.

(iii) You must exhaust the process off gas captured by the primary capture system that is used to comply with paragraph (a)(4)(i) of this section to a gas cleaning system controlling PM and to a sulfuric acid plant prior to discharge to the atmosphere.

(iv) For each secondary capture system that is used to comply with paragraph (a)(4)(ii) of this section and is not vented to a gas cleaning system controlling PM and a sulfuric acid plant, you must not cause to be discharged to the atmosphere any gases that contain total particulate matter in excess of 0.02 grains/dscf.

(b) *Monitoring requirements for electrostatic precipitators.* To monitor the performance of each electrostatic precipitator used to comply with the PM emissions limits in paragraph (a) of this section, you must use a continuous opacity monitoring system (COMS) that is installed at the outlet of each electrostatic precipitator or a common duct at the outlet of multiple electrostatic precipitators.

(1) Each COMS must meet Performance Specification 1 in 40 CFR part 60, appendix B.

(2) You must comply with the quality assurance requirements in paragraphs (b)(2)(i) through (v) of this section.

(i) You must automatically (intrinsic to the opacity monitor) check the zero and upscale (span) calibration drifts at least once daily. For a particular COMS, the acceptable range of zero and upscale calibration materials is as defined in the applicable version of Performance Specification 1 in 40 CFR part 60, appendix B.

(ii) You must adjust the zero and span whenever the 24-hour zero drift or 24-hour span drift exceeds 4 percent opacity. The COMS must allow for the amount of excess zero and span drift measured at the 24-hour interval checks to be recorded and quantified. The optical surfaces exposed to the effluent gases must be cleaned prior to performing the zero and span drift adjustments, except for systems using automatic zero adjustments. For systems using automatic zero adjustments, the optical surfaces must be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity.

(iii) You must apply a method for producing a simulated zero opacity condition and an upscale (span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. All procedures applied must provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.

(iv) Except during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments, the COMS must be in continuous operation and must complete a minimum of one cycle of sampling and analyzing for each successive 10 second period and one cycle of data recording for each successive 6-minute period.

(v) You must reduce all data from the COMS to 6-minute averages. Six-minute opacity averages must be calculated from 36 or more data points equally spaced over each 6-minute period. Data recorded during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments must not be included in the data averages. An arithmetic or integrated average of all data may be used.

(3) You must evaluate opacity measurements from the COMS on a 24-hour rolling average excluding periods of startup, shutdown, and malfunction. If the 24-hour rolling average opacity exceeds 15 percent, you must initiate investigation of the relevant controls or equipment within 24 hours of the first discovery of the high opacity incident and, if necessary, take corrective action as soon as practicable to adjust or repair the controls or equipment to reduce the opacity average to below the 15 percent level.

(4) You must log in ink or electronic format and maintain a record of 24-hour opacity measurements performed in accordance with paragraph (b)(3) of this section and any corrective actions taken, if any. A record of corrective actions taken must include the date and time during which the 24-hour rolling average opacity exceeded 15 percent and the date, time and type of the corrective action.

(c) *Monitoring requirements for baghouses.* To monitor the performance of each baghouse used to comply with PM emissions limits in paragraph (a) of this section, you must use a bag leak detection system according to the requirements in paragraphs (c)(1) through (4) of this section.

(1) You must install, calibrate, maintain, and continuously operate a bag leak detection system for the baghouse to monitor the baghouse performance.

(2) The baghouse leak detection system must meet the specifications and requirements in paragraphs (c)(2)(i) through (v) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations that can effectively discern any dysfunctional leaks of the baghouse.

(ii) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(iii) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(iv) The bag leak detection system must be installed downstream of the baghouse.

(v) The bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations. The calibration of the system must, at a minimum, consist of establishing the relative baseline output level by adjusting the sensitivity and the averaging period of the device and establishing the alarm set points and the alarm delay time.

(3) If the bag leak detection system alarm sounds, you must initiate investigation of the baghouse within 24 hours of the first discovery of the alarm and, if necessary, take corrective action as soon as practicable to adjust or repair the baghouse to minimize possible exceedances of the applicable PM emissions limits in paragraph (a) of this section.

(4) You must log in ink or electronic format and maintain a record of installation, calibration, maintenance, and operation of the bag leak detection system. If the bag leak detection system alarm sounds, the records must include an identification of the date and time of all bag leak detection alarms, their cause, and an explanation of the corrective actions taken, if any.

(d) *Alternative monitoring requirements for baghouses.* As an alternative to the requirements in paragraph (c) of this section for bag leak detection systems, you must monitor the performance of each baghouse used to comply with a PM emissions limit in paragraph (a) of this section using a COMS that is installed at the outlet on the baghouse or a common duct at the outlet of multiple baghouses. Each COMS must meet the requirements in paragraphs (b)(1) through (4) of this section.

(e) *Performance testing.* (1) You must demonstrate initial compliance with the applicable PM emissions limits in paragraph (a) of this section based on the results of a performance test for each affected source.

(i) You may certify initial compliance for an affected source based on the results of a previous performance test conducted within the past 12 months before your compliance date.

(ii) If you have not conducted a performance test to demonstrate compliance with the applicable emissions limits within the past 12 months before your compliance date, you must conduct a performance test within 180 days of your compliance date and report the results in your notification of compliance status.

(2) You must demonstrate subsequent compliance with the applicable PM emissions limits in paragraph (a) of this section based on the results of repeat performance tests conducted at least every 2.5 years for each affected source.

(3) You must conduct each performance test according to § 63.7(e)(1) using the test methods and procedures in paragraphs (e)(3)(i) through (v) of this section.

(i) Method 1 or 1A (40 CFR part 60, appendix A) to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A) to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B (40 CFR part 60, appendix A) to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses'' (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 (40 CFR part 60, appendix A) to determine the moisture content of the stack gas.

(v) Method 5 (40 CFR part 60, appendix A) to determine the PM concentration for negative pressure baghouses or Method 5D (40 CFR part 60, appendix A) for positive pressure baghouses. A minimum of three valid test runs are needed to comprise a PM performance test.

(f) *Operation and maintenance requirements.* (1) At all times, including periods of startup, shutdown, and malfunction, you must to the extent practicable, maintain and operate any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the permitting authority which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(2) All pollution control equipment must be installed, maintained, and operated properly. Instructions from the vendor or established maintenance practices that maximize pollution control must be followed. All necessary equipment control and operating devices, such as pressure gauges, amp meters, volt meters, flow rate indicators, temperature gauges, continuous emissions monitor, etc., must be installed, operated properly and easily accessible to compliance inspectors. A copy of all manufacturers' operating instructions for pollution control equipment and pollution emitting equipment must be maintained at your facility site. These instructions must be available to all employees who operate the equipment and must be made available to the permitting authority upon request. Maintenance records must be made available to the permitting authority upon request.

(3) You must document the activities performed to assure proper operation and maintenance of the air pollution control equipment and monitoring systems or devices. Records of these activities must be maintained as required by the permitting authority.

(4) Except as specified in paragraph (f)(5) of this section, in the event of an emergency situation, you must comply with the requirements specified in paragraphs (f)(4)(i) through (iii) of this section. For the purpose of complying with this paragraph, an emergency situation is any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility owner or operator that requires immediate corrective action to restore normal operation and that causes the affected source to exceed applicable emission limitation under this subpart due to unavoidable increases in emissions attributable to the emergency. An emergency must not include noncompliance to the extent it is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(i) During the period of the emergency you must implement all reasonable steps to minimize levels of emissions that exceeded the emission standards or other applicable requirements in this subpart.

(ii) You must document through signed contemporaneous logs or other relevant evidence that an emergency occurred and you can identify the probable cause, your facility was being operated properly at the time the emergency occurred, and the corrective actions taken to minimize emissions as required by paragraph (f)(4)(i) of this section.

(iii) You must submit a notice of the emergency to the permitting authority within two working days of the time when emission limitations were exceeded due to the emergency (or an alternate timeframe acceptable to the permitting authority). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(5) As an alternative to the requirements in paragraph (f)(4) of this section, you must comply with the startup, shutdown, and malfunction requirements in 40 CFR 63.6(e)(3).

(g) *Recordkeeping requirements.* (1) You must maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected source subject to this subpart; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

(2) You must maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this section recorded in a permanent form suitable for inspection. The file must be retained for at least 5 years following the date of such measurements, maintenance, reports.

(h) *Reporting requirements.* (1) You must prepare and submit to the permitting authority an excess emissions and monitoring systems performance report and summary report every calendar quarter. A less frequent reporting interval may used for either report as approved by the permitting authority.

(2) The summary report must include the information in paragraphs (h)(2)(i) through (iv) of this section.

(i) The magnitude of excess emissions computed, any conversion factor(s) used, and the date and time of commencement and completion of each time period of excess emissions. The process operating time during the reporting period.

(ii) Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected facility. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

(iii) The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

(iv) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information must be stated in the report.

§ 63.11149 What are the standards and compliance requirements for new sources?

(a) *Emissions limits and work practice standards.* (1) You must not discharge to the atmosphere exhaust gases that contain total PM in excess of 0.6 pound per ton of copper concentrate feed charged on a 24-hour average basis from any combination of stacks, vents, or other openings on furnaces, reactors, or other types of process vessels used for the production of anode copper from copper sulfide ore concentrates by pyrometallurgical techniques. Examples of such process equipment include, but are not limited to, copper concentrate dryers, smelting flash furnaces, smelting bath furnaces, converting vessels, combined smelting and converting reactors, anode refining furnaces, and anode shaft furnaces.

(2) You must operate a capture system that collects the gases and fumes released during the transfer of molten materials from smelting vessels and converting vessels and conveys the collected gas stream to a baghouse or other PM control device.

(3) You must operate one or more capture systems that collect the gases and fumes released from each vessel used to refine blister copper, remelt anode copper, or remelt anode scrap and convey each collected gas stream to a baghouse or other PM control device. One control device may be used for multiple collected gas streams.

(b) *Monitoring requirements.* (1) You must install, operate, and maintain a PM continuous emissions monitoring system (CEMS) to measure and record PM concentrations and gas stream flow rates for the exhaust gases discharged to the atmosphere from each affected source subject to the emissions limit in paragraph (a)(1) of this section. A single PM CEMS may be used for the combined exhaust gas streams from multiple affected sources at a point before the gases are discharged to the atmosphere. For each PM CEMS used to comply with this paragraph, you must meet the requirements in paragraphs (b)(1)(i) through (iii) of this section.

(i) You must install, certify, operate, and maintain the PM CEMS according to EPA Performance Specification 11 in 40 CFR part 60, appendix B, and the quality assurance requirements of Procedure 2 in 40 CFR part 60, appendix F.

(ii) You must conduct an initial performance evaluation of the PM CEMS according to the requirements of Performance Specification 11 in 40 CFR part 60, appendix B. Thereafter, you must perform the performance evaluations as required by Procedure 2 in 40 CFR part 60, appendix F.

(iii) You must perform quarterly accuracy determinations and daily calibration drift tests for the PM CEMS according to Procedure 2 in 40 CFR part 60, appendix F.

(2) You must install, operate, and maintain a weight measurement system to measure and record the weight of the copper concentrate feed charged to the smelting vessel on a daily basis.

(c) *Compliance requirements.* (1) You must demonstrate initial compliance with the emissions limit in paragraph (a)(1) of this section using the procedures in paragraph (c)(2) this section within 180 days after startup and report the results in your notification of compliance status no later than 30 days after the end of the compliance demonstration.

(2) You must demonstrate continuous compliance with the emissions limit in paragraph (a)(1) of this section using the procedures in paragraph (c)(2)(i) through (iii) of this section whenever your facility is producing copper from copper concentrate.

(i) You must continuously monitor and record PM emissions, determine and record the daily (24-hour) value for each day, and calculate and record the daily average pounds of total PM per ton of copper concentrate feed charged to the smelting vessel according to the requirements in paragraph (b) of this section.

(ii) You must calculate the daily average at the end of each calendar day for the preceding 24-hour period.

(iii) You must maintain records of the calculations of daily averages with supporting information and data, including measurements of the weight of copper concentrate feed charged to the smelting vessel. Collected PM CEMS data must be made available for inspection.

(d) *Alternative startup, shutdown, and malfunction requirements.* You must comply with the requirements specified in this paragraph as an alternative to the requirements in 40 CFR 63.6(e)(3). In the event of an emergency situation, you must comply with the requirements specified in paragraphs (d)(1) through (3) of this section. For the purpose of complying with this paragraph, an emergency situation is any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility owner or operator that requires immediate corrective action to restore normal operation, and that causes the affected source to exceed an applicable emissions limitation under this subpart, due to unavoidable increases in emissions attributable to the emergency. An emergency must not include noncompliance to the extent it is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(1) During the period of the emergency, you must implement all reasonable steps to minimize levels of emissions that exceeded the emission standards or other applicable requirements in this subpart.

(2) You must document through signed contemporaneous logs or other relevant evidence that an emergency occurred and you can identify the probable cause, your facility was being operated properly at the time the emergency occurred, and the corrective actions taken to minimize emissions as required by paragraph (d)(1) of this section.

(3) You must submit a notice of the emergency to the permitting authority within two working days of the time when emissions limitations were exceeded due to the emergency (or an alternate timeframe acceptable to the permitting authority). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(e) *Reports.* You must submit to the permitting authority by the 20th day of each month a summary of the daily average PM per ton of copper concentrate feed charged to the smelting vessel for the previous month.

Other Requirements and Information

§ 63.11150 What General Provisions apply to this subpart?

(a) If you own or operate a new or existing affected source, you must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) as specified in Table 1 to this subpart.

(b) If you own or operate an existing affected source subject to § 63.11147, your notification of compliance status required by § 63.9(h) must include the information specified in paragraphs (b)(1) through (4) of this section.

(1) If you certify initial compliance with the PM emissions limit in § 63.11147(a)(1) based on monitoring data from the previous month, your notification of compliance status must include this certification of compliance, signed by a responsible official: ''This facility complies with the PM emissions limit in § 63.11147(a)(1) based on monitoring data that were collected during the previous month.''

(2) If you conduct a new performance test to demonstrate initial compliance with the PM emissions limit in § 63.11147(a)(1), your notification of compliance status must include the results of the performance test, including required monitoring data.

(3) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11147(a)(2): ''This facility complies with the requirement to capture gases from transfer of molten materials from smelting vessels and converting vessels and convey them to a control device in accordance with § 63.11147(a)(2).''

(4) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11147(a)(3): ''This facility complies with the requirement to capture gases from operations in the anode refining department and convey them to a PM control device in accordance with § 63.11147(a)(3).''

(c) If you own or operate an existing affected source subject to § 63.11148, your notification of compliance status required by § 63.9(h) must include the information specified in paragraphs (c)(1) through (4) of this section.

(1) If you certify initial compliance with the PM emissions limit in § 63.11148(a)(1), (a)(3)(ii), and (a)(4)(iv) based on the results of a previous performance test conducted within the past 12 months before your compliance date, your notification of compliance status must include this certification of compliance, signed by a responsible official: ''This facility complies with the PM emissions limit in § 63.11148(a)(1) based on the results of a previous performance test.''

(2) If you conduct a new performance test to demonstrate initial compliance with the PM emissions limits in § 63.11148(a)(1), (a)(3)(ii), and (a)(4)(iv), your notification of compliance status must include the results of the performance test, including required monitoring data.

(3) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standards in § 63.11148(a)(2), and (a)(4)(iii): ''This facility complies with the requirement to vent captured process gases to a gas cleaning system controlling PM and to a sulfuric acid plant in accordance with § 63.11148(a)(2) and (a)(4)(iii).''

(3) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11148(a)(3)(i): ''This facility complies with the requirement to operate capture systems to collect gases and fumes released when copper matte or slag is tapped from the smelting vessel in accordance with § 63.11148(a)(3)(i).''

(4) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11148(a)(4): ''This facility complies with the requirement to operate capture systems to collect gases and fumes released during batch copper converter operations in accordance with § 63.11148(a)(4).''

(d) If you own or operate a new affected source, your notification of compliance status required by § 63.9(h) must include the information in paragraphs (d)(1) through (3) of this section.

(1) Your notification of compliance status must include the results of the initial performance test and monitoring data collected during the test that demonstrate compliance with the emissions limit in § 63.11149(a)(1).

(2) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11149(a)(2): ''This facility complies with the requirement to capture gases from transfer of molten materials from smelting vessels and converting vessels and convey them to a PM control device in accordance with § 63.11149(a)(2).''

(3) Your notification of compliance status must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11149(a)(3): ''This facility complies with the requirement to capture gases from each vessel used to refine blister copper, remelt anode copper, or remelt anode scrap, and convey them to a PM control device in accordance with § 63.11149(a)(3).''

§ 63.11151 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this section as follows:

Anode refining department means the area at a primary copper smelter in which anode copper refining operations are performed. Emissions sources in the anode refining department include anode refining furnaces and anode shaft furnaces.

Baghouse means a control device that collects particulate matter by filtering the gas stream through bags. A *baghouse* is also referred to as a ''fabric filter.''

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust) loadings in the exhaust of a baghouse in order to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, transmittance or other effect to continuously monitor relative particulate matter loadings.

Batch copper converter means a converter in which molten copper matte is charged and then oxidized to form blister copper by a process that is performed in discrete batches using a sequence of charging, blowing, skimming, and pouring.

Capture system means the collection of components used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: Duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Charging means the operating mode for a batch copper converter during which molten or solid material is added into the vessel.

Control device means air pollution control equipment used to remove PM from a gas stream.

Converting vessel means a furnace, reactor, or other type of vessel in which copper matte is oxidized to form blister copper.

Copper concentrate means copper ore that has been beneficiated to increase its copper content.

Copper concentrate dryer means a vessel in which copper concentrates are heated in the presence of air to reduce the moisture content of the material. Supplemental copper-bearing feed materials and fluxes may be added or mixed with the copper concentrates fed to a copper concentrate dryer.

Copper concentrate feed means the mixture of copper concentrate, secondary copper-bearing materials, recycled slags and dusts, fluxes, and other materials blended together for feeding to the smelting vessel.

Copper matte means a material predominately composed of copper and iron sulfides produced by smelting copper ore concentrates.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Holding means the operating mode for a batch copper converter or a holding furnace associated with a smelting furnace during which the molten bath is maintained in the vessel but no blowing or smelting is performed nor is material added into or removed from the vessel.

Matte drying and grinding plant means the area at a primary copper smelter in which wet granulated matte copper is ground in a mill, dried by blowing heated air through the mill, and then separated from the drying air stream using a control device such as a baghouse.

Pouring means the operating mode for a batch copper converter during which molten copper is removed from the vessel.

Primary copper smelter means any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques.

Responsible official means responsible official as defined at 40 CFR 70.2.

Secondary gas system means a capture system that collects the gases and fumes released when removing and transferring molten materials from one or more vessels using tapping ports, launders, and other openings in the vessels. Examples of molten material include, but are not limited to: Copper matte, slag, and blister copper.

Skimming means the batch copper converter operating mode during which molten slag is removed from the vessel.

Smelting vessel means a furnace, reactor, or other type of vessel in which copper ore concentrate and fluxes are smelted to form a molten mass of material containing copper matte and slag. Other copper-bearing materials may also be charged to the smelting vessel.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof.

§ 63.11152 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (5) of this section.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) Approval of a major change to a test method under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(4) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(5) Approval of a major change to recordkeeping/reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

As required in § 63.11150(a), you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 1 TO SUBPART EEEEEE OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART EEEEEE

Citation	Subject	Applies to subpart EEEEEE?	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12) (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities and Circumvention	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5).	Compliance with Standards and Maintenance Requirements—Applicability and Compliance Dates.	Yes.	
63.6(e)	Operation and Maintenance Requirements.	Yes/No	Operation and maintenance requirements do not apply to existing sources except that the startup, shutdown, and malfunction requirements in § 63.6(e)(3) are allowed as an alternative to the rule requirements for emergency situations. Operation and maintenance requirements apply to new sources except that the rule requirements for emergency situations are allowed as an alternative to the startup, shutdown, and malfunction requirements in § 63.6(e)(3).
63.6(f), (g), (i), (j)	Compliance with Nonopacity Emission Standards.	Yes.	
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.6(h)(1)–(h)(4), (h)(5)(i)–(h)(5)(iii), (h)(6)–(h)(9).		Yes/No	Requirements apply to new sources but not existing sources.
63.7(a), (e), (f), (g), (h)	Performance Testing Requirements	Yes.	
63.7(b), (c)		Yes/No	Notification of performance tests and quality assurance program apply to new sources but not existing sources.
63.8(a)(1), (a)(2), (b), (c), (f), (g)	Monitoring Requirements	Yes.	
63.8(a)(3)	Reserved	No.	
63.8(a)(4)		No	Subpart EEEEEE does not require flares.
63.8(d), (e)		Yes/No	Requirements for quality control program and performance evaluations apply to new sources but not existing sources.
63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j).	Notification Requirements	Yes.	
63.9(b)(3), (h)(4)	Reserved	No.	
63.9(b)(4), (f)		No.	
63.9(e), (g)		Yes/No	Notification requirements for performance test and use of continuous monitoring systems apply to new sources but not existing sources.
63.10(a), (b)(1), (d)(1), (d)(2), (d)(4), (d)(5), (f).	Recordkeeping and Reporting Requirements.	Yes/No	Recordkeeping requirements apply to new sources but not existing sources.
63.10(b)(2), (b)(3), (c)(1) (c)(5)–(c)(8), (c)(10)–(c)(15), (e)(1), (e)(2).		Yes/No	Recordkeeping requirements apply to new sources but not existing sources.
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.10(d)(3), (e)(4)		No	Reporting requirements apply to new sources but not existing sources.
63.10(e)(3)		Yes/No	Reporting requirements apply to new sources but not existing sources.
63.11	Control Device Requirements	No	Subpart EEEEEE does not require flares.
63.12	State Authorities and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	

■ 5. Part 63 is amended by adding subpart FFFFFF to read as follows:

Subpart FFFFFF—National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources

Sec.

Applicability and Compliance Dates

§ 63.11153 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a new secondary copper smelter that is an area source of hazardous air pollutant (HAP) emissions.

(b) This subpart applies to each new affected source. The affected source is each secondary copper smelter. Your secondary copper smelter is a new affected source if you commenced construction or reconstruction of the affected source before October 6, 2006.

(c) This subpart does not apply to research and development facilities, as defined in section 112(c)(7) of the CAA.

(d) If you own or operate an area source subject to this subpart, you must obtain a permit under 40 CFR part 70 or 40 CFR part 71.

§ 63.11154 What are my compliance dates?

(a) If you startup a new affected source on or before January 23, 2007, you must achieve compliance with the applicable provisions of this subpart not later than January 23, 2007.

(b) If you startup a new affected source after January 23, 2007, you must achieve compliance with the applicable provisions of this subpart upon startup of your affected source.

Standards and Compliance Requirements

§ 63.11155 What are the standards and compliance requirements for new sources?

(a) You must not discharge to the atmosphere any gases which contain particulate matter (PM) in excess of 0.002 grains per dry standard cubic foot (gr/dscf) from the exhaust vent of any capture system for a smelting furnace, melting furnace, or other vessel that contains molten material and any capture system for the transfer of molten material.

(b) For each smelting furnace, melting furnace, or other vessel that contains molten material, you must install and operate a capture system that collects the gases and fumes from the vessel and from the transfer of molten material and convey the collected gas stream to a control device.

(c) You must prepare and operate at all times according to a written plan for the selection, inspection, and pretreatment of copper scrap to minimize, to the extent practicable, the amount of oil and plastics in the scrap that is charged to the smelting furnace. Your plan must include a training program for scrap inspectors. You must keep records to demonstrate continuous compliance with the requirements of your plan. You must keep a current copy of your pollution prevention plan onsite and available for inspection.

(d) You must install, operate, and maintain a bag leak detection system on all baghouses used to comply with the PM emissions limit in paragraph (a) of this section according to paragraph (d)(1) of this section, prepare and operate by a site-specific monitoring plan according to paragraph (d)(2) of this section, take corrective action according to paragraph (d)(3) of this section, and record information according to paragraph (d)(4) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (d)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator must continuously record the output from the bag leak detection system using electronic or other means (*e.g.*, using a strip chart recorder or a data logger.)

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (d)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you must not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (d)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (d)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the baghouse and upstream of any wet scrubber.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (d)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (d)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this specific

condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (d)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective baghouse compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the particulate emissions.

(4) You must maintain records of the information specified in paragraphs (d)(4)(i) through (iii) of this section for each bag leak detection system.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of an alarm were initiated, whether procedures were initiated within 1 hour of the alarm, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the alarm was alleviated within 3 hours of the alarm.

(e) You must conduct a performance test to demonstrate initial compliance with the PM emissions limit within 180 days after startup and report the results in your notification of compliance status. You must conduct each PM test according to § 63.7(e)(1) using the test methods and procedures in paragraphs (e)(1) through (5) of this section.

(1) Method 1 or 1A (40 CFR part 60, appendix A) to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(2) Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A) to determine the volumetric flow rate of the stack gas.

(3) Method 3, 3A, or 3B (40 CFR part 60, appendix A) to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(4) Method 4 (40 CFR part 60, appendix A) to determine the moisture content of the stack gas.

(5) Method 5 (40 CFR part 60, appendix A) to determine the PM concentration for negative pressure baghouses and Method 5D (40 CFR part 60, appendix A) for positive pressure baghouses. The sampling time and volume for each run must be at least 60 minutes and 0.85 dry standard cubic meters (30 dry standard cubic feet). A minimum of three valid test runs are needed to comprise a PM performance test.

(f) You must conduct subsequent performance tests to demonstrate compliance with the PM emissions limit at least once every 5 years.

(g) If you use a control device other than a baghouse, you must prepare and submit a monitoring plan to the Administrator for approval. Each plan must contain the information in paragraphs (g)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with paragraph (e) of this section verifying the performance of the device for reducing PM to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system.

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emission limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

§ 63.11156 [Reserved]

Other Requirements and Information

§ 63.11157 What General Provisions apply to this subpart?

(a) If you own or operate a new affected source, you must comply with the requirements of the General Provisions in 40 CFR part 63, subpart A as specified in Table 1 to this subpart.

(b) Your notification of compliance status required by § 63.9(h) must include the following:

(1) The results of the initial performance tests and monitoring data collected during the test.

(2) This certification of compliance, signed by a responsible official, for the work practice standard in § 63.1155(b): ''This facility complies with the requirement for a capture system for each smelting furnace, melting furnace, or other vessel that contains molten material in accordance with § 63.11155(b).''

(3) This certification of compliance, signed by a responsible official, for the work practice standard in § 63.11155(c): ''This facility complies with the requirement for a written plan for the selection, inspection, and pretreatment of copper scrap in accordance with § 63.11155(c).''

(4) This certification of compliance, signed by a responsible official, for the work practice standard in § 63.11155(d)(2): ''This facility has an approved monitoring plan in accordance with § 63.11155(d)(2).''

(5) This certification of compliance, signed by a responsible official, for the work practice standard in § 63.11157(g): ''This facility has an approved monitoring plan in accordance with § 63.11157(g).''

§ 63.11158 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this section as follows:

Anode copper means copper that is cast into anodes and refined in an electrolytic process to produce high purity copper.

Capture system means the collection of components used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Melting furnace means any furnace, reactor, or other type of vessel that heats solid materials and produces a molten mass of material.

Secondary copper smelter means a facility that processes copper scrap in a blast furnace and converter or that uses another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade

copper scrap. A facility where recycled copper scrap or copper alloy scrap is melted to produce ingots or for direct use in a manufacturing process is not a secondary copper smelter.

Smelting furnace means any furnace, reactor, or other type of vessel in which copper scrap and fluxes are melted to form a molten mass of material containing copper and slag.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof.

§ 63.11159 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA, or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/ reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

As required in § 63.11157(a), you must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 1 TO SUBPART FFFFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFFFF

Citation	Subject	Applies to subpart FFFFFF?	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities and Circumvention	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5), (e)(3)(i), (e)(3)(iii)–(e)(3)(ix), (f), (g), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes.	
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.6(h)(1)–(h)(4), (h)(5)(i)–(h)(5)(iii), (h)(6)–(h)(9).		No	Subpart FFFFFF does not include opacity or visible emissions standards.
63.7	Performance Testing Requirements	Yes.	
63.8(a)(1), (a)(2), (b), (f)(1)–(5)	Monitoring Requirements	Yes.	
63.8(a)(3)	Reserved	No.	
63.8(c), (d), (e), (f)(6), (g)		No	Subpart FFFFFF does not require a continuous monitoring system.
63.8(a)(4)		No	Subpart FFFFFF does not require flares.
63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (e), (f), (g), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j).	Notification Requirements	Yes.	
63.9(b)(3), (h)(4)	Reserved	No.	
63.9(b)(4)		No.	
63.9(f)		No	Subpart FFFFFF does not include opacity or visible emissions standards.
63.9(g)		No	Subpart FFFFFF does not require a continuous monitoring system.
63.10(a), (b)(2)(i)–(b)(2)(v), (b)(2)(xiv), (d)(1), (d)(2), (d)(4), (d)(5), (e)(1), (e)(2), (f).	Recordkeeping and Reporting Requirements.	Yes.	
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.10(b)(2)(vi)–(b)(2)(xiii), (c)(1), (c)(5)–(c)(14), (e)(1)–(e)(2), (e)(4).			Subpart FFFFFF does not require a continuous monitoring system.
63.10(d)(3)		No	Subpart FFFFFF does not include opacity or visible emissions standards.
63.10(e)(3)		Yes.	
63.11	Control Device Requirements	No	Subpart FFFFFF does not require flares.
63.12	State Authorities and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	

TABLE 1 TO SUBPART FFFFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFFFF—Continued

Citation	Subject	Applies to subpart FFFFFF?	Explanation
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	

■ 6. Part 63 is amended by adding subpart GGGGGG to read as follows:

Subpart GGGGGG—National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources—Zinc, Cadmium, and Beryllium

Sec.

Applicability and Compliance Dates

§ 63.11160 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a primary zinc production facility or primary beryllium production facility that is an area source of hazardous air pollutant (HAP) emissions.

(b) The affected source is each existing or new primary zinc production facility or primary beryllium production facility.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source before October 6, 2006.

(2) An affected source is new if you commenced construction or reconstruction of the affected source on or after October 6, 2006.

(c) If you own or operate a new or existing affected source, you must obtain a permit under 40 CFR part 70 or 71.

§ 63.11161 What are my compliance dates?

(a) If you have an existing affected source, you must achieve compliance with applicable provisions in this subpart by January 23, 2007. If you startup a new sintering machine at an existing affected source after January 23, 2007, you must achieve compliance with the applicable provisions in this subpart not later than 180 days after startup.

(b) If you have a new affected source, you must achieve compliance with applicable provisions in this subpart according to the dates in paragraphs (b)(1) and (2) of this section.

(1) If you startup a new affected source on or before January 23, 2007, you must achieve compliance with applicable provisions in this subpart not later than January 23, 2007.

(2) If you startup a new affected source after January 23, 2007, you must achieve compliance with applicable provisions in this subpart upon initial startup.

Primary Zinc Production Facilities

§ 63.11162 What are the standards and compliance requirements for existing sources?

(a) You must exhaust the off-gases from each roaster to a particulate matter (PM) control device and to a sulfuric acid plant, including during the charging of the roaster.

(b) Except as provided in paragraph (b)(6) of this section, you must not discharge to the atmosphere any gases which contain PM in excess of the emissions limits in paragraphs (b)(1) through (5) of this section.

(1) 0.93 pound per hour (lb/hr) from the exhaust vent of a zinc cathode melting furnace.

(2) 0.1 lb/hr from the exhaust vent of a furnace that melts zinc dust, zinc chips, and/or other materials containing zinc.

(3) 0.228 lb/hr from the vent for the combined exhaust from a furnace melting zinc scrap and an alloy furnace.

(4) 0.014 grains per dry standard cubic foot (gr/dscf) from the exhaust vent of an anode casting furnace.

(5) 0.015 gr/dscf from the exhaust vent of a cadmium melting furnace.

(6) You may elect to meet an emissions limit of 0.005 gr/dscf as an alternative to the emissions limits in lb/hr in paragraphs (b)(1) through (3) of this section.

(c) You must establish an operating range for pressure drop for each baghouse applied to a furnace subject to an emissions limit in paragraph (b) of this section based on the minimum and maximum values recorded during a performance test that demonstrates compliance with the applicable PM emissions limit. Alternatively, you may use an operating range that has been previously established and approved by your permitting authority within the past 5 years. You must monitor the pressure drop daily, maintain the pressure drop for each baghouse within the established operating range, and record the pressure drop measurement in a daily log. You must perform routine maintenance on each baghouse and record maintenance activities in a baghouse maintenance log. Baghouse maintenance logs must include, but are not limited to, inspections, criteria for changing bag filters, and dates on which the bag filters are replaced. Both logs must be maintained in a suitable permanent form and kept available for inspection.

(d) If you own or operate a sintering machine at your facility, you must comply with the PM emissions limit in 40 CFR 60.172(a) and the opacity emissions limit in 40 CFR 60.174(a) for that sintering machine.

(e) If you own or operate a sintering machine at your facility, you must install and operate a continuous opacity monitoring system (COMS) for each sintering machine according to the requirements in 40 CFR 60.175(a). Each COMS must meet Performance Specification 1 (40 CFR part 60, appendix B).

(f) For each furnace at your facility subject to an emissions limit in paragraph (b) of this section, you must demonstrate initial compliance with the applicable PM emissions limit in

paragraph (b) of this section based on the results of a performance test for that furnace. If you own or operate a sintering machine, you must also demonstrate initial compliance with the PM and opacity emissions limits in paragraph (d) of this section based on the results of a performance test for that sintering machine.

(1) You may certify initial compliance for a furnace (and sintering machine, if applicable) based on the results of a previous performance test conducted during the past 5 years.

(2) If you have not conducted a performance test to demonstrate compliance with the applicable emissions limits during the past 5 years, you must conduct a performance test within 180 days of your compliance date and report the results in your notification of compliance status. If a furnace subject to an emissions limit in paragraph (b) of this section is not operating on the compliance date and subsequently resumes operation, you must conduct a performance test within 180 days of startup and report the results in your notification of compliance status.

(3) You must conduct each PM test for a furnace according to § 63.7(e)(1) using the test methods and procedures in paragraphs (f)(3)(i) through (v) of this section.

(i) Method 1 or 1A (40 CFR part 60, appendix A) to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A) to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B (40 CFR part 60, appendix A) to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 (40 CFR part 60, appendix A) to determine the moisture content of the stack gas.

(v) Method 5 (40 CFR part 60, appendix A) to determine the PM concentration for a negative pressure baghouse, Method 5D (40 CFR part 60, appendix A) for a positive pressure baghouse, or an alternative method previously approved by your permitting authority. A minimum of three valid test runs are needed to comprise a PM performance test.

(4) You must conduct each PM test for a sintering machine according to § 63.7(e)(1) and 40 CFR 60.176(b)(1) using the test methods in paragraph (f)(3) of this section. You must determine the PM concentration using EPA Method 5 (40 CFR part 60, appendix A). You may use ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses'' (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(5) You must conduct each opacity test for a sintering machine according to the requirements in § 63.6(h)(7). You must determine the opacity of emissions using EPA Method 9 (40 CFR part 60, appendix A).

(g) For each furnace subject to an emissions limit in paragraph (b) of this section, you must conduct subsequent performance tests according to the requirements in paragraph (f)(3) of this section to demonstrate compliance with the applicable PM emissions limit for the furnace every 5 years.

(h) You must submit a notification to your permitting authority of any deviation from the requirements of this subpart within 30 days after the deviation. The notification must describe the probable cause of the deviation and any corrective actions or preventative measures taken.

(i) You must submit semiannual monitoring reports to your permitting authority containing the results for all monitoring required by this subpart. All deviations that occur during the reporting period must be clearly identified.

(j) You must keep records of all required monitoring data and support information. Support information includes all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation and copies of all reports required by this subpart.

(k) You must comply with the operation and maintenance requirements specified in paragraphs (k)(1) and (2) of this section and the requirements for emergency situations specified in paragraph (k)(3) or (4) of this section.

(1) You must maintain all equipment covered under this subpart in such a manner that the performance or operation of such equipment does not cause a deviation from the applicable requirements.

(2) You must keep a maintenance record for each item of air pollution control equipment. At a minimum, this record must show the dates of performing maintenance and the nature of preventative maintenance activities.

(3) Except as specified in paragraph (k)(4) of this section, in the event of an emergency situation you must comply with the requirements in paragraphs (k)(3)(i) through (iii) of this section. For the purpose of complying with this paragraph, an emergency situation is any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility owner or operator that require immediate corrective action to restore normal operation, and that cause the affected source to exceed applicable emission limitation under this subpart, due to unavoidable increases in emissions attributable to the emergency. An emergency must not include noncompliance to the extent it is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(i) During the period of the emergency you must implement all reasonable steps to minimize levels of emissions that exceeded the emission standards or other applicable requirements in this subpart.

(ii) You must document through signed contemporaneous logs or other relevant evidence that an emergency occurred and you can identify the probable cause, your facility was being operated properly at the time the emergency occurred, and the corrective actions taken to minimize emissions as required by paragraph (k)(3)(i) of this section.

(iii) You must submit a notice of the emergency to the permitting authority within two working days of the time when emission limitations were exceeded due to the emergency (or an alternative timeframe acceptable to the permitting authority). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) As an alternative to the requirements in paragraph (k)(3) of this section, you must comply with the startup, shutdown, and malfunction requirements in 40 CFR 63.6(e)(3).

§ 63.11163 What are the standards and compliance requirements for new sources?

(a) You must exhaust the off-gases from each roaster to a PM control device and to a sulfuric acid plant, including the charging of the roaster.

(b) You must not discharge to the atmosphere any gases which contain PM in excess of the emissions limits in paragraphs (b)(1) through (3) of this section.

(1) 0.005 gr/dscf from the exhaust vent of a zinc cathode melting furnace; scrap zinc melting furnace; furnace melting zinc dust, zinc chips, and other

materials containing zinc; and alloy melting furnace.

(2) 0.014 gr/dscf from the exhaust vent of an anode casting furnace.

(3) 0.015 gr/dscf from the exhaust vent of a cadmium melting furnace.

(c) For each melting furnace, you must install and operate a capture system that collects gases and fumes from the melting furnace and from the transfer of molten materials and conveys the collected gases to a control device.

(d) You must install, operate, and maintain a bag leak detection system on all baghouses used to comply with the PM emissions limit in paragraph (b) of this section according to paragraph (d)(1) of this section, prepare and operate by a site-specific monitoring plan according to paragraph (d)(2) of this section, take corrective action according to paragraph (d)(3) of this section, and record information according to paragraph (d)(4) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (d)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per actual cubic meter (0.00044 grains per actual cubic foot) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator must continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger.)

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (d)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, you must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, you must not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (d)(1)(vi) of this section.

(vi) Once per quarter, you may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (d)(2) of this section.

(vii) You must install the bag leak detection sensor downstream of the baghouse and upstream of any wet scrubber.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) You must develop and submit to the Administrator or delegated authority for approval a site-specific monitoring plan for each bag leak detection system. You must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (d)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (d)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, you must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (d)(2)(vi) of this section, you must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective baghouse compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the particulate emissions.

(4) You must maintain records of the information specified in paragraphs (d)(4)(i) through (iii) of this section for each bag leak detection system.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, if procedures were initiated within 1 hour of the alarm, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and if the alarm was alleviated within 3 hours of the alarm.

(e) If there is a sintering machine at your primary zinc production facility, you must comply with the PM emissions limit in 40 CFR 60.172(a) and the opacity emissions limit in 40 CFR 60.174(a) for that sintering machine.

(f) If there is a sintering machine at your primary zinc production facility, you must install and operate a COMS for each sintering machine according to the requirements in 40 CFR 60.175(a). Each COMS must meet EPA Performance Specification 1 (40 CFR part 60, appendix B).

(g) For each furnace (and sintering machine, if applicable) at your facility, you must conduct a performance test to demonstrate initial compliance with each applicable PM emissions limit for that furnace (and the PM and opacity limits for a sintering machine, if applicable) within 180 days after startup and report the results in your notification of compliance status.

(1) You must conduct each PM test for a furnace according to § 63.7(e)(1) using the test methods and procedures in paragraphs (g)(1)(i) through (v) of this section.

(i) Method 1 or 1A (40 CFR part 60, appendix A) to select sampling port locations and the number of traverse points in each stack or duct. Sampling

sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G (40 CFR part 60, appendix A) to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B (40 CFR part 60, appendix A) to determine the dry molecular weight of the stack gas. You may use ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses'' (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(iv) Method 4 (40 CFR part 60, appendix A) to determine the moisture content of the stack gas.

(v) Method 5 (40 CFR part 60, appendix A) to determine the PM concentration for negative pressure baghouses or Method 5D (40 CFR part 60, appendix A) for positive pressure baghouses. A minimum of three valid test runs are needed to comprise a PM performance test.

(2) You must conduct each PM test for a sintering machine according to § 63.7(e)(1) and 40 CFR 60.176(b)(1) using the test methods in paragraph (g)(1) of this section. You must determine the PM concentration using EPA Method 5 (40 CFR part 60, appendix A). You may use ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses'' (incorporated by reference—see § 63.14) as an alternative to EPA Method 3B.

(3) You must conduct each opacity test for a sintering machine according to the requirements in § 63.6(h)(7). You must determine the opacity of emissions using EPA Method 9 (40 CFR part 60, appendix A).

(h) You must conduct subsequent performance tests according to the requirements in paragraph (g)(1) of this section for each furnace subject to an emissions limit in paragraph (b) of this section to demonstrate compliance at least once every 5 years.

(i) If you use a control device other than a baghouse, you must prepare and submit a monitoring plan to the Administrator for approval. Each plan must contain the information in paragraphs (i)(1) through (5) of this section.

(1) A description of the device;

(2) Test results collected in accordance with paragraph (g) of this section verifying the performance of the device for reducing PM and opacity to the levels required by this subpart;

(3) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system;

(4) A list of operating parameters that will be monitored to maintain continuous compliance with the applicable emission limits; and

(5) Operating parameter limits based on monitoring data collected during the performance test.

(i) As an alternative to the startup, shutdown, and malfunction requirements in 40 CFR 63.6(e)(3), you must comply with the requirements specified in this paragraph. In the event of an emergency situation, you must comply with the requirements in paragraphs (i)(1) through (3) of this section. For the purpose of complying with this paragraph, an emergency situation is any situation arising from sudden and reasonably unforeseeable events beyond the control of the facility owner or operator that require immediate corrective action to restore normal operation, and that cause the affected source to exceed applicable emission limitation under this subpart, due to unavoidable increases in emissions attributable to the emergency. An emergency must not include noncompliance to the extent it is caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(1) During the period of the emergency you must implement all reasonable steps to minimize levels of emissions that exceeded the emission standards or other applicable requirements in this subpart.

(2) You must document through signed contemporaneous logs or other relevant evidence that an emergency occurred and you can identify the probable cause, your facility was being operated properly at the time the emergency occurred, and the corrective actions taken to minimize emissions as required by paragraph (i)(1) of this section.

(3) You must submit a notice of the emergency to the permitting authority within two working days of the time when emission limitations were exceeded due to the emergency (or an alternative timeframe acceptable to the permitting authority). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

§ 63.11164 What General Provisions apply to primary zinc production facilities?

(a) If you own or operate an existing affected source, you must comply with the requirements of the General Provisions in 40 CFR part 63, subpart A, according to Table 1 to this subpart and paragraphs (a)(1) through (3) of this section.

(1) Your notification of compliance status required by § 63.9(h) must include this certification of compliance, signed by a responsible official, for the work practice standards in § 63.11162(a): ''This facility complies with the work practice standards in § 63.11162(a).''

(2) If you certify compliance with the PM emissions limits in § 63.11162(b) based on a previous performance test, your notification of compliance status required by § 63.9(h) must include this certification of compliance, signed by a responsible official: ''This facility complies with the PM emissions limits in § 63.11162(b) based on a previous performance test.''

(3) If you conduct a new performance test to demonstrate compliance with the PM emissions limits for a furnace in § 63.11162(b), your notification of compliance status required by § 63.9(h) must include the results of the performance test, including required monitoring data.

(b) If you own or operate a new affected source, you must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) as provided in Table 1 to this subpart and paragraphs (b)(1) through (4) of this section.

(1) Your notification of compliance status required in § 63.9(h) must include the results of the initial performance tests, including required monitoring data.

(2) Your notification of compliance status required by § 63.9(h) must include this certification of compliance, signed by a responsible official, for the work practice standard in § 63.11163(a): ''This facility complies with the work practice standards in § 63.11163(a).''

(3) Your notification of compliance status required by § 63.9(h) must include this certification of compliance, signed by a responsible official, for the capture system requirements in § 63.11163(c): ''This facility has installed capture systems according to § 63.11163(c).''

(4) If you use a baghouse that is subject to the requirements in § 63.11163(d), your notification of compliance status required by § 63.9(h) must include this certification of compliance, signed by a responsible official, for the bag leak detection system requirements in § 63.11163(d): ''This facility has an approved monitoring plan in accordance with § 63.11163(d).''

(5) If you use control devices other than baghouses, your notification of compliance status required by § 63.9(h)

must include this certification of compliance, signed by a responsible official for the monitoring plan requirements in § 63.11163(i): ''This facility has an approved monitoring plan in accordance with § 63.11163(i).''

Primary Beryllium Production Facilities

§ 63.11165 What are the standards and compliance requirements for new and existing sources?

You must comply with the requirements in 40 CFR 61.32 through 40 CFR 61.34 of the National Emission Standards for Beryllium (40 CFR part 61, subpart C).

§ 63.11166 What General Provisions apply to primary beryllium production facilities?

(a) You must comply with all of the requirements of the General Provisions in 40 CFR part 61, subpart A.

(b) You must comply with the requirements of the General Provisions in 40 CFR part 63, subpart A, that are specified in paragraphs (b)(1) and (2) of this section.

(1) Section 63.1(a)(1) through (10).

(2) Section 63.1(b) except paragraph (b)(3), § 63.1(c), and § 63.1(e).

Other Requirements and Information

§ 63.11167 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA; 40 CFR 60.2; 60.171; 61.02; 61.31; 61.61; 63.2; and in this section as follows:

Alloy furnace means any furnace used to melt alloys or to produce zinc that contains alloys.

Anode casting furnace means any furnace that melts materials to produce the anodes used in the electrolytic process for the production of zinc.

Bag leak detection system means a system that is capable of continuously monitoring the relative particulate matter (dust) loadings in the exhaust of a baghouse to detect bag leaks and other conditions that result in increases in particulate loadings. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, electrodynamic, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Cadmium melting furnace means any furnace used to melt cadmium or produce cadmium oxide from the cadmium recovered in the zinc production process.

Capture system means the collection of equipment used to capture gases and fumes released from one or more emissions points and then convey the captured gas stream to a control device. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emissions limitation or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emissions limitation or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Primary beryllium production facility means any establishment engaged in the chemical processing of beryllium ore to produce beryllium metal, alloy, or oxide, or performing any of the intermediate steps in these processes. A primary beryllium production facility may also be known as an extraction plant.

Primary zinc production facility means an installation engaged in the production, or any intermediate process in the production, of zinc or zinc oxide from zinc sulfide ore concentrates through the use of pyrometallurgical techniques.

Responsible official means responsible official as defined in 40 CFR 70.2.

Roaster means any facility in which a zinc sulfide ore concentrate charge is heated in the presence of air to eliminate a significant portion (more than 10 percent) of the sulfur contained in the charge.

Sintering machine means any furnace in which calcines are heated in the presence of air to agglomerate the calcines into a hard porous mass called sinter.

Sulfuric acid plant means any facility producing sulfuric acid from the sulfur dioxide (SO_2) in the gases from the roaster.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof.

Zinc cathode melting furnace means any furnace used to melt the pure zinc from the electrolytic process.

§ 63.11168 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraphs (c) and (d) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) For primary zinc production facilities subject to this subpart, the authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (5) of this section.

(1) Approval of an alternative non-opacity emissions standard under § 63.6(g).

(2) Approval of an alternative opacity emissions standard under § 63.6(h)(9).

(3) Approval of a major change to test methods under § 63.7(e)(2)(ii) and (f). A ''major change to test method'' is defined in § 63.90

(4) Approval of a major change to monitoring under § 63.8(f). A ''major change to monitoring'' is defined in § 63.90.

(5) Approval of a major change to recordkeeping/reporting under § 63.10(f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

(d) For primary beryllium manufacturing facilities subject to this subpart, the authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (d)(1) through (4) of this section.

(1) Approval of an alternative non-opacity emissions standard under 40 CFR 61.12(d).

(2) Approval of a major change to test methods under 40 CFR 61.13(h). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under 40 CFR 61.14(g). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under 40 CFR 61.10. A ''major change to recordkeeping/reporting'' is defined in § 63.90.

As required in § 63.11164(a) and (b), you must comply with the requirements of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table.

TABLE 1 TO SUBPART GGGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO PRIMARY ZINC PRODUCTION AREA SOURCES

Citation	Subject	Applies to subpart GGGGGG	Explanation
63.1(a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(10)–(a)(12), (b)(1), (b)(3), (c)(1), (c)(2), (c)(5), (e).	Applicability	Yes.	
63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3), (c)(4), (d).	Reserved	No.	
63.2	Definitions	Yes.	
63.3	Units and Abbreviations	Yes.	
63.4	Prohibited Activities and Circumvention	Yes.	
63.5	Preconstruction Review and Notification Requirements.	No.	
63.6(a), (b)(1)–(b)(5), (b)(7), (c)(1), (c)(2), (c)(5).	Compliance with Standards and Maintenance Requirements—Applicability Compliance Dates.	Yes.	
63.6(e)	Operation and Maintenance Requirements.	Yes/No	Operation and maintenance requirements do not apply to existing sources except that the startup, shutdown, and malfunction requirements in § 63.6(e)(3) are allowed as an alternative to the rule requirements for emergency situations. Operation and maintenance requirements apply to new sources except that the rule requirements for emergency situations are allowed as an alternative to the startup, shutdown, and malfunction requirements in § 63.6(e)(3).
63.6(f), (g), (i), (j)	Compliance with Nonopacity Emission Standards.	Yes.	
63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv).	Reserved	No.	
63.6(h)(1)–(h)(4), (h)(5)(i)–(h)(5)(iii), (h)(6)–(h)(9).		Yes.	
63.7(a), (e), (f), (g), (h)	Performance Testing Requirements	Yes.	
63.7(b), (c)		Yes/No	Notification of performance tests and quality assurance program apply to new sources but not existing sources.
63.8(a)(1), (a)(2), (b), (c), (f), (g)	Monitoring Requirements	Yes	Requirements in § 63.6(c)(4)(i)–(ii), (c)(5), (c)(6), (d), (e), (f)(6), and (g) apply if a COMS is used.
63.8(a)(3)	Reserved	No.	
63.8(a)(4)		No	Subpart GGGGGG does not require flares.
63.8(d), (e)		Yes/No	Requirements for quality control program and performance evaluations apply to new sources but not existing sources.
63.9(a), (b)(1), (b)(2), (b)(5), (c), (d), (f), (g), (h)(1)–(h)(3), (h)(5), (h)(6), (i), (j).	Notification Requirements	Yes/No	Notification of performance tests and opacity or visible emissions observations apply to new sources but not existing sources.
63.9(b)(3), (h)(4)	Reserved	No.	
63.9(b)(4)		No.	
63.10(a), (b)(1), (b)(2)(i)–(v), (d)(4), (d)(5)(i), (f).	Recordkeeping and Reporting Requirements.	Yes.	
63.10(b)(2), (b)(3), (c)(1), (c)(5)–(c)(8), (c)(10)–(c)(15), (d)(1)–(d)(3), (d)(5)(ii), (e)(1), (e)(2), (e)(4).		Yes/No	Recordkeeping and reporting requirements apply to new sources but not existing sources.
63.10(c)(2)–(c)(4), (c)(9)	Reserved	No.	
63.10(e)(3)		Yes/No	Reporting requirements apply to new sources but not existing sources.
63.11	Control Device Requirements	No	Subpart GGGGGG does not require flares.
63.12	State Authorities and Delegations	Yes.	
63.13	Addresses	Yes.	
63.14	Incorporations by Reference	Yes.	

TABLE 1 TO SUBPART GGGGGG OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO PRIMARY ZINC PRODUCTION AREA SOURCES—Continued

Citation	Subject	Applies to subpart GGGGGG	Explanation
63.15	Availability of Information and Confidentiality.	Yes.	
63.16	Performance Track Provisions	Yes.	

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January 23, 2007

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Unified Rule for Loss on Subsidiary Stock; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157711–02]

RIN 1545–BB61

Unified Rule for Loss on Subsidiary Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under sections 358, 362(e)(2) and 1502 of the Internal Revenue Code (Code). The regulations apply to corporations filing consolidated returns. The regulations implement aspects of the repeal of the *General Utilities* doctrine by redetermining members' bases in subsidiary stock and requiring certain reductions in subsidiary stock basis on a transfer of the stock. The regulations also promote the clear reflection of income by redetermining members' bases in subsidiary stock and reducing the subsidiary's attributes to prevent the duplication of loss. Additionally, the regulations provide guidance limiting the application of section 362(e)(2) with respect to transactions between members of a consolidated group.

DATES: Written or electronic comments or a request for a public hearing must be received by April 23, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–157711–02), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–157711–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS/REG–157711–02).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Theresa Abell (202) 622–7700 or Phoebe Bennett (202) 622–7770; concerning submissions of comments, Richard Hurst, *Richard.A.Hurst@irscounsel.treas.gov*, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by March 26, 2007.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in §§ 1.1502–13(e)(4)(v) and 1.1502–36(d)(7). The respondents are corporations filing consolidated returns. The collection of information is required to allow a corporation to preserve a subsidiary's attributes by foregoing a stock loss. The collection of information is required to obtain a benefit.

Estimated total annual reporting and/or recordkeeping burden: 25 hours.

Estimated average annual burden per respondent and/or recordkeeper: 15 minutes.

Estimated number of respondents and/or recordkeepers: 100.

Estimated annual frequency of responses: Once.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The discussion in this preamble begins with an overview of the history of the regulatory attempts to address both the circumvention of *General Utilities* repeal and the duplication of loss by consolidated groups, in particular, in § 1.1502–20 (the Loss Disallowance Rule, or LDR). The discussion then turns to *Rite Aid Corp.* v. *United States*, 255 F.3d 1357 (2001), which rejected the loss duplication rule in the LDR. Section A.4 of this preamble discusses the immediate administrative responses to *Rite Aid.* Section A.5 of this preamble discusses the legislative response to *Rite Aid.* Following the *Rite Aid* decision, the IRS and Treasury Department undertook a study to reconsider the issues addressed by § 1.1502–20. Section B of this preamble discusses the various issues considered in that study, including both the original noneconomic and duplicated stock loss specifically addressed by the LDR and certain related issues with which the Internal Revenue Service and Treasury Department have grown concerned since the LDR was promulgated. Section C of this preamble describes the various approaches that were considered to address noneconomic stock loss and sets forth the conclusions reached regarding each. Section D of this preamble describes the various approaches that were considered to address loss duplication and sets forth the conclusions reached regarding each. Section E of this preamble describes the various approaches that were considered to address the noneconomic and duplicated loss that can arise from the general operation of the investment adjustment system and sets forth the conclusions reached regarding each. Section F of this preamble describes the specific provisions of this proposed regulation § 1.1502–36. Section G of this preamble discusses the proposed removal of §§ 1.337(d)–1, 1.337(d)–2, and 1.1502–35.

The IRS and Treasury Department are also proposing regulations to address the application of section 362(e)(2) to members of consolidated groups. These proposed regulations are described in section H of this preamble.

Finally, the IRS and Treasury Department are proposing various technical and administrative revisions to the consolidated return regulations. These proposed regulations are described in section I of this preamble.

The IRS and Treasury Department request comments on the proposed regulations and other approaches that could be adopted, as well as other issues currently under study. See section J of this preamble for further discussion of comments requested.

A. History of General Utilities Repeal and Loss Disallowance Under § 1.1502–20

1. The Repeal of the General Utilities Doctrine

In 1986, Congress enacted section 337(d), which directs the Secretary to prescribe such regulations as may be necessary or appropriate to carry out the repeal of the *General Utilities* doctrine (*GU* repeal). See Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085 (1986)). The legislative history states that Congress was concerned that the *General Utilities* doctrine allowed ''assets to leave corporate solution and to take a stepped-up basis in the hands of the transferee without the imposition of a corporate-level tax'' and thus ''tend[ed] to undermine the corporate income tax.'' H.R. Rep. No. 99–426, 99th Cong., 1st Sess. 282 (1985). The *General Utilities* doctrine and *GU* repeal are discussed extensively in the Treasury Decisions referenced in this preamble; in addition, see generally, H.R. Rep. No. 99–426 at 274–282 for a discussion of the history of the *General Utilities* doctrine; see also *General Utilities & Operating Co.* v. *Helvering*, 296 U.S. 200 (1935).

2. The Administrative Response to GU Repeal: § 1.1502–20

The IRS and Treasury Department first responded to *GU* repeal by issuing Notice 87–14 (1987–1 CB 445), which set forth the intent to promulgate regulations affecting adjustments to members' bases in stock of any subsidiary acquired when the subsidiary held an appreciated asset. Notice 87–14 indicated that, in general, adjustments to subsidiary stock basis would not reflect gains on such assets. Thus, Notice 87–14 implied that a tracing-based regime would be adopted to determine adjustments to member's bases in shares of subsidiary stock.

After several years of study, the IRS and Treasury Department concluded that any approach relying on the identification and tracing of appreciation on particular assets, while theoretically accurate, would impose substantial administrative burdens on taxpayers and on the government. See TD 8294 (1990–1 CB 69), 55 FR 9426, 9428 (March 14, 1990). As a result, the tracing-based approach envisioned in Notice 87–14 was implemented only in regulations promulgated under section 337(d). Those regulations applied only for the period of time between the issuance of Notice 87–14 and the effective date of final regulations under § 1.1502–20 (February 1, 1991). See TD 8364 (1991–2 CB 43), 56 FR 47379 (September 19, 1991), §§ 1.337(d)–1 and 1.337(d)–2 (as contained in 26 CFR part 1 revised as of April 1, 1991).

In lieu of tracing, the LDR used certain operating presumptions to determine the extent to which investment adjustments would be permitted to give rise to allowable stock loss. Because the LDR only disallowed loss, noneconomic investment adjustments were able to increase stock basis and thus reduce gain without limitation. As a result, the LDR reduced the duplication of gain in the tax system. The IRS and Treasury Department considered the reduction of gain duplication an important balance to the imprecision inherent in the LDR's use of irrebuttable presumptions.

The study following the issuance of Notice 87–14 led the IRS and Treasury Department to consider the issue of loss duplication by members of consolidated groups. Their conclusion was that loss duplication was inappropriate in the consolidated setting. Further, the IRS and Treasury Department recognized that there were administrative advantages to addressing both issues in a single integrated rule. Thus, unlike the regulations under section 337(d), the LDR was at once directed at both the circumvention of *GU* repeal through the use of noneconomic stock loss and the duplication of loss. See TD 8294 and TD 8364.

3. The Rite Aid Opinion

Ten years after the promulgation of the LDR, the validity of the duplicated loss component of the LDR was considered in *Rite Aid, supra.* Under the duplicated loss component of the LDR, Rite Aid had been disallowed a deduction for an economic loss on subsidiary stock solely because the stock loss could be duplicated by the subsidiary after it left the group. The Federal Circuit stated that the Secretary's authority to change the application of a Code provision to a consolidated group was limited to situations in which the change was necessary to address a problem created by the filing of a consolidated return. Because duplicated stock loss occurs and is allowable in the separate return setting, the court concluded that the duplicated loss component of the LDR was not addressing a problem arising from the filing of a consolidated return. Accordingly, the court held that the Secretary did not have the authority to change the Code rule allowing a deduction for the stock loss.

4. The Administrative Response to Rite Aid

In response to the *Rite Aid* decision, on February 19, 2002, the IRS announced that it would not continue to litigate the validity of the duplicated loss rule in § 1.1502–20. See Notice 2002–11 (2002–1 CB 526). On March 7, 2002, the IRS and Treasury Department promulgated § 1.1502–20T(i) (to suspend the application of the LDR) and § 1.337(d)–2T (to provide an interim rule addressing noneconomic stock loss). See TD 8984 (2002–1 CB 668), 67 FR 11034 (March 12, 2002). Concurrently with the promulgation of §§ 1.337(d)–2T and 1.1502–20T(i), the IRS issued Notice 2002–18 (2002–1 CB 644), announcing that loss duplication regulations would also be promulgated. Following the publication of TD 8984, the IRS and Treasury Department undertook a study of the issues underlying both noneconomic and duplicated loss on subsidiary stock.

In general, § 1.337(d)–2T disallowed stock loss and reduced stock basis (to value) upon the disposition or deconsolidation of subsidiary stock by a member of a consolidated group. However, under § 1.337(d)–2T(c)(2), loss disallowance and basis reduction were avoided to the extent the taxpayer could establish that the loss or basis ''is not attributable to the recognition of built-in gain on the disposition of an asset.'' Section 1.337(d)–2T(c)(2) defined the term ''built-in gain'' as gain that is ''attributable, directly or indirectly, in whole or in part, to any excess of value over basis that is reflected, before the disposition of the asset, in the basis of the share, directly or indirectly, in whole or in part.''

On March 14, 2003, the IRS and Treasury Department promulgated § 1.1502–35T as an interim measure to address the problem of loss duplication in consolidated groups. See TD 9048 (2003–1 CB 644), 68 FR 12287 (March 14, 2003). In the preamble to TD 9048, the IRS and Treasury Department announced that the issues addressed in § 1.1502–35T were still under study. The provisions of § 1.1502–35 are discussed in more detail in section D.1 of this preamble.

Further guidance on the interim rules was issued August 25, 2004, in the form of Notice 2004–58 (2004–2 CB 520). In Notice 2004–58, the IRS announced that it would accept the ''basis disconformity'' method as an alternative approach to determining whether stock

loss or basis was attributable to ''built-in gain'' within the meaning of § 1.337(d)–2T.

Under the basis disconformity method described in Notice 2004–58, stock loss or basis is treated as attributable to built-in gain to the extent of the least of (i) the net positive investment adjustment applied to the stock basis (disregarding distributions), (ii) the aggregate gain (net of directly related expenses) recognized on asset dispositions by the subsidiary, and (iii) the disconformity amount (generally, the amount by which the basis of the share exceeds the share's proportionate interest in the subsidiary's net inside asset basis; for this purpose, net inside asset basis is defined as the excess of the sum of the subsidiary's money, asset basis, loss carryforwards, and deferred deductions over its liabilities). Notice 2004–58 also requested comments on the general scope of *GU* repeal and on other approaches that could be adopted to safeguard the purposes of *GU* repeal in the consolidated return context.

5. The Legislative Response to Rite Aid

Congress responded to the *Rite Aid* opinion on October 22, 2004, in the American Jobs Creation Act (the AJCA), Public Law 108–357 (118 Stat. 1418 (2004)). In the AJCA, Congress added a sentence at the end of section 1502 of the Code, so that the section now reads:

> The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

In the legislative history to the AJCA, Congress stated that the Secretary is authorized to change the application of a Code provision when the Secretary determines it is necessary to clearly reflect the income tax liability of the group and each corporation in the group, both during and after the period of affiliation. See H.R. Conf. Rep. No. 108–755, 108th Cong., 2d Sess. 653 (2004). Congress thus rejected the suggestion in the *Rite Aid* opinion that the Secretary's authority to change the general application of the Code is limited to promulgating regulations that address problems created by the filing of a consolidated return.

In the AJCA legislative history, Congress also spoke to the proper scope of future regulations. Regarding the promulgation of regulations addressing noneconomic stock loss, Congress stated that ''presumptions and other simplifying conventions'' could be used to prevent the circumvention of *GU* repeal. See H.R. Conf. Rep. No. 108–755, fn. 595. In addition, Congress indicated two acceptable methods for addressing loss duplication by group members. The first would disallow subsidiary stock loss to the extent it duplicates losses that remain available to the group. The second would reduce the subsidiary's attributes in order to prevent the subsidiary from using losses outside the group, to the extent the losses duplicate stock loss. But Congress also stated its intention that the result of the *Rite Aid* decision is to be preserved. The IRS and Treasury Department interpret this statement to mean that regulations addressing loss duplication by consolidated groups must not disallow a deduction for an economic loss on subsidiary stock solely because the stock loss duplicates unrecognized or unabsorbed losses that later could be used outside the group.

6. Further Administrative Response to Rite Aid

On March 3, 2005, the IRS and Treasury Department finalized § 1.337(d)–2. See TD 9187 (2005–13 IRB 778), 70 FR 10319 (March 3, 2005). In TD 9187, the IRS and Treasury Department stated that the issues addressed in § 1.337(d)–2 were still under study and that an alternative approach would be proposed. On March 14, 2006, the IRS and Treasury Department finalized § 1.1502–35. See TD 9254 (2006–13 IRB 662), 71 FR 13008 (March 14, 2006). In TD 9254, the IRS and Treasury Department stated that both noneconomic and duplicated loss were still under study, and that regulations would be proposed adopting a singe integrated approach to addressing both issues. The results of that study and the proposed integrated approach are described below in sections D through H of this preamble.

B. Issues Considered in the Post-Rite Aid Study.

1. GU Repeal and Noneconomic Investment Adjustments Under the LDR

Section 337(d) generally directs the Secretary to prescribe regulations to prevent the circumvention of *GU* repeal and, in particular, section 337(d)(1) directs the Secretary to promulgate regulations to prevent the circumvention of *GU* repeal through the use of the consolidated return regulations. Congress' concern stems from the general operation of the investment adjustment system of § 1.1502–32.

The purpose of the investment adjustment system is to promote the clear reflection of the group's income. See § 1.1502–32(a)(1). One of the principal ways that the investment adjustment system promotes clear reflection is by preventing a subsidiary's items of income, gain, deduction and loss from giving rise to duplicative gain or loss on the subsidiary's stock. To that end, the investment adjustment system adjusts members' bases in shares of subsidiary stock to reflect such items once they have been taken into account by the group. See TD 8560 (1994–2 CB 200), 59 FR 41666 (August 15, 1994).

Example 1. Economic adjustment to stock basis prevents duplication. P, the common parent of a consolidated group, purchases all 100 outstanding shares of S common stock for $100 cash, taking a basis of $1 in each share. At the time, S owns one asset, A1, with a basis and value of $100. Later, the value of A1 increases to $150. S sells A1 to a nonmember for $150 and recognizes a $50 gain, which the P group takes into account. Under the investment adjustment system, P increases its basis in its S stock to reflect the $50 taken into account by the group. As a result, the basis of each share increases to $1.50, its fair market value. P can then sell all or any portion of its S stock for its fair market value without recognizing duplicative gain on the disposition.

The result in *Example 1* is that the group takes its economic gain into account only once, on the disposition of S's asset, and not again on the subsequent disposition of the S stock. Thus the group's income is clearly reflected and there is no circumvention of *GU* repeal.

The investment adjustment system is not a tracing regime. Rather, it is a presumptive regime based on certain operating assumptions. A principal assumption is that all of a subsidiary's items taken into account represent economic accruals (of gain or loss) to the group. Another principal assumption is that all such items accrue equally to all outstanding shares, at least within a class. When these assumptions correspond to the facts of a particular situation, as in *Example 1,* the investment adjustment system produces appropriate results: stock basis, which reflects only the investment in the stock, increases to reflect economic accrual (the group's return on its stock investment), and, as a result, stock basis can then shelter that return on the group's investment, protecting it from being taken into account again when the stock is sold.

The assumptions, however, do not correspond to the facts of all situations. For example, if stock of a subsidiary is purchased for its fair market value when the subsidiary holds appreciated assets, the items of income or gain generated when that appreciation is recognized do not represent an economic accrual on the group's investment (because the appreciation was already reflected in the basis of the stock). Nevertheless, the presumptive rules of the investment adjustment system treat such items as economic accruals and include them in the investment adjustment to be applied to the basis of the stock.

Example 2. Noneconomic adjustment to stock basis creates noneconomic stock loss. Assume the same facts as in *Example 1* except that P does not purchase the stock of S until the value of A1 has increased to $150. Accordingly, P purchases the stock for $150, taking a basis of $1.50 in each share. As in *Example 1,* when S sells A1, the investment adjustment system again increases P's basis in its S stock to reflect the $50 taken into account by the group. As a result, P's basis in each of its shares increases to $2, even though the fair market value of each share remains $1.50. If P were then to sell all or some portion of the S stock for its fair market value, P would recognize a $.50 loss on each share ($50 loss in the aggregate).

In this situation, a deduction for the stock loss would be inappropriate because neither the group nor its members have suffered any economic loss. If P were allowed to deduct that noneconomic loss, the deduction would offset the gain recognized on S's asset and, effectively, eliminate the corporate-level tax on the gain on S's asset. This is the circumvention of *GU* repeal that concerned Congress in 1986.

At the time Notice 87–14 was issued, the IRS and Treasury Department had identified the creation of noneconomic stock loss in situations similar to those illustrated in *Example 2.* Thus, Notice 87–14 referred specifically to investment adjustments attributable to the disposition of assets that, at the time of the acquisition of the subsidiary stock, had a fair market value in excess of adjusted basis. For that reason, § 1.337(d)–1, which implemented Notice 87–14, disallowed subsidiary stock loss unless the taxpayer could show that the loss was not attributable to the recognition of appreciation on assets owned, directly or indirectly, by a subsidiary when it became a member.

2. Duplicated Loss and the Clear Reflection of Group Income Under the LDR

In the study that followed the issuance of Notice 87–14, the IRS and Treasury Department also considered the issue of loss duplication by members of a consolidated group. The specific concern of the IRS and Treasury Department was the loss duplication that occurs when an economic loss is reflected in both a member's basis in subsidiary stock and in the subsidiary's assets or operations, and the loss is first recognized with respect to the stock.

Example 3. Duplication of loss. P forms S by contributing $110 to S in exchange for all 100 outstanding shares of S stock. S uses the cash to purchase an asset, A1. The value of A1 later declines to $10. If P were then to sell all or some portion of the S stock for its fair market value, P would recognize a $1 loss on each share.

In this situation, even though P would have recognized the group's economic loss on its disposition of the S stock, the loss continues to be reflected in the basis of A1. As a result, that loss would remain available for use by P (if the stock sale did not deconsolidate S) or S (if the stock sale deconsolidated S). Upon the disposition of A1, the group's single economic loss would thus be recognized and taken into account more than once by the group and its members or former members.

In contrast, if the duplicated loss had first been taken into account with respect to A1, the investment adjustment system would have prevented a duplicative benefit to the group and its members by reducing P's basis in S stock by the amount of the loss. In that case, the group would have enjoyed the tax benefit attributable to the loss, but that benefit would not remain available for another use by the group and its members or former members.

The IRS and Treasury Department concluded that the duplication of a group's tax benefit (represented by a single economic loss) distorts income without regard to whether the duplicated loss is taken into account first with respect to the subsidiary's stock or first with respect to the subsidiary's assets and operations. The IRS and Treasury Department further concluded that, even if the duplicated loss is used by a former member outside the group, that duplicative use distorts the income of the group and its members. Accordingly, the IRS and Treasury Department decided to promulgate regulations that would complement the investment adjustment system by addressing the stock-first recognition of a duplicated loss and that such regulations would apply to both deconsolidating and nondeconsolidating dispositions. Recognizing the administrative benefits of addressing both noneconomic and duplicated stock loss in a single integrated rule, the IRS and Treasury Department promulgated the LDR as a single rule with components directed at both.

The method adopted by the LDR to address loss duplication was the disallowance of stock loss (or reduction of stock basis) that duplicated unrecognized inside loss, such as that illustrated in *Example 3.* However, groups had several mechanisms available to recognize or preserve the inside loss and thereby avoid loss disallowance (by eliminating loss duplication). Inside losses could be recognized through an actual asset sale or a deemed asset sale under section 338(h)(10), and, following the sale, the subsidiary's unabsorbed losses would be available to the group. In addition, the LDR allowed the common parent to elect to reattribute the subsidiary's losses (to itself) under § 1.1502–20(g). If the group chose not to exercise those options, then the stock loss was denied, but the inside loss was preserved for a nonduplicative use by the subsidiary, in or out of the group.

At the time the LDR was promulgated, the duplication potential illustrated in *Example 3* was the principal form of loss duplication with which the IRS and Treasury Department were concerned. Thus it is the only form of loss duplication specifically addressed by the LDR. The anti-abuse rule in the LDR did, however, provide a limited mechanism for expanding the scope of that provision.

3. Noneconomic and Duplicated Loss Resulting from Investment Adjustments Allocated to Shares With Disparate Bases

Since the promulgation of the LDR, the IRS and Treasury Department have become increasingly concerned with the noneconomic and duplicated loss potential arising from the interaction of § 1.1502–32 and the disparate reflection of gain or loss in members' bases in individual shares of subsidiary stock.

As discussed in section B.1 of this preamble, the investment adjustment system is a presumptive regime that allocates a subsidiary's items of income, gain, deduction, and loss taken into account by the group. It operates in accordance with the assumption that all such items reflect economic accruals to all shares equally within each class. When its underlying assumptions correspond to the facts of a particular situation, the investment adjustment system produces appropriate results, as illustrated in *Example 1.* But when its underlying assumptions do not correspond to the facts of a situation because shares held by members have disparate bases, the general operation of

the investment adjustment system can give rise to both noneconomic and duplicated loss on individual shares of subsidiary stock.

Example 4. Noneconomic loss. P and M (a member of the P group) form S by contributing property to S in exchange for all 100 outstanding shares of S stock. P contributes A1, with a basis and value of $80, in exchange for 80 shares of S stock. M contributes A2, with a basis of $0 and a value of $20, to S in exchange for 20 shares of S stock. S then sells A2 for $20 and recognizes a $20 gain that is taken into account by the group. As a result, the basis of each share increases by $.20. P's basis in each of its shares is then $1.20 (or, $96 in the aggregate), and M's basis in each of its shares is then $.20 (or, $4 in the aggregate), even though the value of each share remains $1. P then sells all or some portion of its shares to X, a nonmember, and, under general principles of tax law, recognizes a $.20 noneconomic loss on each share, effectively eliminating up to $16 of the gain on A2.

Example 5(a). Duplicated loss, inside recognition precedes stock disposition. P forms S with $100 and receives all 50 shares of S common stock. S uses the $100 to buy A1, which then declines in value to $50. P contributes another $50 for a second 50 shares of common stock. S then sells A1 and recognizes a loss of $50 that is taken into account on the P group return. The absorption of the $50 loss results in a $.50 reduction to the basis of each share (original and newly issued). P then sells all or some portion of the original shares to X for $1 each (each with a basis of $1.50) and recognizes a $.50 loss on each share (up to $25 total). Although the $50 asset loss and the $25 stock loss both reflect an economic loss of the group, they are both reflecting the same loss. The group has actually experienced only $50 of economic loss. Therefore, the $.50 loss recognized on each of the original shares (up to $25 total) is duplicative.

Example 5(b). Duplicated loss, stock disposition precedes inside recognition. The facts are the same as in *Example 5(a),* except that, before S sells A1, P sells 20 of its original 50 shares to X for $20 (aggregate basis $40), recognizing a $20 loss that is taken into account on the P group return, and S remains a member of the group. S then sells A1, recognizing a $50 loss that is taken into account on the P group return. Although the $50 asset loss and the $20 stock loss both reflect an economic loss of the group, they are both reflecting the same loss. As in *Example 5(a),* the group has actually experienced only $50 of economic loss. Therefore, $20 of the recognized loss is duplicative. Alternatively, if P sold all its original 50 shares, P would recognize a $50 loss even though the entire $50 group loss would remain available to S for a duplicative use against its separate year income.

The IRS and Treasury Department recognize that, in each case where the disproportionate reflection of an item in a particular share causes an inappropriate stock loss, whether noneconomic or duplicated, that loss is offset by unrecognized gain in other shares. However, that gain can be deferred indefinitely or even eliminated by the group. Accordingly, the IRS and Treasury Department do not believe that the system is appropriately balanced in such cases.

The IRS and Treasury Department further recognize that these issues could be addressed by adopting a tracing-based approach to the allocation of investment adjustments. However, the complexity and burden of a tracing-based approach would render such an approach generally inadministrable for consolidated taxpayers and for the government. As a result, the system would be prone to error and, in practice, inconsistently applied. Moreover, the IRS and Treasury Department continue to believe that the assumptions on which the investment adjustment system is based are appropriate for typical commercial transactions, as the IRS and Treasury Department understand that typically subsidiaries have only common stock outstanding, that their stock is wholly owned by group members, and that members' bases in shares of subsidiary stock are uniform, as under the facts of *Example 1.* See section E.2 of the preamble of CO–30–92 (1992–2 CB 627), 57 FR 53634, 53639 (November 12, 1992).

Because a tracing-based approach to the allocation of investment adjustments would not be administrable, the IRS and Treasury Department are not considering revising the investment adjustment system to adopt such an approach. Instead, the IRS and Treasury Department have considered various presumptive approaches that could be adopted to mitigate the creation of noneconomic and duplicated loss when members hold subsidiary stock with disparate bases. The approaches considered and decisions reached are discussed in section E of this preamble.

4. Redetermination Events: Changes in the Extent That Unrecognized Gain or Loss Is Effectively Reflected in the Basis of Individual Shares

Because the investment adjustment system adjusts the basis of each share in accordance with its proportionate interest in S's assets and operations, the relationship between a share's basis and its allocable portion of unrecognized appreciation or depreciation determines the extent to which such amounts are effectively reflected in the basis of the share. This relationship, however, is not fixed at the time that stock is acquired. The reason is that there are many transactions, referred to here as redetermination events, that alter either the basis of a share or the interest it represents. These events generally occur in one of three types of situations.

a. *Stock basis is reallocated.*

The relationship between the basis of a share and the interest represented by the share can be altered whenever stock basis is reallocated among shares, including when it is allocated to shares of stock of other members.

Example 6. Intragroup spin-off. P forms S by contributing $100 to S in exchange for all the stock of S. S purchases two assets, A1 and A2, for $50 each. Subsequently, A1 appreciates to $75 and A2 depreciates to $25. In a transaction qualifying under sections 355 and 368(a)(1)(D), S transfers A2 to C in exchange for all of the C stock and S then distributes all the C stock to P. Under section 358 and § 1.358–2, P's basis in the S stock is allocated among the S and C stock in proportion to the value of the stock of S and C. As a result, P's basis in its S stock is $75 ($^{75}/_{100} \times \$100$) and P's basis in its C stock is $25 ($^{25}/_{100} \times \$100$). S sells A1 for $75, recognizing a $25 gain that is taken into account on the P group return. P's basis in its S stock increases by $25, from $75 to $100. P then sells its S stock for $75 and recognizes a $25 loss.

In this *Example 6,* after the reallocation of stock basis, P's basis in its S stock reflects the unrecognized appreciation on A1, just as P's basis in its S stock reflected unrecognized appreciation on A1 in *Example 2.* As a result, P's reallocated S stock basis protects the appreciation on A1 from being recognized as both asset gain and stock gain. Increasing P's basis in its S stock to reflect the recognition of S's gain on A1 is not only unnecessary, it inflates stock basis and thereby gives rise to either noneconomic loss or noneconomic reduction of gain when the stock is sold.

Basis reallocations, and the consequences described, can occur for a number of reasons, including, for example, under rules like § 1.1502–32(c)(4) (cumulative redetermination of investment adjustments) and § 1.1502–35(b) (basis redetermination to reduce disparity) and the corresponding provision in these proposed regulations.

b. *Capital transactions expand or contract the subsidiary's pool of assets.*

The relationship between the basis of a share and the nature of the interest represented by the share can also be altered by capital transactions that have no effect on the basis or value of outstanding shares, but that nevertheless alter the interest represented by those shares. Some common examples arise in the context of section 351 exchanges, even though, as illustrated in *Example 7(a),* a section 351 exchange in its simplest form cannot give rise to stock basis that reflects unrecognized appreciation.

Example 7(a). Contribution of appreciated asset in section 351 exchange. P forms S by contributing an asset, A1, to S in exchange for all 80 outstanding shares of S stock. The basis of A1 is $40 and its value is $80. S sells A1 and recognizes a $40 gain that is taken into account by the P group. As a result, P's aggregate basis in its S shares is increased by $40, from $40 to $80. Subsequently, P sells its S stock for $80, the stock's fair market value and recognizes $0 on the sale. The group is thus taxed once on its $40 economic gain.

In *Example 7(a),* P holds appreciated S stock and S holds an appreciated asset, but that appreciation is not reflected in either P's basis in its S stock or S's basis in its asset. Each share has a basis of $.50 and an interest in 1/80 of S's asset, A1, which has $40 of unrecognized appreciation (allocable $.50 to each share). If this relationship between P's basis in its S shares and the interest represented by the shares remains constant, as in *Example 7(a),* the investment adjustment system produces appropriate results. But if there is a change in that relationship, the underlying assumptions of the investment adjustment system may no longer correspond to the facts of the situation and, as a result, the general operation of the system could produce inappropriate results. Such changes can occur whenever S acquires property in exchange for additional shares of its stock.

Example 7(b). Contribution of appreciated asset in subsequent section 351 exchange creates disconformity in original shares. The facts are the same as in *Example 7(a),* except that, before A1 is sold, P contributes a second asset, A2, to S in exchange for an additional 20 shares of S stock. A2 has a basis of $0 and a value of $20. S sells both assets and recognizes a $60 gain that is taken into account by the P group. As a result, P's basis in its original shares increases by $48 ($.60 per share), from $40 to $88 (or, from $.50 to $1.10 per share), and P's basis in its new shares increases by $12, from $0 to $12 (or, from $0 to $.60 per share). P then sells 20 of its original shares (basis of $22) for $20, their fair market value, and recognizes a $2 loss.

In *Example 7(b),* P's basis in the original S stock reflected no unrecognized appreciation when the stock was issued. After the second contribution, however, P's basis in those shares reflects a portion of the unrecognized appreciation on A2. The reason is that each share represents an interest in S's entire pool of assets. When the pool changes, the nature of the interest represented by the shares changes, even though the share's basis and value remain constant. Thus, in *Example 7(b),* while each original share's basis ($.50) and value ($1) remain constant, the interest represented by each share changed from 1/80 of an asset with unrecognized appreciation of $40 (or, $.50 per share), to 1/100 of assets with unrecognized appreciation of $60 (or, $.60 per share). This shift causes the basis of each original share to reflect $.10 of unrecognized appreciation. When the gain is recognized, $.10 of the gain allocated to each original share under the investment adjustment system is a noneconomic increase in the share's basis. That increase will give rise to noneconomic stock loss or gain reduction. Although this (noneconomic) allocation of the (economic) item results in an offsetting stock gain on the basis of the new shares, that gain can be indefinitely deferred and even eliminated.

The principles that increase the reflection of unrecognized appreciation in the original shares in *Example 7(b)* can also cause the reflection of unrecognized appreciation in the basis of shares that are received in exchange for property that is not appreciated, including cash. Although such shares would have a substituted basis (which generally precludes the reflection of unrecognized appreciation, as illustrated in *Example 7(a)*), the reflection of unrecognized appreciation is prevented only if the shares represent, wholly and solely, the transferee's interest in its transferred property. If there are previously issued shares outstanding, or if other shares are issued in the exchange, the shares represent an interest in a pool of assets that includes more than the transferred assets. As a result, the interest represented by each such share may be significantly different from what it would be if the subsidiary held only the transferred property.

Example 7(c). Multiple transferors in single section 351 exchange. The facts are the same as in *Example 7(a),* except that, when P contributes A1 to S in exchange for 80 shares of S stock, M (another member in the group) also contributes $20 cash to S in exchange for 20 shares of S stock. S sells A1 for $80 and recognizes a $40 gain that is taken into account by the group. Accordingly, P's aggregate basis in its shares increases by $32 ($\frac{80}{100} \times \$40$), from $40 to $72, and M's aggregate basis in its shares increases by $8 ($\frac{20}{100} \times \$40$), from $20 to $28. M then sells its shares for $20, their fair market value, and recognizes an $8 noneconomic loss.

Similar changes in the extent to which unrecognized amounts are reflected in basis can occur whenever the subsidiary's pool of assets is increased or decreased by a capital transaction. The reason is that the interest represented by each share, and thus the relationship between a share's basis and the interest represented by the share, changes whenever the subsidiary's pool of assets changes. Such transactions include acquisitive reorganizations (if new shares are issued) and redemptions.

c. *Assets are acquired with a basis that reflects unrecognized appreciation.*

The relationship between the basis of a share and the nature of the interest represented by the share can also be altered by transactions in which S acquires assets with a basis that reflects unrecognized appreciation, such as stock of a new member. The reason is that, after the lower-tier acquisition, the S shares have an interest in unrecognized appreciation and the investment adjustment system will increase the basis of the S shares when those lower-tier items are recognized.

Example 8. Acquisition of lower-tier subsidiary with appreciated assets. P forms S by contributing $100 to S in exchange for all the stock of S. S then purchases all the stock of T for $100 when T holds one asset, A1, with a basis of $0 and a value of $100. T sells A1, recognizing a $100 gain that is taken into account on the P group return. As a result, both S's basis in its T stock and P's basis in its S stock are increased by $100, from $100 to $200. P then sells its S stock, recognizing a $100 loss.

The result is the same noneconomic loss illustrated in *Example 2.*

d. *Other redetermination events.*

The IRS and Treasury Department expect that other transactions and events can alter the extent to which unrecognized asset appreciation is reflected in stock basis. Accordingly, the preceding discussion is not intended to present an exhaustive list of possible redetermination events.

e. *Conclusions regarding redetermination events.*

The IRS and Treasury Department recognize that redetermination events occur as the result of bona fide business transactions engaged in frequently and routinely throughout the time a share is held by any member of the group, and that these transactions are typically not tax-structured transactions. Still, these events generate a significant potential for noneconomic stock loss or gain reduction that facilitates the circumvention of *GU* repeal. Accordingly, the IRS and Treasury Department believe that all such events, whether described in this preamble or not, must be taken into account in any model that is adopted to address the circumvention of *GU* repeal.

Nevertheless, the IRS and Treasury Department recognize, and are concerned that, the factual analysis necessary to identify all redetermination events for all members' shares would be an extensive, complex, difficult, and,

therefore, expensive undertaking and, as such, would impose a substantial burden on both taxpayers and the government. Moreover, the nature of the undertaking would make it prone to error and, as a result, the rule would be unevenly administered and similarly situated taxpayers would not be similarly treated.

The IRS and Treasury Department recognize that redetermination events can also create or increase the extent to which the basis of an individual share duplicates an inside loss. However, because duplicated loss is measured at the time that a stock loss is either recognized or preserved for later use, loss duplication rules by their operation account for redetermination events. Accordingly, regulations addressing loss duplication do not generally require specific provisions to address redetermination events.

C. Methods Considered To Implement GU Repeal

The IRS and Treasury Department considered a number of approaches to address the circumvention of *GU* repeal independently from the issue of loss duplication. The approaches fall into two broad categories: tracing-based and presumptive approaches.

1. Tracing-Based Methods

Under a tracing-based method, the extent to which a member can enjoy the benefit of subsidiary stock basis attributable to the recognition of an item of income or gain is determined by the extent to which the recognized item is reflected in the basis of the share and thus already protected from duplicative recognition on a later disposition of the stock. The IRS and Treasury Department continue to believe that tracing is a theoretically correct method for implementing *GU* repeal in the consolidated return setting and so considered various tracing-based proposals.

a. *Pure tracing.*

In general, a tracing approach would look solely to the connection between a subsidiary's recognized items and any appreciation reflected in stock basis in order to determine the extent to which the group will be allowed the benefit of stock basis attributable to those items. However, such an approach would require taxpayers to create and maintain (and the IRS to examine) records to establish:

- The identity of every ''tainted asset,'' that is, every asset held by the subsidiary and any lower-tier subsidiaries on every ''measuring date,'' which includes the date on which the member (or its predecessor) purchased the share and all subsequent dates on which the subsidiary has a redetermination event;
- The ''tainted appreciation,'' that is, the appreciation on each tainted asset held by the subsidiary and any lower-tier subsidiaries on each measuring date; and
- The extent to which tainted appreciation is recognized, whether as income or gain, and included in an adjustment to the basis of the share.

In addition, to fully benefit from a tracing regime, taxpayers would need to create and maintain similar records for tainted assets with unrecognized depreciation on a measuring date, because the recognition of that depreciation would be allowed to reduce the amount of recognized appreciation treated as tainted.

These records would have to be created and maintained for each share of stock of each subsidiary and each share of lower-tier subsidiary stock held by a subsidiary on each measuring date. In addition, these records would need to be created and maintained not just for subsidiaries, but for all corporations the stock of which is acquired by a member, because the information would be necessary if the corporation becomes a member at some later date.

In administering the various temporary and final regulations promulgated as loss limitation rules under § 1.337(d)–1 and § 1.337(d)–2, the IRS has found that taxpayers encounter substantial difficulty in attempting to satisfy these requirements.

To begin, taxpayers are generally unable to accurately identify all of a subsidiary's tainted assets. One reason is simply the vast number of assets implicated. Another reason is that many assets are accounted for in mass accounts and thus cannot be separately identified. Problems are exacerbated if appropriate records are not created contemporaneously; taxpayers have found this a particular concern when subsidiaries have been acquired with inadequate records.

Furthermore, the commonplace nature of many redetermination events makes it difficult to identify all such dates. For example, many taxpayers routinely issue stock when a member contributes cash or property to a subsidiary, even if the issuance of stock would not be required for section 351 to apply, and each such occurrence is a redetermination event.

Valuation also imposes significant financial and administrative burdens on both taxpayers and the government. These problems are exacerbated because the corporation's assets are not themselves the subject of an arms-length transaction and, in most cases, the date on which the assets are actually valued is long after the stock transaction.

The most problematic aspect of tracing, however, has typically been establishing the connection, or lack thereof, between items taken into account by the group and particular amounts of tainted appreciation. If much time has elapsed between a measuring date and the disposition of a tainted asset, or if an asset is held in a mass account, this can be difficult or even impossible. If tainted appreciation is recognized as income earned through the wasting or consumption of the appreciation, instead of as gain on the disposition of the asset, there are additional difficulties. In those cases, tracing is possible only if the tainted appreciation generates an identifiable stream of income. However, this is frequently not the case. For example, intangible assets, like patents or goodwill, are the source of significant tainted appreciation and they typically do not generate identifiable income streams.

i. *Conclusions regarding tracing.*

For all the reasons set forth in this preamble, the IRS and Treasury Department have again, as in 1990, concluded that tracing is not a viable method for preventing the circumvention of *GU* repeal in consolidation. This conclusion, while arguably based on theoretical concerns in 1990, is now based on several years of administering § 1.337(d)–2 (in both its temporary and final form) as a tracing regime. The IRS found that the difficulties encountered, by taxpayers and the government alike, in administering § 1.337(d)–2 as a tracing-based rule were overwhelmingly greater than those encountered in administering it as a presumption-based rule under the basis disconformity method permitted under Notice 2004–58. Accordingly, the IRS and Treasury Department are not proposing to adopt a tracing-based approach.

ii. *Tracing in other contexts.*

The IRS and Treasury Department recognize that tracing-based regimes are used to implement other provisions in the Code. For example, section 382(h), which prescribes the tax treatment of built-in items recognized by a corporation that has had an ownership change, and section 1374, which prescribes the tax treatment of built-in items recognized by an S corporation that was formerly a C corporation, both use tracing-based regimes. Further, the IRS and Treasury Department are proposing regulations implementing section 362(e)(2) in a consolidated return context that require certain items

to be traced. See section H of this preamble.

The tracing regimes appropriate for those sections, however, do not present compliance and administrative concerns of the scope and magnitude presented by a tracing regime appropriate for *GU* repeal in the consolidated setting for at least three reasons.

To begin, both sections 382(h) and 1374 apply only for a limited period of time—five years in the case of section 382(h) and ten years in the case of section 1374—and so whatever burden is imposed is more limited in nature.

More importantly, sections 382(h) and 1374 are generally concerned only with the unrecognized appreciation and depreciation in a pool of assets held by a corporation on a single date—the date the C corporation converts to an S corporation or the date the S corporation acquires assets of a C corporation in the case of section 1374, and the date a corporation has an ownership change in the case of section 382(h). Similarly, section 362(e)(2) is only concerned net unrecognized depreciation in a pool of assets on the date of the transaction to which section 362(e)(2) applies. But the ability to circumvent *GU* repeal using the consolidated return provisions can be created any time the subsidiary has a redetermination event. Thus, any rule implementing *GU* repeal in the consolidated context, unlike rules implementing sections 362(e)(2), 382(h), and 1374, must trace the pool of assets held on all measuring dates, and not just the pool of assets held when subsidiary stock is acquired (or when assets are transferred).

Finally, unlike regulations implementing *GU* repeal, regulations implementing those other sections do not need to take into account the changing relationship between the basis in a particular share of stock and the unrecognized appreciation and depreciation in the corporation's assets.

For these reasons, any tracing-based regime appropriately implementing *GU* repeal in the consolidated setting would be much more expansive and complex, and therefore much less administrable, than the tracing regimes appropriately implementing sections 382(h) or 1374 (or proposed to implement section 362(e)(2)).

b. *Modified tracing.*

The IRS and Treasury Department considered several approaches that could be adopted to modify a tracing model by limiting the extent to which tracing would be required, in order to mitigate the administrative burdens of a pure tracing model.

i. *Exclusion for items attributable to after-acquired assets.*

Several commentators have suggested an approach, generally called the ''after-acquired asset exception,'' which allows taxpayers to identify assets acquired after the acquisition of subsidiary stock, in order to treat any gain realized on those assets as economic to the group. In general, all other items of gain and income would be deemed to be noneconomic, that is, attributable to the recognition of appreciation that was already reflected in basis. Stock loss would be allowed only to the extent that stock basis was attributable to the amounts deemed economic to the group. In response to concerns raised by the IRS and Treasury Department about redetermination events, the proposal was modified to provide that only assets acquired after the latest measuring date would be treated as giving rise to economic amounts. The principal advantage of this approach is that it identifies some untainted items with no need for valuation.

To begin, the IRS and Treasury Department are concerned with the burden and error potential presented by the need to identify all redetermination events. Moreover, because these events can occur with considerable frequency in the ordinary course of business, it is unlikely that a great deal of time will typically elapse between the last redetermination date and the date of a stock disposition. Thus, the amount of gain recognized on an asset acquired and sold during such periods of time will not likely be significant. As a result, it appears unlikely that this approach would afford much relief to taxpayers (in terms of administrative burden or reducing the disallowance amount) or to the government (in terms of administrative burden).

Furthermore, in order to implement *GU* repeal appropriately, such an approach must take into account not only gains, but also losses, recognized on after-acquired assets. But the identification of such losses imposes an additional administrative burden that taxpayers have no incentive to facilitate. In any event, a requirement to take losses into account could be easily manipulated by the timing and structuring of redetermination events.

ii. *Exclusion for items recognized after prescribed period of time.*

Several commentators also suggested a tracing-based approach that would apply to investment adjustments taken into account only during a prescribed period of time following the acquisition of a share. The chief advantage to this approach is that, regardless how burdensome the administration of the rule, it would not extend indefinitely.

Like the proposed after-acquired-asset approach, however, this approach would need to take redetermination events into account. The tracing period would then begin again on the date of each redetermination event. Thus, like the after-acquired-asset exception, this approach is unlikely to afford much relief to taxpayers (in terms of administrative or tax burden) or the government (in terms of administrative burden) because the period for tracing may never close.

Moreover, the IRS and Treasury Department are concerned that such an approach does not adequately respond to *GU* repeal. The reason is that noneconomic investment adjustments circumvent *GU* repeal whenever they are taken into account. Thus, the IRS and Treasury Department continue to believe that, in the absence of any direction from Congress, such as in the case of section 1374, imposing time limits on the implementation of *GU* repeal would be inappropriate. See TD 8294.

iii. *Exclusion for basis conforming acquisitions.*

Commentators have also suggested adopting a tracing-based approach that excepted any stock acquired in either a section 351 exchange or a qualified stock purchase for which an election was made under section 338. The rationale for this approach is that, by operation of statute, the basis of stock acquired in these transactions can reflect no unrecognized appreciation.

The IRS and Treasury Department agree that, in certain circumstances, the structure of a stock acquisition will, by operation of law, preclude the reflection of unrecognized appreciation in stock basis. The IRS and Treasury Department are concerned, however, that many acquisitions under section 351 or section 338 actually do not preclude the reflection of unrecognized asset appreciation in stock basis. For example, if subsidiary stock is acquired in a section 351 exchange in multiple transactions or by multiple transferors, as illustrated in *Example 7(b)* and *Example 7(c)*, respectively, the basis of the shares received can reflect unrecognized appreciation. Similarly, because only 80 percent of the stock of a subsidiary need be acquired to elect section 338 treatment, the basis of up to 20 percent of a subsidiary's shares may reflect unrecognized appreciation. Moreover, even if the initial acquisition precludes the reflection of unrecognized gain, once there is a redetermination event, the form of the acquisition no longer prevents the reflection of

unrecognized appreciation in stock basis. Thus, very few, if any, such transactions would ultimately qualify for this exception.

Thus, like the two previously described approaches to modified tracing, this approach has the inaccuracy and burden associated with identifying redetermination dates and a limited potential for relief to either taxpayers or the government.

iv. *Conclusions regarding modified tracing.*

Each approach considered would increase the administrative burden significantly without significantly increasing precision or relief. Accordingly, the IRS and Treasury Department are not proposing to adopt any of these approaches.

2. Hybrid Tracing-Presumptive Model: Asset Tracing.

The IRS and Treasury Department also considered a hybrid tracing-presumption approach that would identify all assets held when a share is acquired and on each redetermination date thereafter (again, the ''tainted assets'') and then presume all items of income, gain, deduction, and loss traced to those assets to be tainted. The intent was to design an approach that would be more precise than either a modified tracing or purely presumptive approach, while being more administrable than a pure tracing-based approach. The chief advantages of this approach are that it may enhance precision and, like the after-acquired asset exception described in section C.1.b.i of this preamble, may eliminate any need for valuation.

However, like the modified tracing approaches described above, this approach would require the identification of all redetermination events. Furthermore, it would require the identification of all assets held at the time of each such event and the tracing of those assets to particular investment adjustments. Thus, it presents even more complexity, burden, and expense than the modified tracing regimes considered. Furthermore, the IRS and Treasury Department are concerned that this approach could be easily abused, either by the manipulation of redetermination dates or the use of intercompany transactions to make valuation elective. (That is, taxpayers could selectively engage in intercompany transactions so that, in effect, some assets would be valued and not others.)

Finally, the IRS and Treasury Department are not convinced that the approach in fact significantly enhances the precision of a pure presumptive model in light of the fact that there is no actual valuation (and therefore no actual determination that there was any gain reflected in stock basis).

For all these reasons, the IRS and Treasury Department concluded that the potential advantages of this hybrid tracing-presumptive approach are outweighed by its disadvantages. Accordingly, the IRS and Treasury Department are not proposing to adopt this approach.

3. Presumption-Based Models

Recognizing that even the hybrid tracing-presumptive model would present significant burden and imprecision, the IRS and Treasury Department considered various presumptive models that, like the LDR, would eliminate all elements of tracing. A principal advantage of such approaches is that they are readily administrable by both taxpayers and the IRS. Thus, the rules can apply uniformly and consistently, with the result that similarly situated taxpayers will be similarly treated, increasing the overall fairness of the system. The elimination of any tracing element, however, increases the importance of limitations, where appropriate, on the nature and amount of items treated as noneconomic to a share. The approaches considered are discussed in this section C.3 and in section C.4 of this preamble.

a. *Basis disconformity under Notice 2004–58.*

One model considered was the basis disconformity model described in Notice 2004–58, presently available as a method to avoid disallowance under § 1.337(d)–2. As noted in section A.4 of this preamble, the basis disconformity model treats as built-in gain (within the meaning of § 1.337(d)–2) the smallest of three amounts. The first is the basis disconformity amount (which identifies the minimum amount of built-in gain that could be reflected in the share), the second is the net positive adjustment amount (which identifies the actual amount of stock basis attributable to the consolidated return system), and the total gains on property dispositions (which responds to the definition of the term built-in gain in § 1.337(d)–2). A significant advantage of this approach is that both taxpayers and the IRS find it readily administrable with information that taxpayers are already required to maintain.

However, the Notice 2004–58 basis disconformity model, because it is an interpretation of the current loss limitation rule in § 1.337(d)–2, reflects limitations that inhibit the extent to which the rule addresses the circumvention of *GU* repeal and promotes the clear reflection of group income. For example, the model did not account for the consumption of unrecognized appreciation reflected in stock basis (the ''wasting asset'' problem). Thus, if unrealized gain reflected in stock basis was recognized as income (for example through a lease, instead of a disposition of the property), the resulting noneconomic stock loss was not disallowed under the current rule. In addition, the model did not address the problem of basis disparity. (See for example, *Example 4.*)

A more significant concern, however, is that the basis disconformity approach is underinclusive in that it can only address noneconomic stock loss to the extent of net appreciation reflected in stock basis, which is, by its nature, reduced by unrecognized depreciation reflected in basis. As a result, a potentially significant amount of noneconomic stock loss remained unaddressed, particularly in deconsolidating dispositions of subsidiary stock.

Example 9. Unrecognized loss reflected in stock basis. P purchases all the outstanding stock of S for $150. At the time, S owns one asset, A1, with a basis of $25 and value of $100, and one asset, A2, with a basis of $100 and a value of $50. S sells A1 to a nonmember for $100 and recognizes a $75 gain, which the P group takes into account. Under the investment adjustment system, P increases its basis in the S stock by $75, to $225, to reflect the $75 taken into account by the group. If P then sells the S stock for $150 (its fair market value), P will recognize a $75 loss. Under the basis disconformity approach, only $25, the excess of P's S stock basis ($225) over S's net inside asset basis ($100 cash plus S's $100 basis in A2, or, $200), of the $75 gain is treated as a noneconomic investment adjustment. Thus, although the entire loss is noneconomic, only $25 of that loss would be disallowed under this approach.

b. *Modified basis disconformity.*

The IRS and Treasury Department considered several modifications to the basis disconformity model, all of which were intended to address the underinclusivity of that model. One approach suggested by commentators would mitigate the wasting assets concern by first, for a prescribed period of time, treating the sum of all property gains and, up to the disconformity amount, all income as noneconomic (and thus included in the disallowance amount). After the prescribed time, all gains and income would be treated as noneconomic, but only to the extent of the disconformity amount. Other approaches considered reflected variations on this suggestion.

The IRS and Treasury Department recognize that the model described, and

any similar models, would be readily administrable, but are concerned that such a model would not adequately preserve the group's ability to deduct economic loss sustained by the group. The reason is that stock loss could be attributable to economic investment adjustments (adjustments attributable to the recognition of items of income and gain that were not reflected in stock basis) that were followed by economic loss (attributable to a decline in the value of the subsidiary's assets). For example, assume that P contributed an asset to S (basis and value of $10), the asset appreciated and S sold it for $100 (recognizing a $90 gain that increased P's basis in S stock to $100), S reinvested the $100 in an asset that declined in value to $10, and P then sold the stock for $10. P would recognize a $90 loss that would be disallowed because S had a $90 gain on the disposition of an asset. Yet the entire loss was an economic loss. As a result, the IRS and Treasury Department are concerned that the result in *Rite Aid* (that the group receive the tax benefit of its economic loss) would not be adequately protected.

Ultimately, the IRS and Treasury Department concluded that the basis disconformity model in Notice 2004–58 would not be modified, but that elements of the model would be incorporated in a new approach.

4. The Presumptions and Simplifying Conventions Adopted in These Proposed Regulations

a. *Loss limitation model.*

As discussed in section A.2 of this preamble, when the IRS and Treasury Department rejected a tracing approach in favor of the presumptive approach in 1990, the decision was made to balance the use of irrebuttable presumptions by adopting a loss limitation model. Under a loss limitation model, losses attributable to noneconomic investment adjustments are disallowed, but gain reduction (or elimination) attributable to noneconomic investment adjustments is not. The IRS and Treasury Department believed that allowing noneconomic gain reduction not only balanced the benefits and burdens of the presumptive approach, it also provided the considerable advantage of reducing gain duplication in consolidated groups.

Example 10. Noneconomic gain reduction, elimination of gain duplication. P purchases all the stock of S for $150 when S holds one asset, A1, with a basis of $100. S sells A1 for $150, recognizing $50 of gain. S uses the $150 proceeds from the sale of A1 to purchase A2. The value of A2 appreciates to $200, and P then sells its S stock for $200.

If the investment adjustment system did not adjust stock basis for items attributable to appreciation reflected in basis, P's basis in S stock would remain $150 and, when P sells the S stock, P would recognize a gain of $50 (reflecting the $50 appreciation in A2). When S sells A2, S would recognize the same $50 of economic gain a second time. However, because P's basis in S is increased by the $50 gain recognized on the sale of A1, P will recognize no gain or loss on its sale of S stock. The gain on A2 is therefore taxed once, when there is a recognition event with respect to A2.

These proposed regulations adopt a loss limitation model for the same reasons such a model was adopted in 1990, in the regulations promulgated under section 337(d) and the LDR (to balance the use of a presumptive approach).

However, the LDR, as well as §§ 1.337(d)–1 and 1.337(d)–2, applied the loss limitation model by disallowing loss recognized on the disposition of subsidiary stock and reducing basis on the deconsolidation of subsidiary stock. The IRS and Treasury Department recognize that the effect of a loss disallowance rule can be achieved by applying a basis reduction rule immediately before the disposition of loss stock. Modifying the loss limitation model to reduce basis in all cases simplifies the structure of the rule by avoiding the need for two distinct rules.

b. *Amount of basis reduction.*

The IRS and Treasury Department considered two basic approaches to determining the amount of basis reduction. One would be determined with reference to a share's adjusted basis and the other would be determined with reference to the disconformity between the share's basis and its allocable portion of the subsidiary's attributes.

i. *Adjusted purchase price cap.*

Under this approach, the basis of a transferred loss share would be reduced by the amount that the subsidiary's items increased the share's basis, but only to the extent of the adjusted purchase price. For purposes of this rule, the adjusted purchase price would be defined as the holder's original basis in the stock, adjusted to take into account all redetermination events. The rationale for this rule is that the adjusted purchase price represents the maximum amount of unrecognized gain that could be reflected in stock basis. However, this cap does not establish that, in fact, there was any appreciation reflected in stock basis and, therefore, it could prove to be substantially overinclusive.

The IRS and Treasury Department considered several rules that could be combined with the adjusted purchase price cap in order to mitigate its potential for overinclusiveness. One approach would combine this cap with the asset tracing model described in this preamble. Another approach would combine this cap with rules that treat income items as included in the basis reduction amount under a different rate (for example, using a declining percentage over time) or amount (for example, using an annual income cap, perhaps based on a percentage of the gross items). The IRS and Treasury Department ultimately concluded that the limitations either imposed unacceptable burdens (because of the need to identify redetermination dates and trace assets) or did not significantly increase the theoretical soundness of the approach, and that the potential for overinclusiveness prevented the approach from responding adequately to the Congressional mandate to preserve the result in *Rite Aid.*

ii. *Modified adjusted purchase price cap.*

To address the potential overinclusivity of the adjusted purchase price cap, the IRS and Treasury Department considered modifying the rule by reducing the cap by the basis of any tainted assets sold at a gain. The rationale for this modification is that the maximum potential amount of appreciation reflected in basis is reduced by the basis of tainted assets as they are sold. While this modification reduced the potential for overinclusiveness in a theoretically sound manner, it exacerbated the administrative difficulties by requiring not only the identification of all redetermination dates, but also of all assets held on such dates. Moreover, the IRS and Treasury Department ultimately concluded that the basic premise (that the limitation represented the maximum possible noneconomic income) remained an inadequate response to the Congressional directive that the group be allowed to deduct its economic loss.

iii. *Disconformity cap.*

This model would also reduce basis by the amount that the subsidiary's items increased the share's basis, but only to the extent of the disconformity amount. For this purpose, the disconformity amount would generally be the same as the basis disconformity amount described in Notice 2004–58. The rationale for this limitation is that the disconformity amount identifies the minimum amount of unrecognized appreciation actually reflected in the basis of a share of subsidiary stock at the relevant time. Thus, although the

amount of such appreciation could actually be considerably greater (as in *Example 9*), and could even be equal to the adjusted purchase price (assuming a subsidiary was purchased with no basis in any of its assets), it is not lower. Not only does the disconformity cap have the advantage of identifying an amount of appreciation actually reflected in stock basis, it allows for the computation of that amount with information taxpayers are already required to know. Additionally, it avoids the need to identify redetermination events because, by computing disconformity immediately before a transfer, this approach automatically takes the effect of all such events into account.

iv. *Modified disconformity cap.*

Because the use of a disconformity cap raises significant potential for underinclusivity, as illustrated in *Example 9,* the IRS and Treasury Department considered increasing the disconformity cap by the amount of unrecognized loss on any tainted assets held by the subsidiary. The rationale for this increase is that those losses could prevent an equal amount of recognized tainted appreciation from being treated as noneconomic. Thus, the rule would not undermine the theoretical foundation of the disconformity cap.

However, this approach would require the identification of redetermination dates, as well as the identification and valuation of all assets held on the last such date. Recognizing the imprecision inherent in this approach, the IRS and Treasury Department considered increasing the disconformity cap by only a discounted portion of those unrecognized losses. The IRS and Treasury Department concluded that this approach would introduce burden and imprecision much greater than the potential benefit obtained by increasing the cap on basis reductions, at least in the majority of commercially typical cases.

The IRS and Treasury Department also considered implementing this modification not as a general rule, but only as an anti-abuse rule, so that it would apply only in circumstances that indicated a significant amount of tainted income or gain might be sheltered by unrecognized loss on tainted assets. For example, such a rule could require an increase to the disconformity cap if there was a significant loss in stock, if the subsidiary recognized significant gain shortly before stock sale, or if the stock was held for only a short period of time before it was sold. The IRS and Treasury Department were concerned, however, that the increased uncertainty and burden introduced by such an approach could not be justified in light of the protections against manipulation that exist in the Code and other rules of law. For example, see sections 269, 362(e)(2), and 482, as well as various anti-avoidance and anti-abuse provisions in the regulations, including these proposed regulations.

v. *Disconformity cap with duplication rule.*

In considering the structural potential for underinclusivity in the disconformity cap, the IRS and Treasury Department observed that the recognition of noneconomic gains in excess of the disconformity amount causes the subsidiary's unrecognized losses to be expressed in stock basis. The facts of *Example 9* illustrate this point. In that example, P purchased S for $150 when S held A1 (basis $25, value $100) and A2 (basis $100, value $50). S sold A1 and recognized $75 gain, which increased P's basis in S to $225. P then sold the S stock and recognized a $75 loss. At the time of the stock sale, S's net asset basis was $200 (the $100 received for A1 and the basis of A2), which exceeds the value of the stock by $50. Thus, the basis disconformity amount is $25 (the excess of the $225 stock basis over the $200 net asset basis), and so (although there is a $75 recognized gain), only $25 is disallowed. However, at that point, S's $200 net asset basis exceeds S's $150 value by $50. The $50 of unrecognized loss on A2 is reflected in both P's basis in S stock and S's basis in its assets. That is, the loss on A2 has been duplicated. As a result, the underinclusivity of the disconformity cap can be measured and addressed as duplicated loss.

The IRS and Treasury Department recognize that addressing this loss as a duplicated loss allows taxpayers to accelerate the benefit of a subsidiary's unrecognized losses (that is, obtain the benefit of the loss without a recognition event with respect to its loss assets). However, this approach allows taxpayers the benefit of their economic loss while limiting any arguably excessive benefit to the ability to accelerate inside loss. In the end, loss duplication is prevented. (The IRS and Treasury Department have long recognized that it is appropriate for a group to offset recognized built-in gains and losses, see §§ 1.337(d)–1 and 1.337(d)–2, as promulgated in 1990 and again as temporary and final regulations following the *Rite Aid* decision).

vi. *Conclusion.*

In light of the concerns raised by any method that would reduce basis beyond the disconformity amount, the IRS and Treasury Department have concluded that the amount of basis reduction should be limited to the disconformity amount and that combining the disconformity cap with a loss duplication rule to address its underinclusivity provides the most appropriate balancing of interests. Under this approach, the group's economic loss is appropriately protected and neither the group nor its members will receive more than one benefit for the subsidiary's economic loss.

c. *Items applied to reduce basis.*

i. *Character of items applied to reduce basis.*

In general, the IRS and Treasury Department have concluded, and commentators have generally agreed, that all gains on property dispositions, as well as various gain equivalents, should be fully available to reduce basis under a presumptive rule.

Questions arose, however, regarding whether income items should also be fully available to reduce basis. The reasons for these questions center on the general difficulty of tracing income items (which is limited in the best of circumstances) and the observation that the likelihood of a particular income item being attributable to tainted appreciation generally decreases over time. Accordingly, the IRS and Treasury Department considered several proposals to limit both the amount and the rate of inclusion for income items.

All of these approaches would segregate income that could be traced to particular appreciation reflected in stock basis and treat those amounts in the same manner as items of gain. The net income remaining would be applied to reduce basis according to prescribed limits. For example, one proposal would apply net income to reduce basis for a prescribed period of time following a measuring date, but, after that time, net income would be so applied only according to a declining percentage.

The IRS and Treasury Department are concerned, however, that the approaches considered could be readily manipulated, for example, by converting gain into income that cannot be readily traced to particular assets or by delaying the recognition of income items until after the applicable time period. Therefore, any such rule would inappropriately influence the structure of business transactions and, at the same time, fail to provide adequate protection for *GU* repeal. In addition, the need to account for redetermination dates would add complexity and diminish the potential relief afforded under any such approach. Moreover, the IRS and Treasury Department identified no theoretical basis for any particular rule and were concerned that the increased

precision may be more perceived than real.

ii. *Capital transfers.*

Adjustments to reflect transfers of capital, whether contributions or distributions, are not adjustments attributable to the recognition of appreciation or depreciation. Accordingly, these adjustments do not increase or decrease the extent to which stock basis is noneconomic or facilitates the circumvention of *GU* repeal. For that reason, such amounts are not taken into account in determining the extent to which subsidiary stock basis is subject to reduction.

Commentators have suggested that the nature of an intercompany cancellation of indebtedness is similar to that of a capital contribution and thus should not be taken into account in determining basis reduction. The IRS and Treasury Department recognize that this may often be the case, but are concerned that, under some circumstances, this may not be the case. Because it will be administratively very difficult to identify situations in which intercompany cancellation of indebtedness is not similar to a capital contribution, and to distinguish intercompany cancellation of indebtedness from other arguably similar cases, these proposed regulations treat items related to intercompany cancellation of indebtedness like all other items of income or loss. However, the IRS and Treasury Department continue to study the issue and invite further comments.

d. *Netting of items from different tax periods.*

Under the LDR, there was no cross-year netting of investment adjustments. Positive investment adjustments were taken into account in determining the loss disallowance amount, negative investments were not. The IRS and Treasury Department have reconsidered whether items from different tax periods should be considered together in determining basis reduction.

The IRS and Treasury Department recognize that the particular circumvention of *GU* repeal at issue here is a product of the manner in which the investment adjustment system adjusts stock basis to reflect a subsidiary's amounts that are taken into account by the group. Thus, IRS and Treasury Department have concluded that the appropriate measure of the concern must take into account the net extent to which the basis of a share has been increased or decreased by the investment adjustment system. Whether a loss is taken into account in the same year in which a gain is taken into account or in a separate year does not change the net effect of the investment adjustment system. Thus, unlike the LDR, these proposed regulations allow netting of all investment adjustments made to a share for all periods.

e. *Summary and conclusions.*

Only a presumptive approach can eliminate the substantial administrative burdens imposed by the tracing-based and hybrid regimes discussed above. As a result, only a presumptive approach can be applied consistently among taxpayers and thus achieve the overall fairness necessary to these regulations. Importantly, if presumptions are rebuttable, the administrative burdens associated with a tracing system are not avoided. In fact, they are exacerbated, because taxpayers will feel it necessary to be prepared to establish, and the government will then need to be prepared to examine, returns using both systems. Accordingly, the proposed regulations reflect a presumptive approach that does not permit the rebuttal of its operating presumptions. As noted in section A.5 of this preamble, Congress has specifically sanctioned the use of presumptions and other simplifying conventions to address the circumvention of *GU* repeal.

To balance the use of irrebuttable presumptions, the proposed regulations adopt several provisions that are intended to enhance their overall fairness and theoretical soundness. First, the proposed regulations adopt the disconformity amount as the maximum amount of potential stock basis reduction. The reason, as discussed, is that only the disconformity amount both establishes the fact that the taxpayer had unrealized gain reflected in stock basis and identifies the minimum amount of such gain. Second, the proposed regulations include all items taken into account, from all years, in the determination of the basis reduction amount. Thus, basis is not reduced for certain amounts (such as capital transfers) that cannot be attributable to noneconomic investment adjustments. In addition, by presuming all items of income, gain, deduction and loss as attributable to appreciation or depreciation reflected in basis, the proposed regulations avoid the administrative and other concerns inherent in various tracing and hybrid approaches. Moreover, by presuming all items to be reflected in basis, the benefits and burdens inherent in the use of irrebuttable presumptions are fairly balanced between taxpayers and the government. Presuming all items of income and gain are noneconomic favors the fisc, while presuming all items of deduction and loss are noneconomic favors taxpayers.

D. Loss Duplication

The IRS and Treasury Department continue to believe that a group's income is distorted when the group enjoys more than one tax benefit from an economic loss. Further, the IRS and Treasury Department believe that a subsidiary's use of a group loss in a separate return year, after the group has already recognized the benefit of the loss, distorts the subsidiary's separate year income.

Moreover, the IRS and Treasury Department do not believe that the manner or order in which a group takes its losses into account affects the extent to which loss duplication is inappropriate. Thus, loss duplication is inappropriate and must be addressed whether arising in situations like that illustrated in *Example 3* (loss reflected in both stock and assets) or in *Example 5* (duplication attributable to disparate stock basis). In addition, loss duplication is inappropriate and must be addressed whether the group chooses to recognize loss first as an inside loss, on the subsidiary's assets and operations (which is addressed by § 1.1502–32), or as a stock loss (which is currently addressed, at least partially, by § 1.1502–35).

Accordingly, the IRS and Treasury Department have returned to a fundamental premise of the LDR and again concluded that a loss duplication rule that operates without regard to members' continued affiliation is a necessary complement to the investment adjustment system. The IRS and Treasury Department have also concluded that such a rule must also address the potential for loss duplication presented when loss is disproportionately reflected in the bases of individual shares.

Importantly, as noted in section A.5 of this preamble, Congress has indicated that it, too, views the prevention of loss duplication, including in deconsolidating stock dispositions, as an area that is appropriately addressed by regulation. See H.R. Conf. Rep. No. 108–755 at 652.

Therefore, the IRS and Treasury Department have reviewed the current rules and considered alternative approaches to address the duplication of loss.

1. Reconsideration of § 1.1502–35

Loss duplication is currently addressed in § 1.1502–35. That rule generally applies whenever there is a disposition of loss shares of subsidiary stock. To address the loss duplication problems arising when loss is disproportionately reflected in stock

basis, the rule first redetermines members' bases to reduce that disparity (to address the problems illustrated in *Example 5*). Different rules apply depending on the subsidiary's status as a group member following the stock disposition. If the subsidiary remains a member, the full blending rule of § 1.1502–35(b)(1) applies and all members' bases in shares of the subsidiary's stock are combined and then allocated evenly to preferred (to value) and then to common (equally). If the subsidiary ceases to be a member, the basis redetermination rule of § 1.1502–35(b)(2) applies and members' bases are redetermined to reduce loss on all members' shares. However, this rule only redetermines basis to the extent of items of deduction and loss included in negative adjustments applied to nonloss shares. As under the full blending rule, redetermination under this rule first reduces or eliminates loss on preferred shares and then equalizes members' bases in common shares.

The potential for loss duplication following the redetermination of members' bases is addressed only if the subsidiary remains a member of the group. In that case, stock loss (to the extent of loss duplication) is suspended, the suspended loss is reduced as the subsidiary's items of deduction and loss are taken into account, and any suspended loss remaining when the subsidiary ceases to be a member is allowed at that time. The regulation does not address the duplication of loss when the subsidiary ceases to be a member, other than to prevent the reimportation of duplicated losses back into the group.

The IRS and Treasury Department understand that certain administrability concerns have arisen under § 1.1502–35. For example, taxpayers have commented that the rules relating to the suspension of loss in nondeconsolidating dispositions and the treatment of reimported losses present substantial compliance issues. The experience of the IRS is consistent with those comments.

Moreover, the IRS and Treasury Department have reconsidered the appropriateness of allowing subsidiaries to duplicate group losses after the period of consolidation. Under this approach, former members can use group losses (that have already been used by the group) to offset their separate year income. This duplicative use of group losses distorts the former member's separate income. Under section 1502, consolidated return regulations are directed to promote the clear reflection of not only the income of a group, but also of its members, including former members. Accordingly, as in 1990, the IRS and Treasury Department have concluded that a group loss, once used by the group, should not be available to a former member for a second, duplicative use outside the group.

For these reasons, the IRS and Treasury Department propose to remove § 1.1502–35 and replace it with a more easily administered and more comprehensive approach to addressing loss duplication among members of a consolidated group.

2. Other Methods Considered for Addressing Loss Duplication

As discussed in section D of this preamble, the IRS and Treasury Department have concluded that loss duplication is an inappropriate distortion of income (of either a group or its members, including former members) regardless of the subsidiary's status after a transfer of its stock. Accordingly, these proposed regulations address loss duplication in both nondeconsolidating and deconsolidating stock transfers. Several approaches were considered.

a. *Disallowance of stock loss.*

As a general matter, the IRS and Treasury Department believe that disallowing duplicative stock loss better implements single entity principles because it results in the recognition of the subsidiaries' economic gain or loss on its assets and operations, instead of on its stock. However, to preserve the result in *Rite Aid*, stock loss could only be disallowed for nondeconsolidating transfers and additional rules would be necessary to address both the loss remaining in the group and the duplication of loss in deconsolidating transfers (which could not be subject to the loss disallowance rule). Thus, a rule implementing this approach would need to include a provision comparable to § 1.1502–35(c), which taxpayers and the IRS have found to present significant compliance issues. In addition, this approach would need to include a provision to address loss duplication in deconsolidating transfers.

b. *Loss duplication accounts.*

The IRS and Treasury Department also considered an approach that would allow stock loss, but identify the amount of loss duplication and create a suspended account to limit the deductibility of items as they are taken into account. One advantage of this approach is that it only requires one set of rules to address both nondeconsolidating and deconsolidating transfers. This approach also has the advantage of increasing the precision in identifying (and disallowing) losses that are actually duplicated.

However, unless the rule were to use presumptions to treat items as chargeable against the loss duplication account, it would present considerable tracing issues. In addition, this approach raises administrability issues comparable to those associated with the loss suspension regime in § 1.1502–35(c). These difficulties are exacerbated by the need to have the account follow the subsidiary, possibly through subsequent acquisitions, until the account is eliminated.

The IRS and Treasury Department are also concerned that, because this approach would reduce or eliminate duplication only when inside losses were recognized, taxpayers could avoid the effect of the rule by waiting until assets appreciated before disposing of them. To mitigate this concern, the rule could require the subsidiary to take into account the duplication account, either ratably over time or at some specified time, but this could give rise to income in the absence of any loss duplication.

c. *Attribute reduction.*

The IRS and Treasury Department also considered a presumptive rule that would identify the extent of duplicated loss and then reduce the subsidiary's attributes by that amount. This approach, like the loss duplication account, has the advantage of needing only one set of rules to govern both deconsolidating and nondeconsolidating transfers. It has the added advantage of being similar to regimes that are already familiar to taxpayers, such as the attribute reduction rules of sections 108 and 1017, and § 1.1502–28. Although attribute reduction could be based on valuation, like the rule in section 362(e)(2), the IRS and Treasury Department believe that mandatory valuation would present a significant administrative burden and expense for both taxpayers and the IRS.

d. *Conclusions.*

The IRS and Treasury Department have concluded that the complexity, administrative burden, and expense of the loss disallowance and the loss duplication account approaches outweighed their respective advantages. Accordingly, these proposed regulations adopt an attribute reduction rule. The IRS and Treasury Department recognize that the attribute reduction approach allows taxpayers to accelerate economic losses of the subsidiary, but believe that this approach best preserves the result in *Rite Aid* while addressing loss duplication. In general, the approach adopted operates as an irrebuttable presumption, to avoid the burden of

mandatory valuation in all cases, but taxpayers continue to have several mechanisms available to structure their transactions to permit valuation (for example, by using actual or deemed asset sales).

3. Gain Duplication

Notwithstanding the conclusions regarding duplication of loss, for the reasons set forth in the LDR preambles, the IRS and Treasury Department have tentatively concluded that adequate protections, and the incentive to use them, already exist to prevent the duplication of gain. See TD 8294, TD 8364 and TD 8984. For example, see sections 332, 336(e) (which is the subject of another current guidance project), and 338(h)(10). Accordingly, the duplication of gain is not addressed in these proposed regulations, except as a result of the adoption of a loss disallowance model. The IRS and Treasury Department continue to study the issues, however, and invite further comment. See section J of this preamble for further discussion of the issues on which comments are requested.

E. Noneconomic and Duplicated Loss From Investment Adjustment System

For all the reasons discussed in this preamble, IRS and Treasury Department believe that the approaches to noneconomic and duplicated loss that are adopted in these proposed regulations represent the best approach to the (original) noneconomic and duplicated loss concerns described in sections B.1 and B.2 of this preamble. However, those rules alone do not adequately address the problem of noneconomic and duplicated loss attributable to investment adjustments applied to shares of stock with disparate bases. This is the concern described in section B.3 of this preamble and illustrated in *Example 4* and *Example 5*, as well as *Example 7(b)* and *Example 7(c).*

The IRS and Treasury Department believe it is essential to address this concern. One reason is that stock basis would be inappropriately eliminated when, in cases like *Example 4*, there is noneconomic loss on one share because appreciated assets were contributed to a corporation in exchange for other shares. In those cases, the noneconomic loss should not be allowed, but a rule that only prevents that loss does not address the problem that there is insufficient basis on the shares received in the exchange. The result would be noneconomic gain on the sale of those shares. An equally important reason is that loss could otherwise be duplicated when, in cases like *Example 5*, loss is disproportionately reflected in the basis of some shares. Although regulations could prevent duplication in such cases (by eliminating inside loss to the full extent of duplicated stock loss), allowing a deduction for disproportionate stock loss in such cases permits the acceleration of a disproportionate amount of inside loss. To the extent that loss is disproportionately reflected in the basis of an individual share, acceleration is generally unwarranted and should be prevented to the extent possible. Accordingly, the IRS and Treasury Department have considered various approaches to mitigating these effects.

1. Revise Investment Adjustment System To Adopt a Tracing Approach

The IRS and Treasury Department recognize that one approach to this problem would be to revise the investment adjustment system so that it would allocate subsidiaries' items of income, gain, deduction, and loss to their shares in accordance with the actual reflection of those items in the each share's basis. This approach would be similar to the section 704(c) regime applicable to partnerships. However, this approach is a tracing model and, as discussed in section C of this preamble, the IRS and Treasury Department do not believe that tracing is administrable in the consolidated setting.

Moreover, as noted above, the IRS and Treasury Department continue to believe that the presumptive-based rules of § 1.1502–32 are not only administrable, but appropriate in the vast majority of cases because typically subsidiary stock is common stock owned entirely by members with uniform bases. Where subsidiaries have issued preferred stock, it is generally section 1504(a)(4) stock. In addition, the investment adjustment system contains some guidance for situations that do not reflect the general assumptions on which the rules are based (*for example*, the cumulative redetermination rule in § 1.1502–32(c)(4)). In such cases, tracing would be unnecessary. Moreover, the IRS and Treasury Department do not believe that typical commercial transactions generally require groups to alter a subsidiary's capital structure in a manner that would require tracing. Accordingly, the IRS and Treasury Department are not considering revising the investment adjustment system to implement a tracing regime.

2. Presumptive Approaches To Reduce Basis Disparity

The two presumptive approaches considered to reduce basis disparity were a full blending rule similar to that in § 1.1502–35(b)(1) and a rule that would redetermine investment adjustments made under § 1.1502–32, similar to the rule in § 1.1502–35(b)(2).

a. *Full basis blending.*

Under the full basis blending approach, all members' bases are aggregated and then allocated among members' shares in a manner that results in the elimination of loss on preferred shares and of basis disparity on all other shares, at least within each class. As a result, members' bases are aligned with the operating premises of the investment adjustment system.

Full basis blending not only mitigates the effects of previous noneconomic investment adjustments, addressing the concern illustrated in *Example 4* and *Example 5(a),* it also prevents the acceleration of disproportionate amounts of unrecognized loss, addressing the concern illustrated in *Example 5(b).*

A full basis blending rule is, however, a significant departure from the rules generally applicable under the Code. Commentators have suggested that this departure from generally applicable law may be more significant than is warranted in light of the extent to which the concerns can be addressed under the investment adjustment redetermination approach described in this preamble.

b. *Redetermination of Investment Adjustments Previously Made to Stock Basis.*

The investment adjustment redetermination approach is less a departure from Code provisions as it is a departure from the general operation of § 1.1502–32. In general, this approach would reallocate investment adjustments previously applied to members' bases in subsidiary stock with the goal of reducing, to the greatest extent possible, the disparity in members' bases in subsidiary stock. Thus, like the full blending approach, this approach would bring members' bases closer into alignment with the assumptions underlying the investment adjustment system. However, it would do so to a more limited extent than the full blending rule and in a manner that is less of a departure from general Code rules.

i. *Recomputation of individual investment adjustments.*

Presently, § 1.1502–35(b)(2) addresses duplicated loss by redetermining investment adjustments when there is a deconsolidating disposition of subsidiary stock. To achieve the greatest reduction in basis disparity possible, § 1.1502–35(b)(2) in effect deconstructs investment adjustments in order to remove negative items (that is, items of deduction and expense) from

adjustments to the bases of gain shares and then apply those items to reduce members' bases in loss shares. Taxpayers have raised concerns with the complexity and administrability of this approach. The IRS has observed compliance and audit difficulties with this approach.

Accordingly, the IRS and Treasury Department have reconsidered whether this general approach, redetermining investment adjustments, could be adopted in a simpler form. The principal method considered was a presumptive reallocation of entire investment adjustments (exclusive of distributions), instead of the individual items that comprise them. The approach is similar to that used in the cumulative redetermination rule of § 1.1502–32(c)(4). A significant advantage to this simplified approach is that it is readily administered with information that taxpayers are already required to know (§ 1.1502–32 already requires taxpayers to determine investment adjustments exclusive of distributions).

The IRS and Treasury Department recognize that this general approach, in whichever form adopted, does not address the acceleration illustrated in *Example 5(b)* to the extent that full blending would. However, this approach is less disruptive to the general determination of basis.

ii. *Reallocations to loss shares that are not transferred.*

Presently, § 1.1502–35(b)(2) reallocations can result in the reduction of any member's basis in a loss share of subsidiary stock. The IRS and Treasury Department have reconsidered whether reallocated investment adjustments should be applied to reduce loss on shares that are not transferred in the transaction.

The IRS and Treasury Department have concluded that reallocating investment adjustments to reduce the basis of only transferred loss shares better implements the loss disallowance model. The reason is that this approach allows subsidiary stock basis to remain intact until there is a taxable disposition, deconsolidation, or worthlessness of the share, thereby permitting that basis to enjoy the full protection of subsequent appreciation as long as it remains in the group and otherwise subject to the consolidated return system. This approach has the added benefit of affording the maximum potential to eliminate disparate reflection of loss on transferred shares because all the reallocations are directed to transferred shares. As a result, this approach reduces the amount of loss that can be accelerated (as illustrated in *Example 5(b)*).

iii. *Reallocations of positive and negative investment adjustments.*

Under the basis redetermination rule in § 1.1502–35(b)(2), only negative items are reallocated. However, the sole purpose of § 1.1502–35, and thus the basis redetermination rules in § 1.1502–35(b), is to address the duplication of loss. (The full blending approach of § 1.1502–35(b)(1) addresses noneconomic loss attributable to basis disparity as well as loss duplication, but only incidentally as a result of its broad operation.) The IRS and Treasury Department believe that, although it is appropriate for a rule addressing only loss duplication to reallocate just negative items (or negative investment adjustments), a rule addressing both noneconomic and duplicated loss must reallocate both negative and positive items (or investment adjustments). As illustrated in *Example 4* and *Example 5*, reallocations of both positive and negative amounts are necessary to prevent the noneconomic and duplicated stock loss that results from the disparate reflection of unrecognized gain and to do so without causing inappropriate results to taxpayers (specifically, noneconomic gain).

For the foregoing reasons, the IRS and Treasury Department have concluded that the reallocation of both positive and negative adjustments is appropriate and necessary to balance the use of a presumptive system. Accordingly, these proposed regulations provide for the reallocation of both positive and negative investment adjustments to minimize the potential over- and under-application of the noneconomic and duplicated loss rules.

Explanation of Provisions

F. Explanation of the Proposed Regulations

1. Overview

The proposed regulation consists of three principal rules that apply when a member transfers a loss share of subsidiary stock. The first rule redetermines members' bases in subsidiary stock by reallocating § 1.1502–32 adjustments (to adjust for disproportionate reflection of gains and losses in the bases of members' shares). The second rule reduces members' bases in transferred loss shares (but not below value) by the net positive amount of all investment adjustments applied to the bases of those shares, but only to the extent of the share's disconformity amount (to address noneconomic stock loss). The third rule reduces the subsidiary's attributes to prevent the duplication of a loss recognized on, or preserved in the basis of, transferred stock.

The three rules generally apply in the order described. If members transfer stock of multiple subsidiaries in one transaction, the basis redetermination and basis reduction rules apply first with respect to transfers of loss shares of stock of the subsidiaries at the lowest tier and then successively to transferred shares at each next higher tier. These rules are not applied at any tier until any gain or loss recognized (even if disallowed) on lower-tier transfers and any items resulting from lower-tier adjustments (whether required by the basis redetermination or basis reduction rule or otherwise) are taken into account and reflected in stock basis. After the basis redetermination and reallocation rules have applied with respect to all transferred loss shares, the attribute reduction rule applies with respect to the highest-tier transferred loss shares. The attribute reduction rule then applies successively with respect to transferred loss shares at each next lower tier.

For purposes of these proposed regulations, a transfer of stock includes any event in which gain or loss would be recognized (but for these proposed regulations), the holder of a share and the subsidiary cease to be members of the same group, a nonmember acquires an outstanding share from a member, or the share is treated as worthless. This rule allows the proposed regulations to prescribe one integrated set of rules that implement a loss limitation approach and that can be applied to all loss shares, regardless of the event giving rise to the application of the section.

2. The Basis Redetermination Rule

When a member transfers a share of subsidiary (S) stock and, after the application of all other provisions of the Code and regulations, the share is a loss share, this rule subjects all members' shares of S stock to redetermination.

Under the basis redetermination rule, investment adjustments (exclusive of distributions) that were previously applied to members' bases in S stock are generally reallocated in a manner that, to the greatest extent possible, first eliminates loss on preferred shares and then eliminates basis disparity on all shares. The rule moves both positive and negative adjustments, and so addresses both noneconomic and duplicated losses. Because it generally requires adjustments to be made to reduce disparity, it brings members' bases closer in line with the fundamental principals underlying the investment adjustment system. As a result, there is less likelihood for later

noneconomic or duplicated loss attributable to the investment adjustment system.

The rule operates by first removing positive investment adjustments (up to the amount of the loss) from the bases of transferred loss shares. Then, to the extent of any remaining loss on the transferred shares, negative investment adjustments are removed from shares that are not transferred loss shares and applied to reduce the loss on transferred loss shares. The positive adjustments removed from the transferred loss shares are allocated and applied only after the negative items have been reallocated. The reason is to preserve the most flexibility possible in reallocating positive adjustments, in order to minimize disparity to the greatest extent. Thus, the operation of these rules has the effect of removing basis from transferred loss shares and using it to reduce disparity in members' bases in S shares.

Redetermination is limited in several respects. First, because the premise of the rule is that the original allocation of an item did not represent the most economically appropriate allocation of the item, redeterminations under the rule are limited to allocations of investment adjustments that could have been made at the time an item was taken into account. Accordingly, no adjustments can be reallocated to shares that were not held by members in the year taken into account, as members' shares would not have been able to receive those adjustments in the original allocation.

A related limitation on reallocation is that an investment adjustment cannot be reallocated except to the extent that the full effect of the reallocation can be accomplished. Thus, an investment adjustment can not be reallocated to the extent the resulting basis has previously been taken into account (including at a higher tier). This rule guards against double benefits from an adjustment (for example, by not allowing positive adjustments to be moved from, or negative adjustments be moved to, shares after the item would have affected basis that was taken into account in recognizing gain or loss). It also guards against the loss of a benefit (for example, by not allocating positive adjustments to previously transferred shares that can no longer benefit from the basis).

The principle purpose of the rule is to reduce loss on transferred shares. However, because its secondary purpose is to decrease disconformity to the greatest extent possible, in certain fact patterns, the application of the rule will actually increase loss on some shares. Importantly, in no fact patterns will the application of the rule create gain on shares. Overall, the rule has no effect on the aggregate amount of gain or loss on members' bases in subsidiary stock.

In the basis reallocation rule, and in several other provisions of the proposed regulations, there is a direction to allocate items in a manner that reduces disparity to the greatest extent possible. The regulations do not, however, prescribe the manner in which such determinations are to be made. The IRS and Treasury Department intend that taxpayers have flexibility in choosing the methods and formulas to be employed in making these determinations and the IRS will respect any reasonable method or formula so employed.

The IRS and Treasury Department recognize that the redetermination of basis imposes a certain administrative burden. Thus, the rule contains two safe harbors that excuse taxpayers from reallocating basis in situations in which redetermination is deemed unnecessary. One safe harbor is for situations in which redetermination would have no ultimate effect on the basis of any share held by a member. This happens, for example, if only common stock is outstanding and there is no disparity in the bases of the shares. In such a case, any redetermination would result in the same bases the members' had before redetermination. The second safe harbor is for situations in which the group disposes of its entire interest in the subsidiary to an unrelated person in one or more fully taxable transactions. In such a case, the group recognizes all the gains and losses on the shares and so obtains no benefit from the disparate reflection of gain or loss. Transfers that are excepted from basis redetermination, like transfers of shares that remain loss shares after application of the rule, are then subject to the basis reduction rule.

3. The Basis Reduction Rule

If, after basis redetermination, any member's transferred share is a loss share (even if the share only became a loss share as a result of the application of the basis redetermination rule), the basis of that share is subject to reduction under this rule. This rule is intended to eliminate stock loss that is presumed noneconomic. It operates by reducing the basis of each transferred loss share (but not below value) by the lesser of the share's disconformity amount and its net positive adjustment.

A share's disconformity amount is the excess of its basis over its allocable portion of S's net inside attributes, determined at the time of the transfer. This amount identifies the net amount of unrealized appreciation reflected in the basis of the share. Because the disconformity amount is computed at the time of the transfer, the disconformity amount reflects the effects of all prior redetermination events.

The term net inside attributes is defined as the sum of S's loss carryovers, deferred deductions, cash, and asset basis, reduced by S's liabilities. This computation is used in both this basis reduction rule and the attribute reduction rule described in section F.4 of this preamble. Both rules do, however, have special provisions that modify the computation of net inside attributes if S holds lower-tier subsidiary stock. See sections F.3.a and F.4.a of this preamble for a discussion of rules relating to the stock of lower-tier subsidiaries for purposes of basis reduction and attribute reduction, respectively.

A share's net positive adjustment is computed as the greater of zero and the sum of all investment adjustments (excluding distributions) applied to the basis of the transferred loss share, including by reason of prior basis reallocations. All items of income, gain, deduction, and loss are included fully in the net positive adjustment amount. This rule identifies the extent to which basis has been increased by the investment adjustment provisions for items of income, gain, deduction and loss (whether taxable or not) that have been taken into account by the group.

a. *Special rules applicable when S holds stock of lower-tier subsidiary.*

For purposes of computing the disconformity amount, if S holds stock of a lower-tier subsidiary (S1) that was not transferred in the transaction, S's net inside attribute amount is computed by treating S's basis in S1 stock as ''tentatively reduced'' by the lesser of the S1 share's net positive adjustment and its disconformity amount. This reduction is made only for purposes of determining basis reduction to the S share, and has no other effect. The purpose of this adjustment is to prevent S1's recognized items from giving rise to noneconomic loss in S stock, for example, when S1 recognizes gain that is already reflected (indirectly) in P's basis in S shares. This problem is illustrated in *Example 8* (subsidiary holding lower-tier subsidiary stock with a basis that reflects lower-tier unrecognized appreciation).

When determining the disconformity amount of a share of subsidiary stock, no tentative reduction is made to the basis of lower-tier shares that were transferred in the transaction (without

regard to whether S retained the shares after the transaction, such as when S1 is transferred because S and S1 cease to be members of the same group but S continues to hold S1 stock). The reason is that the basis reduction rule applies directly to each transfer, starting with the lowest-tier transfer, and so any noneconomic loss in S stock that was attributable to S1's items has been eliminated by the time that the basis reduction rule applies to the S Stock. In addition, the tentative basis reduction rule does not apply to shares that are lower tier to any shares that were transferred in the transaction. The application of the rule to those shares is unnecessary because, when the basis reduction rule applied to S1, it eliminated any inappropriate effects from items that tiered up from subsidiaries that were lower tier to S1.

4. The Attribute Reduction Rule

If any transferred share remains a loss share after application of the basis reduction rule, the subsidiary's attributes (including the consolidated attributes attributable to the subsidiary) are subject to reduction. The attribute reduction rule addresses the duplication of loss by members of consolidated groups. This rule is intended to insure that the group does not recognize more than one loss with respect to a single economic loss regardless of whether the group chooses to dispose of the subsidiary stock before or after the subsidiary recognizes the loss with respect to its assets or operations.

Under this rule, S's attributes are reduced by the ''attribute reduction amount,'' which is computed as the lesser of the net stock loss and the aggregate inside loss. This amount reflects the total amount of unrecognized loss that is reflected in both the basis of the S stock and S's attributes. Net stock loss is the excess of the sum of the bases (after application of the basis reduction rule) of all S shares transferred by members in the same transaction over the value of such shares. S's aggregate inside loss is the excess of S's net inside attributes over the value of all of the S shares. Net inside attributes generally has the same meaning as in the basis reduction rule, subject to special rules for lower-tier subsidiaries (see section F.4.a of this preamble).

Unlike comparable provisions in § 1.1502–35 and the LDR, this rule does not limit its application to a share's proportionate interest in the subsidiary's aggregate inside loss. The reason is that when a member recognizes a stock loss, or preserves a stock loss for a later recognition (for example, when the share is retained but deconsolidated), the member enjoys (or preserves for later use) the benefit of the entire amount of that stock loss. If basis is uniform, the amount of stock loss will reflect a proportionate interest in the subsidiary's unrecognized loss. But if basis is disparate, the loss on a particular share can reflect any amount, even all, of the subsidiary's unrecognized loss. In either case, the potential loss duplication equals the entire amount by which the stock loss is duplicated in the subsidiary's attributes. Accordingly, the proposed regulations reduce attributes to that extent. This prevents the duplication (but not acceleration) of loss otherwise available in situations similar to *Example 5(b)* by reducing S's attributes by the entire amount by which the stock loss duplicates the aggregate inside loss.

A principal goal of this regulation is to address the issues of noneconomic and duplicated stock loss in a manner that is as readily administrable as possible, by taxpayers and the government. For that reason, the proposed regulations generally avoid imposing valuation requirements whenever possible. However, the proposed regulations do, to the extent possible, use readily available information to identify the location and amount of loss, to avoid knowingly creating gain. The order in which attributes are reduced reflects this principle.

After S's attribute reduction amount is determined, it is first applied to reduce or eliminate items that represent actual realized losses, such as operating loss carryovers, capital loss carryovers, and deferred deductions. If S's attribute reduction amount exceeds those items, the excess is then applied to reduce or eliminate the loss in the basis of property that is publicly traded (other than subsidiary stock, which is subject to special rules). The reason that the basis of publicly traded property, unlike that of other assets, is only reduced by the amount of loss reflected in the basis of the property is that such property can be readily and easily valued. Finally, if any attribute reduction amount remains after eliminating those attributes, it is applied to reduce or eliminate the basis in assets, other than publicly traded property (which then reflects no loss) and other than cash and equivalents (which also reflect no loss). This reduction is made proportionately according to the basis in each property.

The proposed regulations provide a special rule that applies to the extent a subsidiary has liabilities that have not been taken into account as of the time of the transfer. Under the general rule, if the attribute reduction amount exceeds attributes available for reduction, that excess attribute reduction amount has no further effect. However, a special rule applies if the attribute reduction amount exceeds the attributes available for reduction and the subsidiary has a liability that has not been taken into account. Typically this will happen when cash or other liquid assets are held to fund future expenses related to the liability. Because the assets held by S do not reflect attributes that can be reduced, loss can be duplicated later, when the liability is taken into account. To prevent the duplication of loss in such cases, the excess attribute reduction amount is suspended and applied to prevent the deduction or capitalization of payments later made by S or another person with respect to the liability.

a. *Special rules applicable when S holds stock of lower-tier subsidiary.*

When S holds stock of lower-tier subsidiaries, the attribute reduction amount is computed in a manner that identifies the maximum potential amount of loss duplication and attributes are reduced to that extent. However, the rule incorporates two restrictions to prevent excessive reduction of attributes that could otherwise result from this approach. These rules are set forth in this section 4.a.

First, to facilitate the computation of S's attribute reduction amount, all of S's shares of S1 stock are treated as a single share (generally referred to as the S1 stock). To identify the maximum potential duplication, the computation of the attribute reduction amount is made treating S's basis in S1 stock as its ''deemed basis'' in that stock. The proposed regulations define deemed basis as the greater of S's actual aggregate basis in the S1 shares (adjusted for any gain or loss recognized on a transfer of the S1 shares) and the S1 shares' allocable portion of S1's net inside attributes. For example, if P owns all the stock of S with a basis of $150, S owns all the stock of S1 with a basis of $100, and S1 owns an asset with a basis of $150. S's deemed basis in S1 stock is $150, the greater of $100 (S's actual basis in S1 stock) and $150 (the S1 shares' allocable portion of S1's net inside attribute amount), which is the maximum amount of inside loss that S can recognize. The proposed regulation uses deemed basis not only to identify the maximum potential amount of loss duplication ($150 in the example), but also to reduce attributes on the assumption that taxpayers will act in their best interest when deciding how lower-tier attributes will be recognized

(subject to certain limits discussed in this section F.4.a).

S's deemed basis in S1 stock is also used for purposes of allocating S's attribute reduction amount between S's S1 stock and S's other attributes. However, for this purpose, deemed basis is treated as reduced by certain amounts that, by their nature, do not reflect loss. These excluded amounts include the value of S1 shares transferred in the transaction and the portion of S1's cash, S1's cash equivalents, and the value of S1's publicly traded property (net of S1's liabilities) that is attributable to S's nontransferred shares of S1 stock. The excluded amounts also include the corresponding amounts with respect to all shares of stock of lower-tier subsidiaries. These modifications prevent nonloss assets from inappropriately increasing the allocation of attribute reduction to S1 stock.

The attribute reduction amount allocated to S's block of S1 stock is then apportioned and applied to reduce the bases of S's individual shares of S1 stock in a manner that, to the greatest extent possible, reduces disparity. This general rule is subject to two modifications. First, no allocated amount is apportioned to any transferred S1 share if gain or loss is recognized on the transfer of that share. The reason is that the recognition of gain or loss (even if not allowed) establishes that the basis of that share does not reflect (or no longer reflects) unrecognized loss. This modification thus directs attribute reduction to other shares that are the source of the potential duplication. The second modification is that no allocated amount that is apportioned to any transferred S1 share is to be applied to reduce the basis of the share below its value. This modification prevents attribute reduction from knowingly creating gain on such shares.

To fully implement the loss duplication rule, any portion of S's attribute reduction amount that is allocated to S1 stock, whether or not it is apportioned or applied to reduce the basis of any S1 shares, tiers down and becomes an attribute reduction amount of S1. The attribute reduction rules then apply to reduce S1's attributes in the same manner that they apply S's attribute reduction amount to reduce S's attributes. However, because the attribute reduction amount represents the maximum potential amount of duplication in the lower-tier subsidiary, the proposed regulations include two modifications to prevent the reduction of attributes beyond the amount necessary to eliminate duplicated loss.

The first modification is the conforming limit rule, which prevents the tier down of attribute reduction from reducing S1's net inside attributes below the sum of the value of the S1 shares transferred by members and the aggregate bases that members have in nontransferred S1 stock (after any reduction to those shares by the direct application of S's attribute reduction amount).

The second modification is the basis restoration rule. This rule applies after the attribute reduction rule has been applied with respect to all transfers and all resulting reductions (whether as a result of direct or tier-down attribute reduction) have been given effect. This rule reverses stock basis reductions made by the attribute reduction rule, but only to the extent necessary to conform inside (net inside attributes) and outside (stock) basis at each tier, taking into account the effect of any prior section 362(e)(2) transactions. Because net inside attributes can be a negative number, stock basis may be a negative number even after basis restoration. In such cases, the basis of the share will remain an excess loss account in the hands of the owning member after the transaction (the regulations specifically provide that the excess loss account created by this rule is not taken into account under § 1.1502–19). Basis restoration adjustments are made at each tier, but they do not give rise to any upper-tier adjustments.

With these two modifications, the attribute reduction rule can reduce lower-tier attributes in an amount that eliminates the full duplication potential reflected in S's basis in S1 stock and S1's net inside attributes without creating a noneconomic gain in the corresponding attribute.

b. *Election to reduce stock basis and/or reattribute loss.*

Finally, the attribute reduction rule contains an elective provision under which groups can reduce the potential for loss duplication and thereby reduce or completely avoid attribute reduction under these regulations. Under this rule, the common parent of a group can elect to reduce stock basis, reattribute attributes, or do some combination of basis reduction and attribute reattribution in order to prevent the reduction of attributes otherwise required under these proposed regulations. The total amount that can be the subject of the election is limited to the amount that S's attributes would otherwise be subject to reduction.

The election to reattribute attributes can only be made if S ceases to be a member of the P group as a result of the transfer. The reason is that the election is not intended to be merely a mechanism for changing location of items within a group (and its continuing members). The election can be made with respect to loss carryforwards and deferred deductions of S or any of S's lower-tier subsidiaries, but only to the extent and in the order that such attributes would otherwise have been reduced under the attribute reduction rule. However, P may only reattribute attributes of lower-tier subsidiaries that would otherwise be reduced as a result of tier-down attribute reduction to the extent that the reattribution does not create an excess loss account in the stock of any lower-tier subsidiary. When this election is made, P is treated as succeeding to the attributes as though it had acquired them in a section 381(a) transaction. Proposed regulations under § 1.1502–32 treat the reattributed attributes as absorbed and tiering up to reduce the basis of shares such that the full amount tiers up through the transferred S shares for which the election is made. This amount is allocated to shares in the chain with positive basis in a manner that reduces the disparity in the basis of the shares to the greatest extent possible. However, this amount is not allocated to any lower-tier subsidiary shares that were transferred in a transfer in which gain or loss was recognized. The IRS and Treasury Department recognize and are concerned with the potential complexity of this election and request comments regarding both the administrability and the benefit of the election, particularly as it relates to attributes of lower-tier subsidiaries.

Although the maximum amount of the election is computed by tentatively applying the attribute reduction rule to S, the election is actually given effect immediately before the application of the attribute reduction rule. Thus, to the extent loss duplication has not been eliminated by the election, the attribute reduction rules apply in their general manner.

5. Over-Ride Provisions

These proposed regulations contain two over-ride provisions. One, found in the general introductory provisions of the proposed regulation, requires that the provisions of these proposed regulations be interpreted and applied in accordance with their stated purposes. The other, an anti-abuse and anti-avoidance rule, provides that ''appropriate adjustments'' will be made if a taxpayer acts with a view to avoid the purposes of this section or use this section to avoid another rule of law. The anti-abuse rule includes several examples that illustrate general

principles. The examples are not intended to specify particular transactions that will be treated as abusive in all cases or to prevent the IRS from treating other transactions as abusive. This rule is an important safeguard to ensure that only transfers made in the ordinary course of business enjoy the benefits and avoid the burdens arising from the principles adopted in these proposed regulations.

6. Special Rules for Section 362(e)(2) Transactions

The IRS and Treasury Department recognize that adjustments made pursuant to section 362(e)(2) (see discussion in section H of this preamble) alter the extent to which comparisons of stock basis, net inside attributes, and value can identify both the amount of unrecognized appreciation reflected in stock basis and the amount of duplicated loss. For example, a reduction to asset basis under section 362(e)(2)(A) increases the disconformity amount of the shares received in the transaction subject to section 362(e)(2), but this amount does not represent unrealized appreciation reflected in stock basis. Further, the reduction to asset basis under section 362(e)(2)(A) decreases the amount of loss duplication that can exist with respect to the shares received in the transaction subject to section 362(e)(2). Similarly, if stock basis is reduced pursuant to an election under section 362(e)(2)(C), there is an increase in the subsidiary's net inside attribute amount that reduces the disconformity amount of all shares and increases aggregate inside loss, even though there has been neither a decrease in the amount of unrealized appreciation reflected in stock basis nor an increase in duplicated loss.

Accordingly, to adjust for distortions resulting from basis reduction under section 362(e)(2)(A), the proposed regulations adjust the disconformity amount of the shares received in the transaction to which section 362(e)(2) applied by an amount equal to the amount the basis of such shares would have been reduced had an election under section 362(e)(2)(C) been made. Further, for purposes of computing the attribute reduction amount on a transfer of any shares received in the section 362(e)(2) transaction, and applying the conforming limitation on the application of tier-down attribute reduction, the basis in such shares is reduced by an amount equal to the amount the basis of such shares would have been reduced had an election under section 362(e)(2)(C) been made Similarly, to adjust for distortions resulting from basis reduction under section 362(e)(2)(C), for purposes of computing any share's disconformity amount or the subsidiary's aggregate inside loss, and for purposes of determining any stock basis restoration, the proposed regulations reduce S's net inside attribute amount by an amount equal to the amount S's attributes would have been reduced under section 362(e)(2)(A) had no election under section 362(e)(2)(C) been made. Further, the regulations indicate that the special application of section 362(e)(2) to intercompany transactions must be taken into account, so these adjustments only apply to the extent section 362(e)(2) has actually resulted in some basis reduction.

The IRS and Treasury Department recognize that the computations in these proposed regulations may need to take other items into account. Accordingly, the proposed regulations provide that the Commissioner will make appropriate adjustments to account for changes in the relationship between stock basis and net inside attributes that are not the result of either § 1.1502–32 or these proposed regulations and that are not otherwise adjusted under these proposed regulations. In addition, the proposed regulations provide that taxpayers may seek a written determination regarding the treatment of comparable items or adjustments.

7. Special Rules Considered But Not Adopted

a. *Discounting of losses that are limited by section 382 or other provisions.*

The IRS and Treasury Department considered whether losses could be included in the computation of the net inside attribute amount at a reduced rate if their use was limited, for example, by section 382. Ultimately no administrable and precise method was identified for determining the extent to which losses could be considered properly excluded (or included at a reduced rate), except in the most extreme cases. Accordingly, the proposed regulations do not provide special rules for limited losses. As a result, losses are fully included in net inside attributes.

The IRS and Treasury Department recognize that this approach is extremely favorable to taxpayers as it reduces the disconformity amount (and thus the extent to which stock basis may be reduced) with the only potential cost being the elimination of the losses under the attribute reduction rule. The IRS and Treasury Department believe that this taxpayer-favorable result, when produced in the ordinary course of business, is not an inappropriate result as part of the overall balance reached by these regulations. Taxpayers that engage in transactions that have no bona fide purpose other than to acquire limited losses to avoid the purposes of the proposed regulations, however, will be subject to the anti-avoidance rule and the benefits of the transaction will be eliminated.

b. *Exceptions for basis conforming acquisitions.*

Practitioners had suggested that any proposed regulations addressing noneconomic loss contain an exception for transactions such as section 351 exchanges and acquisitions subject to a section 338 election. These proposed regulations do not explicitly contain such an exception. One reason is that such an exception would introduce the complexity and burden of identifying all redetermination events. A more important reason, however, is that such an exception is unnecessary under the basis disconformity model because, by measuring disconformity immediately before the transfer of loss shares, this rule automatically excludes situations from basis reduction when there is inside/outside conformity. Thus, the effect of this suggestion is accomplished and no special rules are necessary.

c. *Shadow account for reduced basis.*

The proposed regulations do not contain a mechanism, suggested by practitioners, for restoring basis to transferred shares that are retained by a member and later sold at a gain (for example, when a member retains S shares but S ceases to be a member). The IRS and Treasury Department are concerned that such a rule would add undue complexity to the regulatory scheme. Moreover, such a rule would be inconsistent with a fundamental principle underlying these proposed regulations, specifically, that a transfer (as defined in these proposed regulations) is the appropriate time for these proposed regulations to apply. Thus, the basis reduction rules do not permanently reduce the basis of lower-tier subsidiary stock unless the stock is transferred in the transaction. And, moreover, similar to the general application of other provisions of the Code and regulations, subsequent events should not reverse the effects of such application.

8. Effective Date

The proposed regulations would be applicable as of the date they are published as final regulations in the **Federal Register**.

G. Sections 1.337(d)–1, 1.337(d)–2, and 1.1502–35

Because proposed § 1.1502–36 addresses both noneconomic and duplicated loss on subsidiary stock, the IRS and Treasury Department are also proposing the removal of §§ 1.337(d)–1, 1.337(d)–2, and 1.1502–35, except to the extent necessary to address losses suspended under § 1.1502–35(c) and losses reimported under § 1.1502–35(g)(3).

Additionally, the IRS and Treasury Department intend to publish temporary regulations that will modify the anti-abuse provisions of § 1.1502–35. First, the temporary regulations will restate the loss reimportation rule as a principle-based rule. This change responds to comments received about the administrability of the current provision. Second, the temporary regulations will modify the loss reimportation rule to provide that a duplicated loss on subsidiary stock is subject to the loss reimportation rule even if the group deconsolidates the subsidiary before selling loss shares of the subsidiary stock. These modifications are reflected in these proposed regulations.

These proposed regulations also revise several regulations solely to reflect the removal of §§ 1.337(d)–1, 1.337(d)–2, and 1.1502–35 (other than with respect to loss suspension and loss reimportation), and the addition of § 1.1502–36.

The proposed regulations described in this section G would be applicable as of the date they are published as final regulations in the **Federal Register**.

H. Suspension of Section 362(e)(2) in Consolidation

1. Background

As part of the AJCA, Congress enacted section 362(e)(2) to address certain instances of loss duplication. Very generally, that provision provides that if loss property is transferred to a corporation in a section 351 exchange (or as a capital contribution or paid-in surplus), the transferee's aggregate basis in the assets will be limited to the properties' fair market value. However, section 362(e)(2) also permits the parties to elect to limit the basis of the stock received (or treated as received) in the exchange to its fair market value, so that the loss is preserved in the basis of the transferred property. Section 362(e)(2)(C). See REG–110405–05 (2006–48 IRB 1004), 71 FR 62067 (October 23, 2006), (''the 2006 proposal'') for a more detailed explanation of the general application of section 362(e)(2).

Practitioners have questioned whether it is necessary to apply section 362(e)(2) to intercompany transactions where there is a consolidated return rule addressing loss duplication. The IRS and Treasury Department recognize that loss duplication in consolidated groups is generally addressed by § 1.1502–32 (when losses are recognized on a subsidiary's assets or operations) and, currently, by § 1.1502–35 (or by this proposed § 1.1502–36 when it is finalized). In general, the IRS and Treasury believe that these regulations together address loss duplication in a manner that is most consistent with single entity principles. Nevertheless, the IRS and Treasury Department are concerned that, if section 362(e)(2) were not to apply to intercompany transfers, members of consolidated groups may be able to reduce gain under circumstances that separate taxpayers could not. Accordingly, the IRS and Treasury Department have tentatively concluded that section 362(e)(2) should be applied to intercompany transactions. However, the IRS and Treasury are concerned with the administrative burden imposed by section 362(e)(2) and are continuing to study whether its provisions should be applicable to such transfers. Comments are invited on this issue.

2. Suspension of Section 362(e)(2) for Intercompany Transactions.

Although the IRS and Treasury Department have tentatively concluded that section 362(e)(2) should remain applicable to transfers between members of a consolidated group, as noted, the IRS and Treasury Department are concerned with the significant complexity and administrative burden that section 362(e)(2) adds in the consolidated return context. For example, if an election is made to reduce stock basis under section 362(e)(2)(C), a portion of the items attributable to the transferred loss assets can produce duplicative reductions unless traced and treated as duplicative of the section 362(e)(2) reduction to stock basis.

Moreover, the IRS and Treasury Department recognize that basis reductions are not necessary in intercompany section 362(e)(2) transactions as long as duplication can effectively be eliminated by the general operation of the investment adjustment system. Accordingly, these proposed regulations would suspend application of section 362(e)(2) until the occurrence of a ''section 362(e)(2) application event,'' and then apply the principles of section 362(e)(2) only to the extent the investment adjustment system has not and can no longer effectively eliminate any remaining duplication. The IRS and Treasury Department expect that this suspension will often effectively eliminate the application of section 362(e)(2) to most intercompany transactions.

Nevertheless, in order to apply section 362(e)(2) upon the occurrence of a section 362(e)(2) application event, the group must determine the extent to which an intercompany transaction resulted in loss duplication that would have been prevented by section 362(e)(2), and track the extent to which this duplication is effectively eliminated while the transferor and the transferee are members. Accordingly, these proposed regulations require the group to identify the amount and location of basis in the transferred assets that would have been eliminated had section 362(e)(2)(A) applied at the time of the intercompany transaction. This is the amount of the net built-in loss that is duplicated as a result of the section 362(e)(2) transaction. The regulations refer to this amount of duplication as the ''section 362(e)(2) amount.''

The duplicated loss is reflected in both the transferor's basis in the transferee stock (or securities), and in the transferee's basis in the property received. The duplication is initially reflected in the basis of the transferee stock (or securities) to the extent the basis would have been reduced under section 362(e)(2)(C), if such an election was made and section 362(e)(2) was not suspended by these temporary regulations. The duplication is also initially reflected in the transferee's basis in the property received to the extent the basis of such property would have been reduced under section 362(e)(2)(A) if no election was made under section 362(e)(2)(C) and section 362(e)(2) was not suspended by these temporary regulations. Over time this amount can be reflected in other attributes of the transferee (such as unabsorbed losses) to the extent such attributes are attributable to the transferee's basis in the property received.

3. Elimination of the Section 362(e)(2) Amount

Because the investment adjustment system reduces stock basis as a subsidiary's attributes are taken into account, the duplication is eliminated to this extent, and the section 362(e)(2) amount must be eliminated to this extent. Further, if the basis of the stock (or securities) received in the intercompany section 362(e)(2) transaction is reduced as the result of a section 362(e)(2)(C) election, as a result of attribute reduction under these

proposed regulations, or is otherwise eliminated without the recognition of gain or loss, the duplication is similarly eliminated. Accordingly, these types of basis reductions result in an elimination of all or a portion of the section 362(e)(2) amount. The proposed regulations provide specific guidance regarding how much of any remaining section 362(e)(2) amount is reflected in the basis of the subsidiary's stock (or securities) or the subsidiary's attributes as the section 362(e)(2) amount is eliminated.

4. Application of Section 362(e)(2) to Intercompany Transactions

Upon the occurrence of a section 362(e)(2) application event, the regulations apply section 362(e)(2) only to the extent necessary. A section 362(e)(2) application event occurs when all or a portion of the duplicated amount can no longer be effectively eliminated by the operation of the investment adjustment system, and can involve either the stock (or securities) of the transferee or the assets transferred in the intercompany section 362(e)(2) transaction. Such an event is defined to include any transfer (as defined in proposed § 1.1502–36) of the transferee's stock received in the exchange, any satisfaction of a security received in the exchange, any transaction in which a nonmember acquires any of the transferred assets with substituted basis or succeeds to any attributes attributable to such basis, or any other transaction the result of which prevents all or a portion of any remaining section 362(e)(2) amount reflected in stock basis and attributes from being effectively eliminated by the operation of the investment adjustment system when taken into account.

Further, if the transferor and the transferee in the intercompany section 362(e)(2) transaction continue to be members of the same group (including as members of another group), the investment adjustment system can continue to effectively eliminate the duplication. Accordingly, these proposed regulations provide a subgroup exception implicit in the definition of section 362(e)(2) application events that allows the transferor and transferee to become members of a new group without triggering the application of section 362(e)(2). In such a case, the transferor and transferee will continue to track the section 362(e)(2) amount reflected in stock basis and attributes, and apply these provisions upon the occurrence of a section 362(e)(2) event.

Given the fact that section 362(e)(2) is applied in this context only to the extent necessary, the scope of its application varies slightly depending upon the type of section 362(e)(2) application event that occurs. If the application event involves a transaction in which a nonmember acquires some or all of the transferee's attributes that reflect a section 362(e)(2) amount, section 362(e)(2) applies to the extent such attributes reflect all or part of any remaining section 362(e)(2) amount. In such a case, the resulting reduction in attributes is applied to the attributes involved in the application event that reflect the section 362(e)(2) amount. If the application event involves all or part of the transferee stock (or securities) received in the section 362(e)(2) transaction, section 362(e)(2) applies to the extent such stock (or securities) reflect all or part of any remaining section 362(e)(2) amount. Further, in this case, the resulting reduction in attributes is applied to proportionately to the transferee's attributes that reflect the section 362(e)(2) amount (based on the relative section 362(e)(2) amount reflected). The reduction in the transferee's attributes is not a noncapital, nondeductible expense.

As is provided in section 362(e)(2)(C), the transferor and transferee may elect to reduce the basis in the transferee stock (or securities) received in the intercompany section 362(e)(2) transaction instead of reducing the transferee's attributes. Similar to the provisions of the proposed regulations under section 362(e)(2), the reduction in the basis of the transferee stock (or securities) received in the intercompany section 362(e)(2) transaction is equal to the amount of the reduction in the transferee's attributes absent the election. Further, if this election is made, the type of section 362(e)(2) application event dictates which shares (or securities) receive the basis reduction. If the application event involves a transaction in which a nonmember acquires some or all of the transferee's attributes, the reduction is applied proportionately to all of the transferee stock (or securities) held by members immediately before the application event (based on the relative section 362(e)(2) amount reflected). However, if the application event involves all or a part of the transferee stock (or securities) received in the intercompany section 362(e)(2) transaction, the reduction is applied proportionately to the stock (or securities) so involved (based on the relative section 362(e)(2) amount reflected). The reduction in the basis of the stock of the transferee as a result of this election is treated as a nondeductible basis recovery item.

Under the proposed regulations, the election to reduce stock basis (in lieu of attributes) under section 362(e)(2)(C) may be made for the intercompany transaction on either the group return for the year of the intercompany section 362(e)(2) transaction or the year in which the first section 362(e)(2) application event occurs. In either case, the election has effect only if and to the extent there is a section 362(e)(2) application event, is irrevocable once made, and applies to all section 362(e)(2) application events with respect to such intercompany section 362(e)(2) transaction (even if the application event occurs at a time when the transferor and transferee are members of another consolidated group).

5. Special Allocations Under § 1.1502–32

The proposed regulations also include a special allocation provision in § 1.1502–32 that requires all items taken into account by a group (including tier-ups of such amounts) that reflect a section 362(e)(2) amount to be allocated entirely to member's shares. In other words, such items are allocated as if any shares held by nonmembers were not outstanding. The reason for these special allocation rules is to prevent the general § 1.1502–32 allocation of items to dilute the elimination of duplication where shares of subsidiary stock are held by nonmembers.

6. Other Considerations

In the 2006 proposal, the IRS and Treasury Department proposed regulations that would provide that the tracing rules in § 1.358–2(a)(2) will not apply to stock received in a section 362(e)(2) transaction if the transferor and transferee elect to apply section 362(e)(2)(C). The IRS and Treasury requested comments regarding whether that treatment is appropriate. As noted in section H.4 of this preamble, these proposed regulations would allow the making of a section 362(e)(2)(C) election to be deferred until the year of the first section 362(e)(2) application event. The IRS and Treasury Department are aware of the potential difficulty and administrative burden associated with retroactively not applying the provisions of § 1.358–2(a)(2). The IRS and Treasury Department continue to study this issue, and invite comments regarding whether the proposed revision to § 1.358–2(a)(2)(viii) regarding section 362(e)(2)(C) elections should apply to intercompany transactions.

These proposed regulations would be applicable as of the date they are published as final regulations in the **Federal Register**.

I. Other Revisions to the Consolidated Return Regulations

The IRS and Treasury Department are also proposing various technical and administrative revisions to the consolidated return regulations.

1. Removal of § 1.1502–13(f)(6)(ii)

Section 1.1502–13(f)(6)(ii) prevents a member from recognizing gain on the qualified disposition of parent stock. However, § 1.1502–13(f)(6)(ii) only applies to dispositions of parent stock occurring prior to May 16, 2000. Thus, the provision has no current applicability. Nevertheless, gain on dispositions of parent stock occurring on or after May 16, 2000 may qualify to be prevented by § 1.1032–3, which has fewer conditions to its application than did § 1.1502–13(f)(6)(ii). To avoid confusion, the IRS and Treasury Department propose replacing the current provisions in § 1.1502–13(f)(6)(ii) (and references to that provision) with a reference to § 1.1032–3.

2. Modification of Exception to Definition of Deconsolidation in § 1.1502–19

Section 1.1502–19 provides rules for the determination and recapture of excess loss accounts. In general, an excess loss account is recaptured (taken into account) when there is a disposition of the stock to which the account relates. Section 1.1502–19(c) defines the term disposition for purposes of § 1.1502–19. Under that section, the term disposition includes transfers, cancellations, deconsolidations, and worthlessness. The term deconsolidation is defined in § 1.1502–19(c)(1)(ii).

In general, the termination of a consolidated group will give rise to the deconsolidation of the members of the group. However, § 1.1502–19(c)(3)(i)(A) provides that, if a group terminates because a member of another group has acquired either the assets of the common parent of the terminating group (in a reorganization described in section 381(a)(2)) or the stock of the common parent, the members of the acquired group that become members of the acquiror's group are not treated as deconsolidated. Thus, there is no recapture of excess loss accounts in the shares of stock of subsidiaries of the acquired group that, after the acquisition, are held by a member of the acquiring group.

The exception to deconsolidation treatment in § 1.1502–19(c)(3)(i)(A) (and therefore to the recapture of excess loss accounts) is warranted because its conditions ensure that the consolidated return provisions will continue to apply to the members of the acquired group. Thus, the provisions of § 1.1502–19 are able to continue to regulate the determination and recapture of the excess loss accounts. However, for the continued application of the consolidated return provisions to the acquired group, it is only necessary that the acquiror be a member of a group following the acquisition. Its status prior to the acquisition is immaterial. The IRS and Treasury Department have therefore decided to revise the rule in § 1.1502–19(c)(3)(i)(A) to require only that the acquiror be a member of a group following the qualified acquisition.

Thus, under the proposed regulations, the exception to deconsolidation treatment provided in § 1.1502–19(c)(3)(i)(A) would be available when the acquisition is by a stand-alone corporation or a member of an affiliated, nonconsolidated group.

3. Clarification of ''Substantially All'' Standard in § 1.1502–19(c)(1)(iii)(A)

Section 1.1502–19(c)(1)(iii) defines the term ''worthless'' for purposes of excess loss account recapture (resulting in the inclusion of the excess loss account in income). The definition of worthlessness in § 1.1502–19(c)(1)(iii) is adopted for determining the time when subsidiary stock with positive basis may be treated as worthless (and therefore deductible). See § 1.1502–80(c).

Section 1.1502–19(c)(1)(iii)(A) generally provides that a share of subsidiary stock will be treated as worthless when substantially all the subsidiary's assets are treated as disposed of, abandoned, or destroyed for federal tax purposes. This provision prevents an excess loss account from being included in income (and a worthless stock deduction from being taken) until the subsidiary's activities have been taken into account by the group. As a result, the group's income is clearly reflected and single entity treatment is promoted.

The current regulations do not, however, define the term ''substantially all'' for purposes of § 1.1502–19(c)(1)(iii)(A). Particular concerns have arisen because the term is used in many other areas of tax law, most notably in the area of corporate reorganizations. Because different policies are operative in those areas, the thresholds appropriate in those areas are not necessarily appropriate for purposes of § 1.1502–19(c)(1)(iii)(A) and the consolidated return provisions that incorporate it.

The IRS and Treasury Department believe that the single entity purpose of these consolidated return provisions is best effected by treating a subsidiary's stock as worthless only once the subsidiary has recognized all items of income, gain, deduction, and loss attributable to its assets and operations. Accordingly, these proposed regulations clarify § 1.1502–19(c)(1)(iii)(A) by providing that stock of a subsidiary will be treated as worthless when the subsidiary has disposed of, abandoned, or destroyed (for Federal tax purposes) all its assets other than its corporate charter and those assets, if any, that are necessary to satisfy state law minimum capital requirements to maintain corporate existence.

4. Triangular Reorganizations That Are Also Group Structure Changes

Sections 1.1502–30 and 1.1502–31 provide special rules for determining the basis of stock following, respectively, a triangular reorganization and group structure change. The provisions both generally adopt net asset basis rules, but, in the case of a triangular reorganization, taxpayers can elect other rules in certain transactions. The regulations do not specify whether a group structure change that is also a triangular reorganization is subject to the basis rules applicable to group structure changes (under § 1.1502–31) or to triangular reorganizations (under § 1.1502–30). Because it is appropriate to conform the basis of the stock of the former common parent to its net asset basis in the case of any group structure change, the IRS and Treasury Department intend the rules of § 1.1502–31 to control the determination of stock basis when a transaction is a group structure change, without regard to whether the transaction is also a triangular reorganization. Accordingly, the proposed regulations add a rule to clarify that § 1.1502–31 governs the determination of basis in all cases to which it applies, even those that also qualify as triangular reorganizations.

5. Allocations of Investment Adjustments To Prevent or Minimize Excess Loss Accounts

Under § 1.1502–32(c)(2)(i), positive investment adjustments allocated to a member's shares of a class of common stock are allocated first to equalize and eliminate excess loss accounts and then equally to all the member's other shares in that class. In the case of a negative adjustment, that section provides for the reduction of a member's positive basis in shares of a class of common stock

before the creation or increase of an excess loss account in any such share. However, the current rule does not require that negative adjustments must be made first to equalize excess loss accounts before applying them equally to all shares. The proposed regulations add such a provision in order to better reflect the member's investment in its shares of subsidiary stock.

6. Expired Losses and Attribute Reduction Under § 1.1502–28.

Section 1.1502–32(b)(3)(ii)(C)(*2*) provides that, if the amount of a discharge of indebtedness exceeds the amount of the related attribute reduction under § 1.1502–28, that excess is treated as applying to reduce attributes to the extent of certain expired losses. In general, this section only applies to losses that expired without tax benefit, that were taken into account as noncapital, nondeductible expenses when they expired, and that would have been reduced had they not expired. The effect of this rule is to create a positive adjustment to the extent of the expired losses. The purpose of the rule, as stated in TD 8560, is to more fully integrate expired losses into the investment adjustment system.

As currently written, however, the rule does not explicitly state whether this special treatment of expired losses is available to all members' expired losses or only to the debtor-subsidiary's expired losses. Allowing such treatment for all members' expired losses is beyond the intended scope of relief and undermines the purpose of sections 108 and 1017, and § 1.1502–28. Accordingly, § 1.1502–32(b)(3)(ii)(C)(*2*) is revised to state explicitly that such treatment is intended only for the debtor-subsidiary's expired losses. The regulation is also revised to clarify that all available attributes, not just those of the debtor-subsidiary, must be reduced before this special rule for certain expired losses can apply.

7. Applicability of Other Rules of Law, Anti-Duplicative Adjustments Rules

Many of the consolidated return rules include provisions stating that other rules of law continue to apply. These provisions are generally unnecessary in light of § 1.1502–80(a), which provides that the provisions of the Code continue to apply to taxpayers filing a consolidated return unless specifically provided otherwise in the consolidated return regulations. However, these provisions often also contain statements that the consolidated return provisions modify other rules of law and that duplicative adjustments should not be made as a result of the consolidated return provisions. To simplify the regulations and remove any potential negative implication from the absence of such a provision in a particular provision, these proposed regulations incorporate all of these principles in § 1.1502–80(a) and remove similar provisions from other sections of the consolidated return regulations.

8. Retention of, and Nonsubstantive Revisions to, § 1.1502–80(c)

Section 1.1502–80(c) provides that subsidiary stock is not treated as worthless until the earlier of the time that the subsidiary ceases to be a member of the group and the time that the stock is worthless within the meaning of § 1.1502–19(c)(1)(iii). This rule, with its companion rule postponing the inclusion in income of excess loss accounts, prevents a group from recognizing any amount (whether loss or gain) on subsidiary stock until the subsidiary has taken into account all of its operating income, gain, deduction, and loss. Thus, the rule promotes single entity treatment by enabling the group to continue treating its investment in subsidiary stock as an investment in the subsidiary's assets and operations until the subsidiary has either taken all of its items into account or ceased to be a member of the group.

Following the *Rite Aid* decision, practitioners have submitted comments suggesting that § 1.1502–80(c) should be removed from the consolidated return regulations. The suggestion was based on the observation that § 1.1502–80(c) prevented inappropriate disallowance under the LDR and, since LDR no longer applies to stock dispositions, § 1.1502–80(c) is no longer necessary. While it is correct that there is no longer an LDR-based justification for the rule in § 1.1502–80(c), the LDR was neither the only nor the principal purpose for the rule. The principal purpose of the rule was, and is, to promote single entity treatment. And, with its companion rule governing the inclusion of excess loss accounts, this rule continues to do that.

In addition, the IRS and Treasury Department recognize that, to the extent a subsidiary's attributes would survive a worthlessness event (for example, when a subsidiary survives and is owned by its creditors following a bankruptcy), § 1.1502–80(c) benefits the group by postponing the time that the subsidiary's stock is treated as worthless. Because section 382(g)(4)(D) could subject S's losses to a zero section 382 limitation if P were to treat S's stock as worthless during bankruptcy, a court might prevent P from treating S's stock as worthless in an earlier year, effectively denying P any worthlessness deduction. See, *In re Prudential Lines, Inc.,* 928 F.2d 565 (2d Cir. 1991), *cert. denied,* 112 S.Ct. 82 (1991).

Accordingly, the IRS and Treasury Department have rejected the suggestion to remove § 1.1502–80(c). The proposed regulations do, however, revise the language of the current rule solely for the purpose of clarifying its operation. No substantive change is intended.

9. Effective Dates

The proposed regulations described in this section I would be applicable as of the date they are published as final regulations in the **Federal Register**.

J. Request for Comments

As described in this preamble, many approaches and combinations of approaches were considered with respect to both noneconomic and duplicated loss and, although the IRS and Treasury Department believe the approach adopted in these proposed regulations best responds to and balances the Congressional mandates, comments are requested concerning both the approach adopted in these proposed regulations and other possible approaches.

As noted in section D of this preamble, the IRS and Treasury Department are continuing to study, and invite comments on, the issue of gain duplication by consolidated groups. Comments are specifically requested concerning the circumstances under which gain duplication should be addressed and the mechanisms that could be adopted to do so. For example, comments could address whether a gain duplication rule could or should parallel the approach to loss duplication suggested in the proposed regulations, or whether some other approach would be more appropriate or administrable. Comments are also requested regarding limitations that may be necessary or appropriate to address concerns such as attribute churning and conversion. In addition, comments are requested concerning the noneconomic reduction of stock gain (that is, the appropriateness of the continued use of a loss disallowance model) and the reduction of noneconomic stock gain (that is, the reduction of basis through the absorption of built-in losses or net built-in losses), and the extent to which it would be appropriate to address gain duplication without addressing these issues.

As noted in section H of this preamble, the IRS and Treasury Department are continuing to study the application of section 362(e)(2) in the consolidated setting. Comments are

specifically requested concerning the general application of section 362(e)(2) to intercompany transactions, as well as the administrability and appropriateness of the proposed rules suspending the application of section 362(e)(2) to intercompany transactions and specially allocating items attributable to intercompany section 362(e)(2) transactions.

Although these regulations are generally proposed to be applicable when published as final regulations in the **Federal Register**, the IRS and Treasury Department invite comments regarding the extent to which it would be appropriate and desirable to allow taxpayers to elect to apply these provisions retroactively.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily will affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Theresa Abell and Phoebe Bennett of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.1502–36 also issued under 26 U.S.C. 1502 * * *

Section 1.1502–36 also issued under 26 U.S.C. 337(d). * * *

§ 1.337(d)–1 [Removed]

Par. 2. Section 1.337(d)–1 is removed.

§ 1.337(d)–2 [Removed]

Par. 3. Section 1.337(d)–2 is removed.

Par. 4. Section 1.358–6 is amended by:

1. Revising paragraph (e).

2. Adding new paragraph (f)(3).

The revision and addition reads as follows:

§ 1.358–6 Stock basis in certain triangular reorganizations.

* * * * *

(e) *Cross-reference regarding triangular reorganizations involving members of a consolidated group.* For rules relating to stock basis adjustments made as a result of a triangular reorganization in which P and S, or P and T, as applicable, are, or become, members of a consolidated group, see § 1.1502–30. However, if a transaction is a group structure change, even if it is also a triangular reorganization, stock basis adjustments are determined under § 1.1502–31.

* * * * *

(f) * * *

(3) *Special rule for triangular reorganizations involving members of a consolidated group.* Paragraph (e) of this section shall apply to all transfers on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 5. Section 1.1502–13 is amended by:

1. Revising paragraphs (a)(4), (f)(6)(ii), and (j)(5)(i)(A).

2. Adding new paragraph (e)(4).

3. Revising the last sentence of paragraph (f)(6)(iv)(A).

4. Removing the second sentence in paragraph (f)(6)(v).

5. Adding a new last sentence to paragraph (l)(1).

The revisions and additions read as follows:

§ 1.1502–13 Intercompany transactions.

(a) * * *

(4) *Application of other rules of law.* See § 1.1502–80(a) regarding the general applicability of other rules of law and a limitation on duplicative adjustments.

* * * * *

(e) * * *

(4) *Intercompany section 362(e)(2) transactions*—(i) *Purpose and scope.* This paragraph (e)(4) provides simplifying rules for intercompany transactions that are subject to section 362(e)(2) (intercompany section 362(e)(2) transactions). The purpose of this paragraph (e)(4) is to suspend the application of section 362(e)(2) during the period of time that the duplication resulting from the intercompany section 362(e)(2) transaction (the section 362(e)(2) amount, as defined in paragraph (e)(4)(ii)(A) of this section) can effectively be eliminated by the operation of the investment adjustment provisions of § 1.1502–32. The amount and location of this duplication is identified and tracked while in the consolidated group. When this duplication can no longer effectively be eliminated by the investment adjustment provisions, the principles of section 362(e)(2) apply to the extent necessary to eliminate all or a portion of any remaining section 362(e)(2) amount (as defined in paragraph (e)(4)(ii)(B) of this section) reflected in B's attributes or stock. For purposes of this paragraph (e)(4), any reference to B stock received in an intercompany section 362(e)(2) transaction refers to B stock or B securities received (or deemed received) without the recognition of gain or loss.

(ii) *Identification and elimination of section 362(e)(2) amount*—(A) *Section 362(e)(2) amount.* The *section 362(e)(2) amount* is the amount of duplication resulting from an intercompany section 362(e)(2) transaction, and is equal to the amount by which B's basis in the assets received in an intercompany section 362(e)(2) transaction would have, but for the application of this paragraph (e)(4), been eliminated under section 362(e)(2)(A) (absent an election under section 362(e)(2)(C)). Such amount is initially reflected in both the basis of the B stock received in the transaction and B's basis in the assets received. Each share of B stock initially reflects the section 362(e)(2) amount to the extent the basis would have been reduced under section 362(e)(2)(C) if such an

election was made and this paragraph (e)(4) did not apply. B's basis in each asset received initially reflects the section 362(e)(2) amount to the extent the basis in such asset would have been reduced under section 362(e)(2)(A) if no election was made under section 362(e)(2)(C) and this paragraph (e)(4) did not apply. However, over time the section 362(e)(2) amount may be reflected in B's basis in assets, deferred items, or other unabsorbed losses (B's attributes).

(B) *Remaining section 362(e)(2) amount.* The *remaining section 362(e)(2) amount* is the portion of the section 362(e)(2) amount that has not been eliminated.

(C) *Elimination of section 362(e)(2) amount*—(*1*) *Elimination caused by reduction in B's attributes.* The section 362(e)(2) amount is eliminated as B's attributes that reflect the section 362(e)(2) amount are taken into account by the group (including as a result of attribute reduction under paragraph (e)(4)(iv) of this section, or § 1.1502–36(d) to the extent it did not reduce the basis in B stock that reflects the section 362(e)(2) amount). The portions of B's attributes that reflect a section 362(e)(2) amount are generally taken into account by the group proportionately. However, because any reduction in B's attributes under paragraph (e)(4)(iv) of this section is applied to reduce attributes that reflect the section 362(e)(2) amount, the section 362(e)(2) amount is eliminated to the extent of the full amount of such reduction. If the section 362(e)(2) amount is eliminated because B's attributes that reflect the section 362(e)(2) amount are taken into account, each share of B stock received in the intercompany section 362(e)(2) transaction that is held by a member is treated as proportionately reflecting the remaining section 362(e)(2) amount (based on the section 362(e)(2) amount reflected before the elimination).

(*2*) *Elimination caused by reduction in basis in B stock.* The section 362(e)(2) amount is also eliminated to the extent the basis in B stock that reflects the section 362(e)(2) amount is reduced under paragraph (e)(4)(v) of this section, is reduced under § 1.1502–36(d), or is otherwise is eliminated (other than under § 1.1502–32) without the recognition of gain or loss. The portion of the basis in a share of B stock that reflects a section 362(e)(2) amount is so reduced or eliminated before any other portion of the basis in such a share. If the section 362(e)(2) amount is eliminated as provided in this paragraph (e)(4)(ii)(C)(*2*), each of B's attributes that reflected the section 362(e)(2) amount is treated as proportionately reflecting the remaining section 362(e)(2) amount (based on the section 362(e)(2) amount reflected before the elimination).

(iii) *Section 362(e)(2) application event.* A section 362(e)(2) application event is any transaction or event that results in—

(A) A transfer (within the meaning of § 1.1502–36(f)(11)) of any of the B stock that was received in the intercompany section 362(e)(2) transaction;

(B) Any satisfaction (actual or deemed) of a security received in an intercompany section 362(e)(2) transaction without the recognition of gain or loss;

(C) Any nonmember holding an asset with a substituted basis that reflects all or a portion of the remaining section 362(e)(2) amount or succeeding to an attribute that reflects all or a portion of the remaining section 362(e)(2) amount; or

(D) Any other transaction the result of which prevents all or a portion of any remaining section 362(e)(2) amount reflected in stock basis or attributes from being effectively eliminated by the operation of the investment adjustment provisions of § 1.1502–32 when taken into account.

(iv) *General rule.* In the case of an intercompany section 362(e)(2) transaction, no adjustment to B's attributes shall be made under section 362(e)(2) until immediately before a section 362(e)(2) application event (as defined in paragraph (e)(4)(iii) of this section). At that time, unless an election is made under paragraph (e)(4)(v) of this section, B reduces its attributes that reflect the remaining section 362(e)(2) amount as provided in this paragraph (e)(4)(iv).

(A) *Amount of reduction.* If the application event involves B's attributes that reflect all or a portion of the remaining section 362(e)(2) amount, the amount of the reduction is equal to the remaining section 362(e)(2) amount reflected in the attributes so involved. If the application event involves all or a portion of the B stock received in the intercompany section 362(e)(2) transaction, the amount of the reduction is equal to the remaining section 362(e)(2) amount reflected in the B stock so involved.

(B) *Application of reduction.* If the application event involves B's attributes that reflect all or a portion of the remaining section 362(e)(2) amount, the reduction is applied to reduce each attribute so involved by the full amount of the remaining section 362(e)(2) amount reflected in each such attribute. If the application event involves all or a portion of the B stock received in the intercompany section 362(e)(2) transaction, the reduction is applied proportionately (based on the remaining section 362(e)(2) amount reflected in each attribute prior to reduction) to all of B's attributes that reflect the remaining section 362(e)(2) amount.

(C) *Effect of the reduction.* Any reduction to B's attributes under this paragraph (e)(4)(iv) is not a noncapital, nondeductible expense described in § 1.1502–32(b)(2)(iii).

(v) *Election to reduce the basis in B stock.* In lieu of reducing B's attributes as provided in paragraph (e)(4)(iv) of this section, S and B may elect to reduce the basis in the B stock received in the intercompany section 362(e)(2) transaction as provided in this paragraph (e)(4)(v).

(A) *Amount of reduction.* The basis in the B stock is reduced by an amount equal to the amount B would otherwise be required to reduce its attributes under paragraph (e)(4)(iv) of this section.

(B) *Application of reduction.* If the application event involves B's attributes that reflect all or a portion of the remaining section 362(e)(2) amount, the reduction is applied proportionately (based on the remaining section 362(e)(2) amount reflected in the B stock prior to reduction) to all of the B stock received in the intercompany section 362(e)(2) transaction that is held by members immediately before the application event. If the application event involves all or a portion of the B stock received in the intercompany section 362(e)(2) transaction, the reduction is applied proportionately (based on the remaining section 362(e)(2) amount reflected in the B stock prior to reduction) to the B stock so involved. Any reduction in the basis of the B stock under this paragraph (e)(4)(v) is applied immediately before the section 362(e)(2) application event.

(C) *Effect of the reduction.* Any reduction to the basis of the B stock under this paragraph (e)(4)(v) is a nondeductible basis recovery item described in § 1.1502–32(b)(3)(iii)(B).

(D) *Election.* The election is made in the manner described in regulations implementing section 362(e)(2). The election must be made for an intercompany section 362(e)(2) transaction on or with the group return for either the year in which the intercompany section 362(e)(2) transaction or the first section 362(e)(2) application event occurs. The election is irrevocable and applicable for all section 362(e)(2) application events with respect to such intercompany section 362(e)(2) transaction (even if the event occurs while S and B are members

of another consolidated group). If the election is made on or with the return for the year of the intercompany section 362(e)(2) transaction, it has effect only if and to the extent there is a remaining section 362(e)(2) amount when there is a section 362(e)(2) application event.

(vi) *Examples.* The application of this paragraph (e)(4) is illustrated by the following examples:

Example 1. Section 362(e)(2) amount reflected in asset basis. (i) *Facts.* P owns the sole outstanding share of S stock. S owns Asset 1 with a basis of $100 and a value of $20. On January 1, year 1, S contributes Asset 1 to newly formed B in exchange for 10 shares of B stock in a transaction to which section 351 applies. At the end of year 1, B's only item is a $10 depreciation deduction with respect to Asset 1, which gives rise to a $10 loss that is absorbed by the group. On January 1, year 2, S sells all 10 shares of B stock for $18. After applying and giving effect to all generally applicable rules of law, S's basis in each share of B stock is $9 (the original $10 basis reduced by $1 loss attributable to the depreciation on Asset 1). No election is made under section 362(e)(2)(C).

(ii) *Suspension of section 362(e)(2) in year 1.* S's contribution of Asset 1 to B is an intercompany transaction to which section 362(e)(2) applies. Under the general rules of section 362(e)(2)(A), B's basis in Asset 1 would be reduced by $80 to its value, $20. However, as described in this paragraph (e)(4), the transfer is an intercompany section 362(e)(2) transaction and therefore, under paragraph (e)(4)(iv) of this section, no adjustment is made under section 362(e)(2) until there is a section 362(e)(2) application event. The $80 reduction that B would have had in its basis in Asset 1 is a section 362(e)(2) amount described in paragraph (e)(4)(ii)(A) of this section. This amount is reflected ratably in S's basis in the 10 shares of B stock, and in B's basis in Asset 1. There is no section 362(e)(2) application event in year 1 and so there is no section 362(e)(2) adjustment in year 1.

(iii) *Application of section 362(e)(2) on sale of B stock.* S's sale of the B stock is a transfer within the meaning of § 1.1502–36(f)(11) and therefore a section 362(e)(2) application event under paragraph (e)(4)(iii)(A) of this section. Accordingly, under paragraphs (e)(4)(iv)(A) and (e)(4)(iv)(B) of this section, because the section 362(e)(2) application event was caused by the transfer of B stock received in the intercompany section 362(e)(2) transaction, B must reduce its basis in Asset 1 that reflects the remaining section 362(e)(2) amount by an amount equal to the remaining section 362(e)(2) amount reflected in the B stock involved in the application event. Because S sold all of the B stock received in the intercompany section 362(e)(2) transaction and this stock reflects all of the section 362(e)(2) amount, B must reduce its basis in Asset 1 by the full amount of the remaining section 362(e)(2) amount immediately before the application event. Although there was originally an $80 section 362(e)(2) amount, $8 of that amount ($80/$100 × $10) was eliminated under paragraph (e)(4)(ii)(C)(*1*) of this section when the loss attributable to the depreciation deduction on Asset 1 was absorbed in year 1. Thus, at the time of the sale, the remaining section 362(e)(2) amount is only $72 ($80 less $8), and B's basis in Asset 1 is reduced by such amount, to $18. Under paragraph (e)(4)(iv)(C) of this section, the reduction in the basis of Asset 1 is not a noncapital, nondeductible expense described in § 1.1502–32(b)(2)(iii) and so has no effect on S's basis in its B shares. See § 1.1502–36 for additional rules relating to loss on shares of subsidiary stock.

Example 2. Section 362(e)(2) amount reflected in unabsorbed loss. (i) *Facts.* The facts are the same as in *Example 1*, except that during year 1 B sells Asset 1 to an unrelated nonmember for $20, and recognizes an $80 loss that is not absorbed by the group.

(ii) *Suspension of section 362(e)(2) in year 1.* As in paragraph (ii) of *Example 1,* S's contribution of Asset 1 to B is an intercompany section 362(e)(2) transaction, the section 362(e)(2) amount is $80, and there is no section 362(e)(2) adjustment in year 1. This amount is reflected ratably in S's basis in the 10 shares of B stock, and initially in B's basis in Asset 1. Further, because the $80 loss recognized on the sale of Asset 1 is not absorbed by the group, at the end of year 1 the remaining section 362(e)(2) amount is $80, reflected ratably in S's basis in the 10 shares of B stock, and in B's unabsorbed $80 loss.

(iii) *Application of section 362(e)(2) on sale of B stock.* As in paragraph (iii) of *Example 1*, S's sale of the 10 shares of B stock is a section 362(e)(2) application event that involves all of the B stock received in the intercompany section 362(e)(2) transaction. Accordingly, immediately before the application event, B must reduce the unabsorbed loss carryover that reflects the remaining section 362(e)(2) amount by an amount equal to the remaining section 362(e)(2) amount reflected in the B stock involved in the application event, $80 (all of the remaining section 362(e)(2) amount). The reduction of the loss carryover is not a noncapital, nondeductible expense described in § 1.1502–32(b)(2)(iii) and so has no effect on S's basis in its B shares. See § 1.1502–36 for additional rules relating to loss on shares of subsidiary stock.

Example 3. Section 362(e)(2) amount reflected in unabsorbed loss, partial application. (i) *Facts.* The facts are the same as in *Example 2,* except that on January 1, year 2, S only sells two shares of the B stock to an unrelated nonmember for $4.

(ii) *Suspension of section 362(e)(2) in year 1.* S's contribution of Asset 1 to B is an intercompany section 362(e)(2) transaction, the section 362(e)(2) amount is $80, and there is no section 362(e)(2) adjustment in year 1. This amount is reflected ratably in S's basis in the 10 shares of B stock, and initially in B's basis in Asset 1. Further, because the $80 loss recognized on the sale of Asset 1 is not absorbed by the group, at the end of year 1 the remaining section 362(e)(2) amount is $80, reflected ratably in S's basis in the 10 shares of B stock, and in B's unabsorbed $80 loss.

(iii) *Application of section 362(e)(2) on sale of B stock.* S's sale of two of the shares of B stock is a section 362(e)(2) application event that involves two shares of the B stock received in the intercompany section 362(e)(2) transaction. Accordingly, immediately before the application event, B must reduce the unabsorbed loss carryover that reflects the remaining section 362(e)(2) amount by an amount equal to the remaining section 362(e)(2) amount reflected in the B stock involved in the application event, $16 ($8 of the remaining section 362(e)(2) amount reflected in each share). The loss carryover is reduced from $80 to $64. This reduction is not a noncapital, nondeductible expense described in § 1.1502–32(b)(2)(iii) and so has no effect on S's basis in its B shares. Additionally, under paragraph (e)(4)(ii)(C)(*1*) of this section, $16 of the remaining section 362(e)(2) amount is eliminated, and, thereafter, the $64 remaining section 362(e)(2) amount is ratably reflected in S's basis in the remaining 8 shares of B stock and in B's $64 loss carryover. Because no election is made under section 362(e)(2)(C) in the year of the intercompany section 362(e)(2) transaction or in the year of the stock sale, the first section 362(e)(2) application event, no such election can be made with respect to the remaining shares received in the intercompany section 362(e)(2)(C) transaction. See § 1.1502–36 for additional rules relating to loss on shares of subsidiary stock.

(iv) *Application of section 362(e)(2) on sale of B stock, section 362(e)(2)(C) election.* If S and B elect under paragraph (e)(4)(v) of this section to reduce S's basis in the B stock received in the intercompany section 362(e)(2) transaction, under paragraph (e)(4)(v)(A) of this section S will reduce its basis in the B stock by $16 (an amount equal to the amount that B would otherwise be required to reduce its loss carryover, or the remaining section 362(e)(2) amount reflected in the two shares of B stock sold). Under paragraph (e)(4)(v)(B) of this section, this $16 reduction is applied proportionately to the two shares of B stock sold immediately before the application event, reducing the basis of each share to $2. The reduction in the basis of the two B shares sold is a nondeductible basis recovery item described in § 1.1502–32(b)(3)(iii)(B), and will effect P's basis in its share of S stock. Additionally, under paragraph (e)(4)(ii)(C)(*2*) of this section, $16 of the remaining section 362(e)(2) amount is eliminated, and, thereafter, the $64 remaining section 362(e)(2) amount is ratably reflected in S's basis in the remaining 8 shares of B stock and in B's $80 loss carryover. S recognizes no gain or loss on the sale of these two shares of B stock. Under paragraph (e)(4)(v)(D) of this section, S and B's election to reduce S's basis in the B stock is irrevocable and applicable to all future section 362(e)(2) application events with respect to this intercompany section 362(e)(2) transaction, such as subsequent dispositions of B stock to an unrelated nonmember.

Example 4. Section 362(e)(2) amount reflected in unabsorbed loss, subgroup exception. (i) *Facts.* The facts are the same as in *Example 3,* except that S does not sell any shares of B stock, and on January 1, year 2, P sells the sole share of the S stock to P1, the

common parent of another consolidated group.

(ii) *Suspension of section 362(e)(2) in year 1.* S's contribution of Asset 1 to B is an intercompany section 362(e)(2) transaction, the section 362(e)(2) amount is $80, and there is no section 362(e)(2) adjustment in year 1. This amount is reflected ratably in S's basis in the 10 shares of B stock, and initially in B's basis in Asset 1. Further, because the $80 loss recognized on the sale of Asset 1 is not absorbed by the group, at the end of year 1 the remaining section 362(e)(2) amount is $80, reflected ratably in S's basis in the 10 shares of B stock, and in B's unabsorbed $80 loss.

(iii) *No section 362(e)(2) application event on sale of S stock.* P's sale of the S stock is not an application event described in paragraph (e)(4)(iii) of this section. Further, because S and B continue to be members of the same consolidated group, there is no transfer (within the meaning of § 1.1502–36(f)(11)) of the 10 shares of B stock. Accordingly, there is no application event and, under paragraph (e)(4)(iv) of this section, no section 362(e)(2) adjustment is required. However, adjustments will be required if a section 362(e)(2) application event occurs at a time when there is a remaining section 362(e)(2) amount.

* * * * *

(f) * * *

(6) * * *

(ii) *Gain stock.* For dispositions of P stock occurring before May 16, 2000, see § 1.1502–13(f)(6)(ii) as contained in 26 CFR part 1 in effect on April 1, 2000. For dispositions of P stock occurring on or after May 16, 2000, see § 1.1032–3.

* * * * *

(iv) * * * (A) * * * If P grants M an option to acquire P stock in a transaction meeting the requirements of § 1.1032–3, M is treated as having purchased the option from P for fair market value with cash contributed to M by P.

* * * * *

(j) * * *

(5) * * * (i) * * *

(A) The acquisition of either the assets of the common parent of the terminating group in a reorganization described in section 381(a)(2), or the stock of the common parent of the terminating group; or

* * * * *

(l) * * * (1) * * * Paragraphs (a)(4), (e)(4), (f)(6)(ii), (f)(6)(iv)(A), and (j)(5)(i)(A) of this section apply to all transfers on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 6. Section 1.1502–19 is amended by:

1. Revising paragraphs (a)(3), (c)(1)(iii)(A), and (c)(3)(i)(A).

2. Adding a new last sentence to paragraph (h)(1).

The revisions and addition reads as follows:

§ 1.1502–19 Excess loss accounts.

(a) * * *

(3) *Application of other rules of law.* See § 1.1502–80(a) regarding the general applicability of other rules of law and a limitation on duplicative adjustments. In addition, for purposes of this section, the definitions in § 1.1502–32 apply.

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(A) All of S's assets (other than its corporate charter and those assets, if any, necessary to satisfy state law minimum capital requirements to maintain corporate existence) are treated as disposed of, abandoned, or destroyed for Federal income tax purposes (for example, under section 165(a) or § 1.1502–80(c), or, if S's asset is stock of a lower-tier member, the stock is treated as disposed of under this paragraph (c)). An asset of S is not considered to be disposed of or abandoned to the extent the disposition is in complete liquidation of S under section 332 or is in exchange for consideration (other than in satisfaction of indebtedness);

* * * * *

(3) * * * (i) * * *

(A) The acquisition of either the assets of the common parent of the terminating group in a reorganization described in section 381(a)(2), or the stock of the common parent of the terminating group; or

* * * * *

(h) * * * (1) * * * Paragraphs (a)(3), (c)(1)(iii)(A), and (c)(3)(i)(A) of this section apply to all transfers on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

§ 1.1502–20 [Removed]

Par. 7. Section 1.1502–20 is removed.

Par. 8. Section 1.1502–21 is amended by:

1. Removing the last sentence of paragraph (b)(1).

2. Removing paragraph (b)(3)(v).

3. Revising paragraphs (b)(2)(ii)(A), (b)(2)(iv)(B)(*2*), (h)(6), and (h)(8).

4. Adding new paragraph (h)(1)(iii).

The revisions and addition reads as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(b) * * *

(2) * * *

(ii) *Special rules*—(A) *Year of departure from group.* If a corporation ceases to be a member during a consolidated return year, net operating loss carryovers attributable to the corporation are first carried to the consolidated return year, then are subject to reduction under section 108 and § 1.1502–28 (regarding discharge of indebtedness income that is excluded from gross income under section 108(a)), and then are subject to reduction under § 1.1502–36 (regarding transfers of loss shares of subsidiary stock). Only the amount that is neither absorbed nor reduced under section 108 and § 1.1502–28 or under § 1.1502–36 may be carried to the corporation's first separate return year. For rules concerning a member departing a subgroup, see paragraph (c)(2)(vii) of this section.

* * * * *

(iv) * * *

(B) * * *

(*2*) *Special rules*—(*i*) *Carryback to a separate return year.* If a portion of the CNOL attributable to a member for a taxable year is carried back to a separate return year, the percentage of the CNOL attributable to each member, as of immediately after such portion of the CNOL is carried back, is recomputed pursuant to paragraph (b)(2)(iv)(B)(*2*)(*v*) of this section.

(*ii*) *Excluded discharge of indebtedness income.* If during a taxable year a member realizes discharge of indebtedness income that is excluded from gross income under section 108(a) and such amount reduces any portion of the CNOL attributable to any member pursuant to section 108 and § 1.1502–28, the percentage of the CNOL attributable to each member as of immediately after the reduction of attributes pursuant to sections 108 and 1017, and § 1.1502–28, shall be recomputed pursuant to paragraph (b)(2)(iv)(B)(*2*)(*v*) of this section.

(*iii*) *Departing member.* If during a taxable year a member that had a separate net operating loss for the year of the CNOL ceases to be a member, the percentage of the CNOL attributable to each member as of the first day of the following consolidated return year shall be recomputed pursuant to paragraph (b)(2)(iv)(B)(*2*)(*v*) of this section.

(*iv*) *Reduction of attributes for stock loss.* If during a taxable year a member does not cease to be a member of the group and any portion of the CNOL attributable to any member is reduced pursuant to § 1.1502–36, the percentage of the CNOL attributable to each member immediately after the reduction of attributes pursuant to § 1.1502–36 shall be recomputed pursuant to paragraph (b)(2)(iv)(B)(*2*)(*v*) of this section.

(*v*) *Recomputed percentage.* The recomputed percentage of the CNOL attributable to each member shall equal the unabsorbed CNOL attributable to the member at the time of the recomputation divided by the sum of the unabsorbed CNOL attributable to all of the members at the time of the recomputation. For purposes of the preceding sentence, a CNOL that is reduced pursuant to section 108 and § 1.1502–28, or under § 1.1502–36, or that is otherwise permanently disallowed or eliminated, shall be treated as absorbed.

(*vi*) *Examples.* For purposes of the examples in this section, unless otherwise stated, all groups file consolidated returns, all corporations have calendar taxable years, the facts set forth the only corporate activity, value means fair market value and the adjusted basis of each asset equals its value, all transactions are with unrelated persons, and the application of any limitation or threshold under section 382 is disregarded. * * *

* * * * *

(h) * * * (1) * * *

(iii) Paragraphs (b)(2)(ii)(A) and (b)(2)(iv)(B)(*2*) of this section apply to taxable years the original return for which the due date (without regard to extensions) is on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

(6) *Certain prior periods.* Paragraphs (b)(1), (b)(2)(iv)(A), (b)(2)(iv)(B)(*1*), and (c)(2)(vii) of this section shall apply to taxable years for which the due date of the original return (without regard to extensions) is after March 21, 2005. Sections 1.1502–21T(b)(1), (b)(2)(iv), and (c)(2)(vii), as contained in 26 CFR part 1 revised as of April 1, 2004, shall apply to taxable years for which the due date of the original return (without regard to extensions) is on or before March 21, 2005, and after August 29, 2003. For taxable years for which the due date of the original return (without regard to extensions) is on or before August 29, 2003, see paragraphs (b)(1), (b)(2)(ii)(A), (b)(2)(iv), and (c)(2)(vii) of this section and § 1.1502–21T(b)(1) as contained in 26 CFR part 1 revised as of April 1, 2003.

* * * * *

(8) *Losses treated as expired under § 1.1502–35(f)(1).* For rules regarding losses treated as expired under § 1.1502–35(f) on and after March 10, 2006, see § 1.1502–21(b)(3)(v) as contained in 26 CFR part 1 in effect on April 1, 2006. For rules regarding losses treated as expired before March 10, 2006, see § 1.1502–21T(h)(8) as contained in 26 CFR part 1 in effect on April 1, 2005.

Par. 9. Section 1.1502–30 is amended by:

1. Revising paragraph (b)(4).

2. Adding a new second sentence to paragraph (c).

The revision and addition reads as follows:

§ 1.1502–30 Stock basis after certain triangular reorganizations.

* * * * *

(b) * * *

(4) *Application of other rules of law.* If a transaction otherwise subject to this section is also a group structure change subject to § 1.1502–31, the provisions of § 1.1502–31 and not this section apply to determine stock basis. See § 1.1502–80(a) regarding the general applicability of other rules of law and a limitation on duplicative adjustments. See § 1.1502–80(d) for the non-application of section 357(c) to P.

* * * * *

(c) * * * However, paragraph (b)(4) of this section applies to reorganizations occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 10. Section 1.1502–31 is amended by:

1. Revising paragraph (a)(2).

2. Adding a new last sentence to paragraph (h)(1).

The revision and addition reads as follows:

§ 1.1502–31 Stock basis after a group structure change.

(a) * * *

(2) *Application of other rules of law.* If a transaction subject to this section is also a triangular reorganization otherwise subject to § 1.1502–30, the provisions of this section and not those of § 1.1502–30 apply to determine stock basis. See § 1.1502–80(a) regarding the general applicability of other rules of law and a limitation on duplicative adjustments.

* * * * *

(h) * * * (1) * * * In addition, paragraph (a)(2) of this section applies to group structure changes that occurred on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 11. Section 1.1502–32 is amended by:

1. Revising paragraphs (a)(2), (b)(3)(ii)(C)(*2*), (b)(3)(iii)(C), (b)(3)(iii)(D), (c)(1), (c)(2)(i), the first sentence in paragraph (c)(2)(ii)(A) introductory text, the first sentence in paragraph (c)(3), and the first sentence in paragraph (c)(4)(i) introductory text.

2. Adding new paragraph (h)(9).

The revisions and addition read as follows:

§ 1.1502–32 Investment adjustments.

(a) * * *

(2) *Application of other rules of law.* See § 1.1502–80(a) regarding the general applicability of other rules of law and a limitation on duplicative adjustments.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) * * *

(2) *Expired loss carryovers.* If the amount of the discharge exceeds the amount of the attribute reduction under sections 108 and 1017, and § 1.1502–28, the excess nevertheless is treated as applied to reduce tax attributes to the extent a loss carryover attributable to S expired without tax benefit, the expiration was taken into account as a noncapital, nondeductible expense under paragraph (b)(3)(iii) of this section, and the loss carryover would have been reduced had it not expired.

* * * * *

(iii) * * *

(C) *Loss suspended under § 1.1502–35(c).* For losses suspended by § 1.1502–35(c) prior to the date these regulations are published as final regulations in the **Federal Register**, see 1.1502–32(b)(3)(iii)(C) as contained in 26 CFR part 1 revised as of April 1, 2006.

(D) *Reimported losses disallowed under § 1.1502–35.* Any loss or deduction the use of which is disallowed pursuant to § 1.1502–35(b) (other than duplicating items that are carried back to a consolidated return year of the group), and with respect to which no waiver described in paragraph (b)(4) of this section is filed, is treated as a noncapital, nondeductible expense incurred during the taxable year that such loss would otherwise be absorbed. For losses or deductions disallowed under § 1.1502–35(g)(3)(iii) prior to the date these regulations are published as final regulations in the **Federal Register**, see 1.1502–32(b)(3)(iii)(D) as contained in 26 CFR part 1 revised as of April 1, 2006.

* * * * *

(c) *Allocation of adjustments among shares of stock*—(1) *In general*—(i) *Distributions.* The portion of the adjustment under paragraph (b) of this section that is described in paragraph (b)(2)(iv) of this section (negative adjustments for distributions) is allocated to the shares of S's stock to which the distribution relates.

(ii) *Special allocations in the case of certain loss transfers and reallocations of investment adjustments subject to prior use limitation*—(A) *Losses attributable to transfers subject to section 362(e)(2)–(1) In general.* If a nonmember holds shares of S stock, any amounts that directly or indirectly reflect a section 362(e)(2) amount (as defined in § 1.1502–13(e)(4)(ii)(A)) are allocated to members' shares of S stock under the general principles of this paragraph (c), except that such allocations are made as though the shares of S stock held by nonmembers were not outstanding.

(*2*) *Example.* The application of this paragraph (c) is illustrated by the following example:

Example. (i) *Facts.* P owns four of the five outstanding shares of the stock of M. X, a nonmember, owns the remaining outstanding share of M stock. On January 1, year 1, M contributes Asset 1 to S, a newly formed subsidiary, in exchange for five shares of S stock in a transaction to which section 351 applies. At the time of the transfer, M's basis in Asset 1 is $100 and its value is $20. At the end of year 1, S's only item is a $10 depreciation deduction with respect to Asset 1, which gives rise to a $10 loss that is absorbed by the group. At the beginning of year 2, M sells one of its S shares to X for $3.60, and M and S elect to reduce M's basis in the S stock under § 1.1502–13(e)(4)(v) by the amount of the remaining section 362(e)(2) amount ($72) (computed in paragraph (iii)(C) of this *Example*) reflected in the share. See, § 1.1502–13(e)(4). Accordingly, M's basis in the S share is reduced by $14.40 (the portion of the $72 remaining section 362(e)(2) amount reflected in the share (computed in paragraph (iii)(C) of this *Example*)), to $3.60. M recognizes no gain or loss on the sale of the S share. At the end of year 2, S's only item is an additional $10 depreciation deduction with respect to Asset 1, which gives rise to an additional $10 loss that is absorbed by the group. At the end of year 2, M's only item is a $14.40 nondeductible basis recovery item resulting from the election to reduce its basis in the S share. See § 1.1502–13(e)(4)(v)(C).

(ii) *Application of section 362(e)(2) and § 1.1502–13(e)(4) to the transfer of Asset 1.* M's contribution of Asset 1 to S is a transaction described in section 362(e)(2). Under the general rules of section 362(e)(2)(A), S's basis in Asset 1 would be limited to its value ($20) and would thus be reduced by $80, from $100 to $20. However, the transfer is an intercompany section 362(e)(2) transaction and therefore, under § 1.1502–13(e)(4)(iv), no adjustment is made to S's basis in Asset 1 under section 362(e)(2) until there is a section 362(e)(2) application event (within the meaning of § 1.1502–13(e)(4)(iii)). There is no section 362(e)(2) application event in year 1 and so there is no section 362(e)(2) adjustment in year 1. The $80 reduction that S would have had in its basis in Asset 1 is a section 362(e)(2) amount described in § 1.1502–13(e)(4)(ii)(A). This $80 section 362(e)(2) amount is initially reflected ratably ($16 per share) in M's basis in each of the five shares of S stock received in the transaction, and in S's basis in Asset 1. Further, under § 1.1502–13(e)(4)(ii)(C)(*1*), the section 362(e)(2) amount reflected in an attribute is generally eliminated proportionately as the attribute is taken into account. Accordingly, $8 ($80/$100 × $10) of the year 1 Asset 1 depreciation deduction is attributable to the section 362(e)(2) amount.

(iii) *Treatment of year 1 item.* (A) *Allocation of item among shares of S stock.* Although no adjustment is made under section 362(e)(2) during year 1, if any shares of S stock are held by nonmembers, any items taken into account that are attributable to the section 362(e)(2) amount must be specially allocated under the rules of this paragraph (c)(1)(ii). Because M owns all the shares of S stock, the special allocation rules of this paragraph (c)(1)(ii) have no application to the allocation of S's depreciation deduction to M's shares. Accordingly, the entire $10 of depreciation on Asset 1 is included in the remaining adjustment to the S shares under the general rules in paragraphs (c)(2) through (c)(4) of this section. As a result, $2 is allocated to, and decreases the basis in, each share of S stock held by M from $20 to $18.

(B) *Allocation of tiered-up item among shares of M stock.* Under paragraph (a)(3)(iii) of this section, adjustments to M's basis in S stock tier up and are taken into account in determining adjustments to higher-tier stock. However, because X, a nonmember, holds a share of M stock, any portion of the tiering-up adjustment that is attributable to a section 362(e)(2) amount is specially allocated under this paragraph (c)(1)(ii). In this case, $8 of the adjustment to M's basis in S stock ($^{80}/_{100}$ × $10) is attributable to a section 362(e)(2) amount and thus $8 of the tiered-up adjustment is indirectly attributable to a section 362(e)(2) amount. As a result, $8 of the tiered-up adjustment must be allocated as though X's share of M stock was not outstanding. Accordingly, $2 (1/4) of the $8 of the tiered-up adjustment is allocated to each of P's four shares of M stock and no portion of that amount is allocated to X's share of M stock. However, the remaining $2 of the tiered-up adjustment not attributable to a section 362(e)(2) amount is included in the remaining adjustment allocated to all outstanding shares under the general rules in paragraphs (c)(2) through (c)(4) of this section. Thus, $.40 (1/5) of the $2 of the tiered-up adjustment is allocated to each outstanding share. (Although $.40 is allocated to X's share of M stock, that allocation does not affect X's basis in the share because X is not a member of the group. See paragraph (c)(1)(iv) of this section.) The allocation of the tiered up year 1 item is thus:

Item	Allocation	
	P's shares of M stock (4/5)	X's share of M stock (1/5)
Tiered-up section 362(e)(2) amount ($8 of the $10 depreciation on Asset 1)	$8.00 ($2.00 per share)	N/A.
Tiered-up non-section 362(e)(2) amount ($2 of the $10 depreciation on Asset 1)	$1.60 ($.40 per share)	$.40 ($.40 per share).
Total allocation	$9.60 ($2.40 per share)	$.40 ($.40 per share).

(C) *Remaining section 362(e)(2) amount.* After the year 1 items have been taken into account, the remaining section 362(e)(2) amount with respect to the S shares is $72 ($80 less $8 eliminated due to Asset 1 depreciation being taken into account). Under § 1.1502–13(e)(4)(ii)(C)(*1*), this $72 remaining section 362(e)(2) amount is reflected proportionately in the five S shares held by M, or $14.40 per share.

(iv) *Treatment of year 2 items.* (A) *Elimination of a portion of the section 362(e)(2) amount.* Under § 1.1502–13(e)(4)(ii)(C)(*2*), S's remaining section 362(e)(2) amount is eliminated to the extent of the reduction in M's basis in the S stock under § 1.1502–13(e)(4)(v). Accordingly, S's remaining section 362(e)(2) amount is reduced by $14.40, to $57.60. This remaining section 362(e)(2) amount is reflected proportionately in the four remaining S shares held by M, or $14.40 per share.

(B) *Allocation of item among shares of S stock.* Because X owns a share of S stock in year 2, the special allocation rule in paragraph (c)(1)(ii) of this section applies to the allocation of the portion of the year 2 depreciation deduction attributable to a section 362(e)(2) amount. Under that rule, $6.40 (57.60/90 × $10) of the item attributable to a section 362(e)(2) amount must be allocated as though only the four shares of S stock held by M were outstanding. Accordingly, $1.60 (1/4) of the $6.40 of the $10 depreciation deduction is allocated to each of M's four shares of S stock and no portion of that amount is allocated to X's share of S stock. However, the remaining $3.60 of the $10 depreciation deduction not attributable to a section 362(e)(2) amount is included in the remaining adjustment allocated to all outstanding shares under the general rules in paragraphs (c)(2) through (c)(4) of this section. Thus, $.72 (1/5) of the $3.60 of the $10 depreciation deduction is allocated to each outstanding S share. (Although $.72 is allocated to X's share of S stock, that allocation does not affect X's basis

in the share because X is not a member of the group. See paragraph (c)(1)(iv) of this section.) The allocation of S's year 2 item is thus:

Item	Allocation	
	M's shares of S stock (4/5)	X's share of S stock (1/5)
Section 362(e)(2) amount ($6.40 of the $10 depreciation on Asset 1)	$6.40 ($1.60 per share)	N/A.
Non-section 362(e)(2) amount ($3.60 of the $10 depreciation on Asset 1)	$2.88 ($.72 per share)	$.72 ($.72 per share).
Total allocation:	$9.28 ($2.32 per share)	$.72 ($.72 per share).

(C) *Adjustments to the basis of shares of M stock.* The adjustment to the basis of M stock includes two items: M's $14.40 nondeductible basis recovery item resulting from the reduction in M's basis in the S stock under § 1.1502–13(e)(4)(v); and $9.28 tiered-up adjustment from the adjustment made to its basis in the S stock. The full amount of the $14.40 nondeductible basis recovery item, and $6.40 of the $9.28 tiered-up adjustment is attributable to the section 362(e)(2) amount. Therefore $20.80 ($14.40 plus $6.40) must be allocated entirely to P's shares of M stock. Accordingly, $5.20 (1/4) of the $20.80 is allocated to each of P's four shares of M stock. The remaining $2.88 of the tiered-up adjustment not attributable to a section 362(e)(2) amount is included in the remaining adjustment allocated to all outstanding shares under the general rules in paragraphs (c)(2) through (c)(4) of this section. Thus, approximately $.58 (1/5) of the $2.88 of the tiered-up adjustment is allocated to each outstanding share. (Although approximately $.58 is allocated to X's share of M stock, that allocation does not affect X's basis in the share because X is not a member of the group. See paragraph (c)(1)(iv) of this section.) The allocation of M's year 2 items is thus:

Item	Allocation	
	P's shares of M stock (4/5)	X's share of M stock (1/5)
.		
Nondeductible basis recovery ($14.40 reduction in S stock basis)	$14.40 ($3.60 per share)	N/A.
Tiered-up section 362(e)(2) amount ($6.40 of the $9.28 tiered-up adjustment)	$6.40 ($1.60 per share)	N/A.
Tiered-up non-section 362(e)(2) amount ($2.88 of the $9.28 tiered-up adjustment)	$2.30 (approx. $.58 per share).	$.58 (approx. $.58 per share).
Total allocation:	$23.10 (approx. $5.78 per share).	$.58 (approx. $.58 per share).

(D) *No duplicative adjustments to the basis of shares of M stock.* A portion of the $2.88 of the tiered-up adjustment not attributable to a section 362(e)(2) amount duplicates a portion of the $14.40 nondeductible basis recovery item resulting from the reduction in M's basis in the S stock under § 1.1502–13(e)(4)(v). Consequently, under § 1.1502–80(a), such portion of the tiered-up adjustment is not applied to reduce P's basis in its shares of M stock. The election to reduce M's basis in the S stock eliminated $14.40 of the remaining section 362(e)(2) amount. Accordingly, at the S level, $1.60 ($14.40/$90 × $10) of the Asset 1 year 2 depreciation deduction is associated with this amount. This portion was allocated to all outstanding shares of S stock under the general rules in paragraphs (c)(2) through (c)(4) of this section ($.32 per share ($1.60/5)). At the M level, $1.28 (4 × $.32) of the tiered-up non-section 362(e)(2) amount reflects depreciation on this $14.40 of Asset 1 basis. So, at the M level, approximately $.26 ($1.28/5) of this tiered-up amount is allocated to each outstanding share. This approximately $.26 per share amount would duplicate a portion of the $14.40 nondeductible basis recovery item if it is applied to reduce P's basis in the M shares. Accordingly, although approximately $5.78 of the items are allocated to each M share held by P, P's basis in each share of M stock is only reduced by approximately $5.52 ($5.78 less $.26).

(B) *Losses reattributed pursuant to an election under § 1.1502–36(d)(6).* If a member transfers (within the meaning of § 1.1502–36(f)(11)) loss shares of S stock and the common parent elects under § 1.1502–36(d)(6) to reattribute S attributes, the resulting noncapital, nondeductible expense is allocated to all loss shares of S stock transferred by members in the transaction in proportion to the loss in the shares, and such amount tiers up to any higher tiers under the general rules of this section. If lower-tier subsidiary attributes that would otherwise be reduced as a result of tier-down attribute reduction under § 1.1502–36(d)(5)(ii)(D) are reattributed, the resulting noncapital, nondeductible expense is allocated to the shares of the lower-tier subsidiary (and any tier up of such amount is allocated to the shares of higher tier subsidiaries) that will cause the full amount of this expense to be applied to reduce the basis of the loss shares of S stock transferred by members in the transaction. However, this noncapital, nondeductible expense (and any tier up of such amount) is not allocated to shares (other than S shares) transferred in a transfer in which gain or loss was recognized. Further, this noncapital, nondeductible expense (and any tier up of such amount) is allocated among lower-tier shares with positive basis in a manner that reduces the disparity in the basis of the shares to the greatest extent possible. The tier up of this amount is allocated to the loss shares of S stock transferred by members in the transaction in proportion to the loss in the shares, and such amount tiers up to any higher tiers under the general rules of this section. For example, suppose P owns M1, P and M1 own M2, M2 owns S, M1 and S own S1, and M1 and S1 own S2. If S sells a portion of the S1 shares at a gain and M2 sells all of the S stock at a net loss (after adjusting the basis for the gain recognized by S on the sale of the S1 shares), and P elects under § 1.1502–36(d)(6) to reattribute attributes of S2, the resulting noncapital, nondeductible expense is allocated entirely to the S2 shares held by S1, the tier up of this amount is allocated entirely to the S1 shares held by S (excluding the S1 shares sold), and the tier up of this amount is allocated to the loss shares of S stock sold by M2. This amount then tiers up from M2 to M1 and P, and from M1 to P under the general rules of this section.

(C) *Reallocations of investment adjustments subject to prior use limitation.* If the reallocation of an investment adjustment under § 1.1502–36(b)(2) is subject to the limitation in § 1.1502–36(b)(2)(iii)(B)(*2*) due to prior use, no amount of such reallocation (including as a tiered-up amount) shall be allocated to any share whose prior use resulted in the application of the limitation.

(iii) *Remaining adjustment.* The *remaining adjustment* is that portion of the adjustment described in paragraphs (b)(2)(i) through (b)(2)(iii) of this section (adjustments for taxable income or loss, tax-exempt income, and noncapital, nondeductible expenses) that is not specially allocated under paragraph (c)(1)(ii) of this section. The remaining adjustment is allocated among the shares of S stock as provided in paragraphs (c)(2) through (c)(4) of this section. If the remaining adjustment is positive, it is allocated first to any preferred stock to the extent provided in paragraph (c)(3) of this section, and then to the common stock as provided in paragraph (c)(2) of this section. If the remaining adjustment is negative, it is allocated only to common stock as provided in paragraph (c)(2) of this section.

(iv) *Nonmember shares.* No adjustment under this section that is allocated to a share for the period it is owned by a nonmember affects the basis of the share.

(v) *Cross-references.* See paragraph (c)(4) of this section for the reallocation of adjustments, and paragraph (d) of this section for definitions. See § 1.1502–19(d) for special allocations of basis determined or adjusted under the Code with respect to excess loss accounts.

(2) *Common stock*—(i) *Allocation within a class.* The remaining adjustment described in paragraph (c)(1)(iii) of this section that is allocable to a class of common stock generally is allocated equally to each share within the class. However, if a member has an excess loss account in shares of a class of common stock at the time of a positive remaining adjustment, the portion of the adjustment allocable to the member with respect to the class is allocated first to equalize and eliminate that member's excess loss accounts and then to increase equally its basis in the shares of that class. Similarly, any negative remaining adjustment is allocated first to reduce the member's positive basis in shares of the class before creating or increasing its excess loss account. After positive basis is eliminated, any remaining portion of the negative adjustment is allocated first to equalize, to the greatest extent possible, and then to increase equally, the member's excess loss accounts in the shares of that class. Distributions and any adjustments or determinations under the Internal Revenue Code (for example, under section 358, including any modifications under § 1.1502–19(d)) are taken into account before the allocation is made under this paragraph (c)(2)(i).

(ii) *Allocation among classes*—(A) *General rule.* If S has more than one class of common stock, the extent to which the remaining adjustment described in paragraph (c)(1)(iii) of this section is allocated to each class is determined, based on consistently applied assumptions, by taking into account the terms of each class and all other facts and circumstances relating to the overall economic arrangement.

* * *

* * * * *

(3) *Preferred stock.* If the remaining adjustment described in paragraph (c)(1)(iii) of this section is positive, it is allocated to preferred stock to the extent required (when aggregated with prior allocations to the preferred stock during the period that S is a member of the consolidated group) to reflect distributions described in section 301 (and all other distributions treated as dividends) to which the preferred stock becomes entitled, and arrearages arising, during the period that S is a member of the consolidated group. * * *

* * * * *

(4) *Cumulative redetermination*—(i) *General rule.* A member's basis in each share of S's preferred and common stock must be redetermined whenever necessary to determine the tax liability of any person. See paragraph (b)(1) of this section. The redetermination is made by reallocating S's adjustments described in paragraphs (c)(1)(ii) and (c)(1)(iii) of this section (adjustments for specially allocated losses and remaining adjustments, respectively) for each consolidated return year (or other applicable period) of the group by taking into account all of the facts and circumstances affecting allocations under this paragraph (c) as of the redetermination date with respect to all of S's shares. * * *

* * * * *

(h) * * *

(9) *Allocations of investment adjustments, including adjustments attributable to certain loss transfers; certain conforming amendments.* Paragraphs (a)(2), (b)(3)(ii)(C)(*2*), (b)(3)(iii)(C), (b)(3)(iii)(D), (c)(1), (c)(2)(i), (c)(2)(ii)(A), (c)(3), and (c)(4)(i) of this section are applicable on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 12. Section 1.1502–33 is amended by:

1. Revising paragraph (a)(2).

2. Adding a new last sentence to paragraph (j)(1).

The revision and addition reads as follows:

§ 1.1502–33 Earnings and profits.

(a) * * *

(2) *Application of other rules of law.* See § 1.1502–80(a) regarding the general applicability of other rules of law and a limitation on duplicative adjustments.

* * * * *

(j) * * * (1) * * * However, paragraph (a)(2) of this section applies with respect to determinations of the earnings and profits of a member in consolidated return years beginning on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 13. Section 1.1502–35 is amended by:

1. Revising paragraphs (a), (b), and (h).

2. Removing and reserving paragraphs (f) and (g).

3. Adding new paragraph (l).

The revisions and addition read as follows:

§ 1.1502–35 Transfers of subsidiary stock and deconsolidations of subsidiaries.

(a) *Losses on subsidiary stock transferred or deconsolidated prior to the date that these regulations are published as final regulations in the* **Federal Register**. If a member disposed of a loss share of stock of a subsidiary (S), or if S ceased to be a member (deconsolidated) when any member held loss shares of S stock, and if the disposition or deconsolidation occurred prior to the date that these regulations are published as final regulations in the **Federal Register**, see § 1.1502–35, as contained in 26 CFR part 1, revised as of April 1, 2006. For transfers and deconsolidations on or after the date that these regulations are published as final regulations in the **Federal Register**, see § 1.1502–36.

(b) *Anti-loss reimportation rule applicable on or after the date that these regulations are published as final regulations in the* **Federal Register**—(1) *Conditions for application.* This paragraph (b) applies when—

(i) A member of a group (the selling group) recognized and was allowed a loss with respect to a share of stock of S, a subsidiary or former subsidiary in the selling group;

(ii) That stock loss was duplicated (in whole or in part) in S's attributes (duplicating items) at the earlier of the time that the loss was recognized or that S ceased to be a member; and

(iii) Within ten years of the date that S ceased to be a member, there is a reimportation event. For this purpose, a reimportation event is any event after which a duplicating item becomes directly or indirectly reflected in the attributes of any member of the selling group, including S, or, if not reflected in the attributes, would be properly taken into account by any member of the selling group (for example, as the result of a carryback) (reimported items).

(2) *Effect of application.* Immediately before the time that a reimported item (or any portion of a reimported item) would be properly taken into account (but for the application of this paragraph (b)), such item (or such portion of the item) is reduced to zero and no deduction or loss is allowed, directly or indirectly, with respect to that item.

(3) *Operating rules.* For purposes of this paragraph (b)—

(i) The terms ''member'', ''subsidiary'', and ''group'' include their predecessors and successors to the extent necessary to effectuate the purposes of this section;

(ii) The determination of whether a loss is duplicative is made under the principles of § 1.1502–35, as contained in 26 CFR part 1, revised as of April 1, 2006; and

(iii) The reduction of a reimported item (other than duplicating items that are carried back to a consolidated return year of the group) is a noncapital, nondeductible expense within the meaning of § 1.1502–32(b)(2)(iii).

(4) *Period of applicability.* The provisions of this paragraph (b) apply to a reimported item if its related stock loss is recognized on or after the date that these regulations are published as final regulations in the **Federal Register**. The provisions of this paragraph (b) (other than paragraph (b)(1)(i)) also apply to a reimportation event if its related stock loss is recognized on or after March 7, 2002, and is recognized in either a disposition (described in paragraph (g)(3)(i)(A) of this section, as contained in 26 CFR part 1, revised as of January 1, 2007) or a disposition otherwise subject to this section. For prior law, see paragraph (g)(3) of this section, as contained in 26 CFR part 1, revised as of January 1, 2007.

* * * * *

(h) *Application of other rules of law.* See § 1.1502–80(a) regarding the general applicability of other rules of law and a limitation on duplicative adjustments.

* * * * *

(l) *Effective date.* Paragraphs (a), (b), and (h) of this section apply with respect to stock transfers, deconsolidations of subsidiaries, determinations of worthlessness, and stock dispositions on or after the date these regulations are published as final regulations in the **Federal Register**. For rules applicable prior to the date these regulations are published as final regulations in the **Federal Register**, see § 1.1502–35 as contained in 26 CFR part 1 in effect on April 1, 2007.

§ 1.1502–35T [Removed]

Par. 14. Section 1.1502–35T is removed.

Par. 15. Section 1.1502–36 is added to read as follows:

§ 1.1502–36 Loss on subsidiary stock.

(a) *In general*—(1) *Scope.* This section provides rules for adjusting members' bases in stock of a subsidiary (S) and for reducing S's attributes when a member (M) transfers a loss share of S stock. See paragraph (f) of this section for definitions of the terms used in this section, including *transfer* and *loss share*.

(2) *Purpose.* The rules in this section have two principal purposes. The first is to prevent the consolidated return provisions from reducing a group's consolidated taxable income through the creation of noneconomic loss on S stock. The second is to prevent members (including former members) of the group from collectively obtaining more than one tax benefit from a single economic loss. Additional purposes are set forth in other paragraphs of this section. The rules of this section must be interpreted and applied in a manner that is consistent with and reasonably carries out the purposes of this section.

(3) *Overview*—(i) *General application of section.* This section applies when M transfers a share of S stock and, after giving effect to all applicable rules of law other than this section, the share is a loss share. Paragraph (b) of this section applies first to require certain redeterminations of all members' bases in shares of S stock. If the transferred share is a loss share after any basis redetermination required by paragraph (b) of this section, paragraph (c) of this section applies to require certain reductions in M's basis in the transferred loss share. If the transferred share is a loss share after any reduction required by paragraph (c) of this section, paragraph (d) of this section applies to require certain reductions in S's attributes. Paragraphs (e), (f), and (g) of this section provide general operating rules (predecessor/successor rules, effects of prior section 362(e)(2) transactions), definitions, and an anti-abuse rule, respectively.

(ii) *Stock of multiple subsidiaries transferred in the transaction*—(A) *Order of application*—(*1*) *Transferred shares in lowest tier.* If shares of stock of more than one subsidiary are transferred in a transaction and no transferred shares of stock of the lowest-tier subsidiary (S2) are loss shares, any gain recognized with respect to the S2 shares immediately adjusts members' bases in subsidiary stock under the principles of § 1.1502–32. However, if any of the transferred S2 shares are loss shares, first paragraph (b) of this section and then paragraph (c) of this section apply with respect to the S2 shares. After giving effect to any adjustments required under paragraphs (b) and (c) of this section, gain or loss is computed on all transferred S2 shares. Any adjustments under paragraphs (b) and (c) of this section, any gain or loss recognized on transferred S2 shares (whether allowed or disallowed), and any other related or resulting adjustments are then applied to adjust members' bases in subsidiary stock under the principles of § 1.1502–32.

(*2*) *Application of paragraphs (b) and (c) of this section to higher-tier stock.* After giving effect to any lower-tier adjustments described in paragraph (a)(3)(ii)(A)(*1*) of this section, transfers in the next higher tier in which shares are transferred, and then in each next higher tier successively, are subject to the treatment described in paragraph (a)(3)(ii)(A)(*1*).

(*3*) *Application of paragraph (d) of this section.* After paragraphs (b) and (c) of this section have been applied with respect to all transferred loss shares and after giving effect to all adjustments (whether required by paragraphs (b) and (c) of this section, by the recognition of gain on a transfer, or otherwise), paragraph (d) of this section applies with respect to the highest-tier shares that are then transferred loss shares. Paragraph (d) then applies with respect to transferred loss shares in each next lower tier successively.

(B) *Example.* The rules of this paragraph (a)(3) are illustrated by the following example:

Example. M owns all the outstanding shares of S stock and one of the two outstanding shares of S2 stock, S owns all the outstanding shares of S1 stock, and S1 owns the other outstanding share of S2 stock. As part of one transaction, M sells all the S shares and its S2 share, and S1 sells its S2 share. The sales are to unrelated individuals, S and S1 do not elect to file a consolidated return after the transaction, the S and S1 shares are loss shares and the S2 shares are gain shares. Each share is transferred within

the meaning of this section, the S and S2 shares because S and S2 cease to be owned by M, and M and S1, respectively, as a result of taxable dispositions, and the S1 shares because S and S1 cease to be members of the same group. This section applies to the transfer of the S and S1 (loss) shares, but not to the transfer of the S2 (gain) shares. Accordingly, immediately before the transaction, after giving effect to other rules of law, the following occurs. First, the gain recognized on the transferred S2 shares tiers up to adjust members' bases in all upper-tier subsidiary shares under the principles of § 1.1502–32. Then, if S's transferred S1 shares are still loss shares, paragraphs (b) and (c) of this section apply to those shares. The loss on the S1 shares is not recognized in the transfer (because there is no taxable disposition of the shares) and so only the adjustments to the bases of the S1 shares required by paragraphs (b) and (c) of this section tier up to adjust M's basis in the S stock. Then, if M's transferred shares of S stock are still loss shares, paragraphs (b) and (c) of this section apply with respect to those shares. If, after giving effect to any adjustments under paragraphs (b) and (c) of this section, any of the S shares are still loss shares, paragraph (d) of this section applies with respect to the transfer of those shares. If any transferred S1 shares are still loss shares after the application of paragraph (d) of this section with respect to the transfer of S shares, paragraph (d) applies with respect to the transfer of the S1 shares.

(4) *Other rules of law and coordination with deferral and disallowance provisions.* This section applies and has effect immediately upon the transfer of a loss share even if the loss is deferred, disallowed, or otherwise not taken into account under any other applicable rules of law. For example, if M sells loss shares of S stock to another member in an intercompany transaction, every member's bases in shares of S stock and all of S's attributes may be adjusted under this section even though M's loss is deferred under §§ 1.267(f)–1 and 1.1502–13, and S remains a member. See § 1.1502–80(a) regarding the general applicability of other rules of law and a limitation on duplicative adjustments.

(5) *Nomenclature, factual assumptions adopted in this section.* Unless otherwise stated, for purposes of this section, the following nomenclature and assumptions are adopted. P is the common parent of a consolidated group and X is a nonmember of the P group. If a corporation has preferred stock outstanding, it is stock described in section 1504(a)(4). The examples set forth the only facts and activities relevant to the example. All transactions are between unrelated persons and are independent of each other. Tax liabilities and their effect, and the application of any loss disallowance or deferral provision of the Code or regulations, including but not limited to section 267, are disregarded. All persons report on a calendar year basis and use the accrual method of accounting. All parties comply with filing and other requirements of this section and all other provisions of the Code and regulations.

(b) *Basis redetermination to reduce disparity*—(1) *In general*—(i) *Purpose and scope.* The rules of this paragraph (b) reduce the extent to which there is disparity in members' bases in shares of S stock. These rules are intended to prevent the operation of the investment adjustment system from creating noneconomic or duplicated loss when members hold S shares with disparate bases, and they operate by reallocating previously applied investment adjustments. The provisions of this paragraph (b) do not alter the aggregate amount of basis in shares of S stock held by members or the aggregate amount of investment adjustments applied to shares of S stock.

(ii) *Exemptions from basis redetermination*—(A) *No potential for redetermination.* Notwithstanding the general rule in paragraph (b)(2) of this section, basis redetermination will not be required if redetermination would not result in a change to any member's basis in any share of S stock. For example, if S has only one class of stock outstanding and there is no disparity in members' bases in S shares, no member's basis would be changed by the application of this paragraph (b). Accordingly, under this paragraph (b)(1)(ii)(A), no redetermination would be required. Similarly, if S has preferred and common stock outstanding, there is no gain or loss on any member's preferred shares, and there is no disparity in members' bases in the common stock, no member's basis would be changed by the application of this paragraph (b). Accordingly, under this paragraph (b)(1)(ii)(A), no redetermination would be required.

(B) *Disposition of entire interest.* Notwithstanding the general rule in paragraph (b)(2) of this section, basis redetermination will not be required if, within the group's taxable year in which the transfer occurs, every share of S stock held by a member is transferred to a nonmember in one or more fully taxable transactions.

(iii) *Transfers of stock of subsidiaries at multiple tiers.* If stock of subsidiaries at multiple tiers is transferred in a transaction, see paragraph (a)(3)(ii) of this section regarding the order of application of this section.

(iv) *Investment adjustment.* For purposes of this paragraph (b), the term *investment adjustment* means the adjustment for items described in § 1.1502–32(b)(2), excluding § 1.1502–32(b)(2)(iv) (distributions). The term includes all such adjustments reflected in the basis of the share, whether originally applied directly by § 1.1502–32 or otherwise. The term therefore includes investment adjustments reallocated to the share, and it does not include investment adjustments reallocated from the share, whether pursuant to this section or any other provision of law. It also includes the proportionate amount of investment adjustments reflected in the basis of a share after the basis is apportioned among shares, for example in a transaction qualifying under section 355.

(2) *Basis redetermination rule.* If M transfers a loss share of S stock, all members' bases in all their shares of S stock are subject to redetermination under this paragraph (b). The adjustments are made in accordance with the following:

(i) *Decreasing the bases of transferred loss shares*—(A) *Removing positive investment adjustments from transferred loss shares.* M's basis in each of its transferred loss shares of S stock is first reduced, but not below value, by removing positive investment adjustments previously applied to the basis of the share. The positive investment adjustments removed from transferred loss shares are reallocated under paragraph (b)(2)(ii) of this section after negative investment adjustments are reallocated under paragraph (b)(2)(i)(B) of this section.

(B) *Reallocating negative investment adjustments.* If a transferred share is still a loss share after applying paragraph (b)(2)(i)(A) of this section, M's basis in the share is reduced, but not below value, by reallocating and applying negative investment adjustments to the transferred loss share from shares held by members that are not transferred loss shares. Reductions under this paragraph (b)(2)(i)(B) are made first to M's bases in transferred loss shares of S preferred stock and then to M's bases in transferred loss shares of S common stock.

(ii) *Increasing the bases of gain preferred and all common shares*—(A) *Preferred stock.* After the application of paragraph (b)(2)(i) of this section, the positive investment adjustments removed from transferred loss shares are reallocated and applied to increase, but not above value, members' bases in gain shares of S preferred stock.

(B) *Common stock.* Any positive investment adjustments removed from transferred loss shares and not applied to S preferred shares are then

reallocated and applied to increase members' bases in shares of S common stock. Reallocations are made to shares of common stock without regard to whether a particular share is a loss share or a transferred share, and without regard to the share's value.

(iii) *Operating rules*—(A) *In general.* Reallocations are made in a manner that reduces basis disparity among shares of preferred stock and among shares of common stock to the greatest extent possible (that is, causes the ratio of the basis to the value of each member's share to be as equal as possible).

(B) *Limits on reallocation*—(*1*) *Restriction to outstanding shares.* Investment adjustments can only be reallocated to shares that were held by members in the period to which the adjustment is attributable.

(*2*) *Limitation by prior use of allocation*—(*i*) *In general.* In order to prevent the reallocation of investment adjustments from either increasing or decreasing members' aggregate bases in subsidiary stock, no investment adjustment (positive or negative) may be reallocated under this paragraph (b)(2) to the extent that it was (or would have been) used prior to the time that it would otherwise be reallocated under this paragraph (b)(2). For this purpose, an investment adjustment was used (or would have been used) to the extent that it was reflected in (or would have been reflected in) the basis of a share of subsidiary stock and the basis of that share has already been taken into account, directly or indirectly, in determining income, gain, deduction, or loss (including by affecting the application of this section to a prior transfer of subsidiary stock) or in determining the basis of any property that is not subject to § 1.1502–32. However, notwithstanding the general rule, if the prior use was in an intercompany transaction, an investment adjustment may be reallocated to the extent that § 1.1502–13 has prevented the gain or loss on the transaction from being taken into account. (In that case, appropriate adjustments must be made to the prior intercompany transaction.) Further, if an investment adjustment was reflected in (or would have been reflected in) the basis of a share that has been taken into account, but the basis of that share would not change as a result of the reallocation (for example, because the reallocation would be among shares that are all lower-tier to the share with the previously used basis), the investment adjustment may be reallocated. See § 1.1502–32(c)(1)(ii)(C) regarding special allocations applicable if the reallocation of an investment adjustment is limited under this paragraph (b)(2)(iii)(B)(*2*).

(*ii*) *Example.* The application of this paragraph (b)(2)(iii)(B)(2) is illustrated by the following example:

Example. (i) *Facts.* P owns all 20 shares of M stock, and 10 shares of S stock. M owns the remaining 10 shares of S stock. In year 1, S recognizes $200 of income that results in a $10 positive investment adjustment being allocated to each share of S stock. The group does not recognize any other items. The $100 positive adjustment to M's basis in the S stock tiers up, and results in a $5 positive adjustment to each share of M stock. In year 2, P sells one share of M stock and recognizes a gain. In year 3, M sells one loss share of S stock, and paragraph (b) of this section applies and requires a reallocation of the year 1 positive investment adjustment.

(ii) *Application of limitation by prior use.* M's basis in the transferred loss share of S stock reflects a $10 positive investment adjustment attributable to S's year 1 income. Under the general rule of this paragraph (b), that $10 would be subject to reallocation to reduce basis disparity. However, that $10 adjustment had originally tiered up to adjust P's basis in its M shares and, as a result, $.50 of that adjustment was reflected in P's basis in each share of M stock. When P sold the share of M stock, the basis of that share (including the tiered up $.50) was used in determining the gain on the sale. Accordingly, $.50 of the $10 investment adjustment originally allocated to the S share that tiered-up to the M share was previously used and therefore cannot be reallocated in a manner that would (if it were the original allocation) affect the basis of the sold share. Thus, taking into account the special allocations in § 1.1502–32(c)(1)(ii)(C), up to $9.50 of the adjustment to M's transferred S share could be allocated to P's shares of S stock (leaving $.50 on M's transferred S share, all of which would be treated as tiered up to P's transferred M share). Alternatively, all $10 could be reallocated to M's other S shares (because the tier up to P's M shares would have been the same regardless which of M's shares of S stock were adjusted.)

(iii) *Application of limitation where adjustment would have been used.* The facts are the same as in paragraph (i) of this *Example* except that M does not sell any shares of S stock and, in year 3, P sells a loss share of S stock. As in paragraph (i) of this *Example,* when P sold the share of M stock, the basis of that share was used in determining the gain on the share. When P sells the loss share of S stock, the $10 positive investment adjustment from S's year 1 income cannot be reallocated in a manner that, if it were the original adjustment, would have caused any amount to be reflected in the basis of the transferred share. If this $10 positive investment adjustment had originally been allocated to the S shares held by M, $.50 of the $10 investment adjustment would have tiered up to the M share P sold, would have been reflected in P's basis, and would have been used in determining the gain or loss on the sale. Accordingly, taking into account the special allocations in § 1.1502–32(c)(1)(ii)(C), up to $9.50 of the $10 adjustment to P's transferred S share could be allocated to M's shares of S stock (all of which would tier up to P's 19 retained M shares). Alternatively, all $10 could be reallocated to P's other S shares.

(C) *Order of reallocation.* In general, reallocations are made first with respect to the earliest available adjustments. However, the overall application of this paragraph (b) to a transaction must be made in a manner that reduces basis disparity to the greatest extent possible.

(3) *Examples.* The general application of this paragraph (b) is illustrated by the following examples:

Example 1. Transfer of stock received in section 351 exchange. (i) *Redetermination to prevent noneconomic loss.* (A) *Facts.* For many years, P has owned two assets, Asset 1 and Asset 2. On January 1, year 1, P receives four shares of S common stock (the Block 1 shares) in exchange for Asset 1, which has a basis and value of $80. The exchange qualifies under section 351 and, therefore, under section 358, P's aggregate basis in the Block 1 shares is $80 ($20 per share). On July 1, year 1, P receives another share of S common stock (the Block 2 share) in exchange for Asset 2, which has a basis of $0 and value of $20. This exchange also qualifies as a section 351 exchange and, under section 358, P's basis in the Block 2 share is $0. P's Block 1 and Block 2 shares are the only outstanding shares of S stock. On October 1, year 1, S sells Asset 2 for $20. On December 31, year 1, P sells one of its Block 1 shares for $20. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in each Block 1 share is $24 (P's original $20 basis increased under § 1.1502–32 by $4 (the share's allocable portion of the $20 gain recognized on the sale of Asset 2)). In addition, P's basis in its Block 2 share is $4 (P's original $0 basis increased under § 1.1502–32 by $4 (the share's allocable portion of the $20 gain recognized on the sale of Asset 2)). P's sale of the Block 1 share is a transfer of a loss share and therefore subject to the provisions of this section.

(B) *Basis redetermination under this paragraph (b).* Under this paragraph (b), P's bases in all its shares of S stock are subject to redetermination. First, paragraph (b)(2)(i)(A) of this section applies to reduce P's basis in the transferred loss share, but not below value, by removing positive investment adjustments applied to the basis of the share. Accordingly, P's basis in the transferred Block 1 share is reduced by $4 (the amount of the positive investment adjustment applied to the share), from $24 to $20. No further reduction to the basis of the share is required under this paragraph (b) because the basis of the share is then equal to value. Under paragraph (b)(2)(ii)(B) of this section, the positive investment adjustment removed from the transferred loss share is reallocated and applied to increase P's bases in its S shares in a manner that reduces basis disparity to the greatest extent possible. Accordingly, the $4 positive investment adjustment removed from the Block 1 share is reallocated and applied to the basis of the Block 2 share, increasing it from $4 to $8.

(C) *Application of paragraphs (c) and (d) of this section.* Because P's sale of the Block 1 share is no longer a transfer of a loss share after the application of this paragraph (b), paragraphs (c) and (d) of this section do not apply.

(ii) *Redetermination to prevent duplicated loss.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 1,* except that, at the time of the second contribution, the value of Asset 1 had declined to $20 and so, instead of contributing Asset 2, P contributed Asset 3 to S in exchange for the Block 2 share. At the time of that exchange, Asset 3 had a basis and value of $5. On October 1, year 1, S sells Asset 1 for $20, recognizing a $60 loss that is absorbed by the group. On December 31, year 1, P sells one of its Block 1 shares for $5. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in each Block 1 share is $8 (P's original $20 basis decreased under § 1.1502–32 by $12 (the share's allocable portion of the $60 loss recognized on the sale of Asset 1)). P's basis in its Block 2 share is an excess loss account of $7 (its original basis of $5 reduced by $12, the share's portion of the loss recognized on Asset 1). P's sale of the Block 1 share is a transfer of a loss share and therefore subject to the provisions of this section.

(B) *Basis redetermination under this paragraph (b).* Under this paragraph (b), P's bases in all its shares of S stock are subject to redetermination. There are no positive investment adjustments and so there is no adjustment under paragraph (b)(2)(i)(A) of this section. However, under paragraph (b)(2)(i)(B) of this section, P's basis in the transferred Block 1 share is reduced, but not below value, by reallocating negative investment adjustments from shares that are not transferred loss shares. In total, there were $48 of negative investment adjustments applied to shares that are not transferred loss shares. Accordingly, P's basis in the Block 1 share is reduced by $3, from $8 to its value of $5. Under paragraph (b)(2)(i)(B) of this section, the negative investment adjustments applied to the transferred share are reallocated from (and therefore cause an increase in the basis of) S shares that are not transferred loss shares in a manner that reduces basis disparity to the greatest extent possible. Accordingly, the $3 negative investment adjustment reallocated and applied to the transferred Block 1 share is reallocated entirely from the Block 2 share, increasing the basis in the Block 2 share from an excess loss account of $7 to an excess loss account of $4.

(C) *Application of paragraphs (c) and (d) of this section.* Because P's sale of the Block 1 share is no longer a transfer of a loss share after the application of this paragraph (b), paragraphs (c) and (d) of this section do not apply.

(iii) *Nonapplicability of redetermination rule to sale of entire interest.* The facts are the same as in paragraph (ii)(A) of this *Example 1,* except that, on December 31, year 1, P sells all its shares of S stock for $25. Under paragraph (b)(1)(ii)(B) of this section, this paragraph (b) does not apply to redetermine P's basis in its S shares because every S share held by a member is transferred to a nonmember in a fully taxable transaction. However, the sale of the Block 1 shares is a transfer of loss shares and therefore subject to paragraphs (c) and (d) of this section. Paragraphs (c)(7) and (d)(3)(i)(A) of this section apply netting principles to prevent adjustments under either paragraph (c) or paragraph (d) of this section.

Example 2. Redetermination increases basis of transferred loss share. (i) *Facts.* On January 1, year 1, P owns all 10 outstanding shares of S common stock. Five of the shares have a basis of $20 per share (the Block 1 shares) and five of the shares have a basis of $10 per share (the Block 2 shares). S's only asset, Asset 1, has a basis of $50. S has no other attributes. On October 1, year 1, S sells Asset 1 for $100. On December 31, year 2, S sells one Block 1 share and one Block 2 share to X for $10 per share. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in each Block 1 share is $25 (P's original $20 basis increased under § 1.1502–32 by $5 (the share's allocable portion of the $50 gain recognized on the sale of Asset 1)), and P's basis in each Block 2 share is $15 (P's original $10 basis increased by $5). P's sale of the Block 1 and Block 2 shares is a transfer of loss shares and therefore subject to the provisions of this section.

(ii) *Basis redetermination under this paragraph (b).* Under this paragraph (b), P's bases in all its shares of S stock are subject to redetermination. First, paragraph (b)(2)(i)(A) of this section applies to reduce P's basis in the transferred Block 1 and Block 2 shares, but not below value, by removing the positive investment adjustments applied to the bases of the transferred loss shares. Accordingly, the basis of the Block 1 share is reduced by $5, from $25 to $20. The basis of the Block 2 share is also reduced by $5, from $15 to $10. (Although the Block 1 share is still a loss share, there is no reduction to its basis under paragraph (b)(2)(i)(B) of this section because there were no negative investment adjustments to shares that are not transferred loss shares.) Next, paragraph (b)(2)(ii)(B) of this section applies to reallocate and apply the $10 of positive investment adjustments removed from the transferred loss shares to increase P's bases in its S shares in a manner that reduces basis disparity to the greatest extent possible. Accordingly, of the $10 positive investment adjustments to be reallocated, $6 is reallocated and applied to the basis of the Block 2 share (increasing it from $10 to $16) and $4 is reallocated and applied equally to the basis of each of the four retained Block 2 shares (increasing the basis of each from $15 to $16). After giving effect to the reallocations under this paragraph (b), P's basis in each retained Block 1 share is $25, P's basis in the transferred Block 1 share is $20, and P's basis in each Block 2 share is $16.

(iii) *Application of paragraph (c) of this section.* After the application of this paragraph (b), P's sale of the Block 1 and Block 2 shares is still a transfer of loss shares and, accordingly, subject to paragraph (c) of this section. No adjustment is required to the basis of the Block 1 share under paragraph (c) of this section because, after its basis is redetermined under this paragraph (b), the net positive adjustment to the basis of the share is $0. See paragraph (c)(3) of this section. However, paragraph (c) of this section reduces P's basis in the transferred Block 2 share (by the lesser of its net positive adjustment and its disconformity amount, or $6, from $16 to $10, its value).

(iv) *Application of paragraph (d) of this section.* After the application of paragraph (c) of this section, P's sale of the Block 1 share is still a transfer of a loss share and, accordingly, subject to paragraph (d) of this section. No adjustment is required under paragraph (d) of this section because there is no aggregate inside loss. See paragraph (d)(3)(iii) of this section. Because P's sale of the Block 2 share is no longer a transfer of a loss share after the application of paragraph (c) of this section, paragraph (d) of this section does not apply to the transfer of the Block 2 share.

Example 3. Application to outstanding common and preferred shares. (i) *Facts.* P owns all the stock of M and all eight outstanding shares of S common stock. S also has two shares of nonvoting preferred stock outstanding; the preferred shares have a $100 annual, cumulative preference as to dividends (per share). M owns one of the preferred shares (PS1) and P owns the other (PS2). On January 1, year 1, the bases and values of the outstanding S shares are:

	Preferred		Common							
	PS1 (M)	PS2 (P)	CS1 (P)	CS2 (P)	CS3 (P)	CS4 (P)	CS5 (P)	CS6 (P)	CS7 (P)	CS8 (P)
Basis	1250	975	1025	710	550	400	375	250	215	100
Value	1000	1000	375	375	375	375	375	375	375	375

As of January 1, year 1, there are no arrearages on the preferred stock. In year 1, S has a $1100 capital loss and $100 of ordinary income. The loss is absorbed by the group and the resulting negative adjustment of $1000 is allocable entirely to the common stock. See § 1.1502–32(c)(1).

In year 2, S has $700 of ordinary income and a $100 ordinary loss. Also, on October 1, year 2, S declares a dividend of $200 ($100 with respect to each of the preferred shares). Thus, there is a net positive investment adjustment for year 2 of $400. See § 1.1502–32(b)(2). Under § 1.1502–32(c)(1), a negative adjustment of $100 is first allocated to each of the preferred shares to reflect the dividend declaration. Then, $400 of the $600 remaining adjustment (the adjustment computed without taking distributions into account) is allocated $200 to each of the preferred shares to reflect their entitlement to dividends accruing in year 1 and year 2. See § 1.1502–32(c)(3). (The year 2 investment adjustment to each preferred share is therefore a positive $100.) Finally, under § 1.1502–32(c)(2), the remaining $200 of the investment adjustment is allocated to the common stock, equally to all outstanding shares. After applying and giving effect to all generally applicable rules of law (other than this section), the adjusted bases and the values of the shares as of January 1, year 3, are:

	Preferred		Common							
	PS1 (M)	PS2 (P)	CS1 (P)	CS2 (P)	CS3 (P)	CS4 (P)	CS5 (P)	CS6 (P)	CS7 (P)	CS8 (P)
Basis	1250	975	1025	710	550	400	375	250	215	100
Year 1 § 1.1502–32 adjustments	N/A	N/A	−125	−125	−125	−125	−125	−125	−125	−125
Year 2 § 1.1502–32 adjustments	+100	+100	+25	+25	+25	+25	+25	+25	+25	+25
Adjusted basis	1350	1075	925	610	450	300	275	150	115	0
Value	1100	1100	275	275	275	275	275	275	275	275
Unrecognized gain/(loss)	(250)	25	(650)	(335)	(175)	(25)	0	125	160	275

On January 1, year 3, M sells PS1 for $1100 and P sells CS2 for $275. The sales of PS1 and CS2 are transfers of loss shares and therefore subject to the provisions of this section.

(ii) *Basis redetermination under this paragraph (b).* Under this paragraph (b), all members' bases in shares of S stock are subject to redetermination in accordance with the following:

(A) *Removing positive investment adjustments from transferred loss shares.* First, paragraph (b)(2)(i)(A) of this section applies to reduce M's basis in PS1 and P's basis in CS2, but not below value, by removing the positive investment adjustments applied to the bases of the shares. Accordingly, M's basis in PS1 is reduced by $200 (the investment adjustment applied to the share without regard to the distribution), from $1350 to $1150, and P's basis in CS2 is reduced by $25, from $610 to $585.

(B) *Reallocating negative investment adjustments from shares that are not transferred loss shares.* Because the transferred shares remain loss shares after the removal of positive investment adjustments, their bases are further reduced under paragraph (b)(2)(i)(B) of this section, but not below value, by negative investment adjustments applied to shares that are not transferred loss shares. Reallocations are made first to preferred shares and then to the common shares, in a manner that reduces basis disparity to the greatest extent possible. The remaining loss on PS1 is $50, the remaining loss on CS2 is $310, and the total amount of negative investment adjustments applied to shares that are not transferred loss shares is $875 (the sum of the adjustments made to all common shares other than CS2). Thus, $50 of negative investment adjustments are reallocated to the basis of PS1 and $310 of negative investment adjustments are reallocated to the basis of CS2, reducing each to its value ($1100 and $275, respectively). The negative investment adjustments are reallocated from the shares that are not transferred loss shares in a manner that reduces basis disparity to the greatest extent possible. Accordingly, of the $360 reallocated negative investment adjustments, $125 is reallocated from each of CS7 and CS8, and $110 is reallocated from CS6. As a result, the basis of CS6 increases to $260, the basis of CS7 increases to $240, and the basis of CS8 increases to $125.

(C) *Increasing basis by reallocated positive investment adjustments.* Under paragraph (b)(2)(ii)(A) of this section, the $225 of positive investment adjustments removed from the transferred loss shares are then reallocated and applied to increase the basis of preferred shares, but not above value. Accordingly $25 of that amount is reallocated to PS2, increasing its basis from $1075 to $1100, its value. The remaining $200 is allocated among the common shares in a manner that reduces basis disparity to the greatest extent possible. Accordingly, of the $200 positive investment adjustment that is reallocated to common shares, $150 is reallocated to CS8, $35 is reallocated to CS7, and $15 is reallocated to CS6, increasing the basis of each to $275.

(D) *Summary of reallocation adjustments.* The adjustments made under this paragraph (b) are therefore:

	Preferred		Common							
	PS1 (M)	PS2 (P)	CS1 (P)	CS2 (P)	CS3 (P)	CS4 (P)	CS5 (P)	CS6 (P)	CS7 (P)	CS8 (P)
Adjusted basis Before redetermination	1350	1075	925	610	450	300	275	150	115	0
Removing positive adjustments from transferred loss shares	−200	.....	.....	−25	.....	.....	.....	.....	.....	.....
Reallocating negative adjustments	−50	.....	.....	−310	.....	.....	.....	+110	+125	+125
Applying positive adjustments removed from transferred shares	.....	+25	.....	.....	.....	.....	.....	+15	+35	+150
Basis after redetermination	1100	1100	925	275	450	300	275	275	275	275
Value	1100	1100	275	275	275	275	275	275	275	275
Gain/(loss)	0	0	(650)	0	(175)	(25)	0	0	0	0

(iii) *Application of paragraphs (c) and (d) of this section.* Because M's sale of PS1 and P's sale of CS2 are no longer transfers of loss shares after the application of this paragraph (b), paragraphs (c) and (d) of this section do not apply.

(iv) *Higher-tier effects.* The adjustments made to PS1 give rise to a $250 nondeductible basis recovery item (a noncapital, nondeductible expense under § 1.1502–32(b)(3)(iii)(B)) that will be included in the year 3 investment adjustment

to be applied to reduce P's basis in its M stock.

(c) *Stock basis reduction to prevent noneconomic loss*—(1) *In general.* The rules of this paragraph (c) reduce M's basis in a transferred share of S stock in order to prevent noneconomic stock loss and thereby promote the clear reflection of the group's income. The effect of these rules is to limit the reduction to M's basis in the S share to the amount of net unrealized appreciation reflected in the share's basis immediately before the transfer. These rules also limit the reduction to M's basis in the S share to the portion of the share's basis that is attributable to investment adjustments made pursuant to the consolidated return regulations.

(2) *Basis reduction rule*—(i) *In general.* If M transfers a share of S stock and, after the application of paragraph (b) of this section, the share is a loss share, M's basis in the share is reduced, but not below value, by the lesser of—

(A) The share's net positive adjustment (see paragraph (c)(3) of this section); and

(B) The share's disconformity amount (see paragraph (c)(4) of this section).

(ii) *Transactions that adjusted stock or asset basis.* See paragraph (e)(2) of this section for special rules that may apply if a prior transaction, such as an exchange subject to section 362(e)(2), adjusted the basis in any share of S stock or S's attributes in a manner that altered a share's disconformity amount.

(iii) *Transfers of stock of subsidiaries at multiple tiers.* If stock of subsidiaries at multiple tiers is transferred in a transaction, see paragraph (a)(3)(ii) of this section regarding the order of application of this section.

(3) *Net positive adjustment.* A share's *net positive adjustment* is the greater of—

(i) Zero; and

(ii) The sum of all investment adjustments reflected in the basis of the share. The term investment adjustment has the same meaning as in paragraph (b)(1)(iv) of this section.

(4) *Disconformity amount.* A share's *disconformity amount* is the excess, if any, of—

(i) M's basis in the share; over

(ii) The share's allocable portion of S's net inside attribute amount (as defined in paragraph (c)(5) of this section).

(5) *Net inside attribute amount.* S's *net inside attribute amount* is determined as of the time immediately before the transfer, taking into account all applicable rules of law other than this section (except as specifically provided otherwise in this section). S's net inside attribute amount is the sum of S's net operating and capital loss carryovers, deferred deductions, money, and basis in assets other than money (for this purpose, S's basis in any share of lower-tier subsidiary stock is S's basis in that share, adjusted to reflect any gain or loss recognized in the transaction and any other related or resulting adjustments), reduced by the amount of S's liabilities. See paragraph (f) of this section for definitions of the terms ''allocable portion'', ''deferred deduction'', ''liability'', and ''loss carryover''. See paragraph (c)(6) of this section for special rules regarding the computation of S's net inside attribute amount for purposes of this paragraph (c) if S holds stock of a subsidiary.

(6) *Determination of S's net inside attribute amount if S owns stock of a lower-tier subsidiary*—(i) *Overview.* If a loss share of S stock is transferred when S holds a share of stock of another subsidiary (S1) and the S1 share is not transferred in the same transaction, S's net inside attribute amount is determined by treating S's basis in its S1 share as tentatively reduced under this paragraph (c)(6). The purpose of this rule is to reduce the extent to which S1's investment adjustments increased noneconomic loss on S stock (as a result of S1's recognition of items that are indirectly reflected in members' bases in S stock).

(ii) *General rule for nontransferred shares of lower-tier subsidiary.* Solely for purposes of determining the disconformity amount of a share of S stock, S's basis in a share of S1 stock is treated as reduced by the share's tentative reduction amount. The tentative reduction amount is the lesser of the S1 share's net positive adjustment and the S1 share's disconformity amount, computed under the principles of paragraphs (c)(3) and (c)(4) of this section, respectively.

(iii) *Multiple tiers of nontransferred shares.* If S directly or indirectly owns non-transferred shares of stock of subsidiaries in multiple tiers, then, subject to the limitations in paragraph (c)(6)(iv) of this section (regarding nontransferred shares that are lower-tier to transferred shares), the rules of this paragraph (c)(6) first apply to determine the tentatively reduced basis of stock of the subsidiary at the lowest tier. These rules then apply successively to determine the tentatively reduced basis of nontransferred shares of stock of subsidiaries at each next higher tier that is lower tier to S. The tentative reductions are treated as noncapital, nondeductible expenses that tier up under the principles of § 1.1502–32, tentatively reducing the basis of stock and the net positive adjustments of subsidiaries that are lower tier to S.

(iv) *Nonapplicability of tentative basis reduction rule to transferred shares.* The tentative basis reduction rule in this paragraph (c)(6) does not apply to any share of stock of a lower-tier subsidiary (S1) that is transferred in the same transaction in which the S share is transferred. Further, for purposes of determining the S share's disconformity amount, the tentative basis reduction rule in this paragraph (c)(6) does not apply with respect to stock of any other subsidiary (S2) to the extent it is lower tier to the transferred S1 share. However, the tentative basis reduction rule may apply to S2 stock for purposes of computing the disconformity amount of the transferred S1 share. The purpose of this rule is to prevent tentative adjustments under this paragraph (c)(6) to the extent that this paragraph (c) has already applied to shares of subsidiary stock, without regard to whether the basis of those shares was reduced under this paragraph (c).

(v) *Example.* The rules of this paragraph (c)(6) are illustrated by the following example:

Example. (i) *Facts.* P owns the sole outstanding share of S stock, S owns the sole outstanding share of S1 stock, S1 owns the sole outstanding share of S2 stock, S2 owns the sole outstanding share of S3 stock, and S3 owns the sole outstanding share of S4 stock. The S and S1 shares are loss shares, and the S3 share is a gain share. In one transaction, P sells its S share to X, S1 issues new shares in an amount that prevents S and S1 from being members of the same group, and S2 sells the S3 share to an unrelated individual. S1 and S2 elect to file a consolidated return following the transaction, as do S3 and S4.

(ii) *General applicability of section.* The transaction is a transfer of the S and S3 shares (by reason of the sales) and of the S1 share (because S and S1 cease to be members of the same group). The transfer of the S3 share is not a transfer of a loss share and so this section does not apply to that transfer. This section does, however, apply to the transfer of the S and S1 loss shares. Under paragraph (a)(3)(ii)(A) of this section, the application of this section begins with the application of paragraph (b) to the transfer of the loss share stock of S1, the lowest-tier subsidiary the stock of which is transferred in the transaction.

(iii) *Application of paragraphs (b) and (c) to transfer of S1 stock.* First, the gain recognized on the transfer of S3 tiers up to adjust the basis of each upper-tier share. Then, because the transferred S1 share is still a loss share under these facts, paragraph (b) of this section applies to S's transfer of S1 stock. However, no adjustment is required under paragraph (b) of this section because redetermination would change no member's basis in a share (members hold only one share of S1 stock). See paragraph (b)(1)(ii)(A)

of this section. The S1 share is still a loss share and so it is then subject to the provisions of this paragraph (c). In determining basis reduction under this paragraph (c), the disconformity amount of the S1 share is computed by treating S1's basis in S2 stock as tentatively reduced under this paragraph (c)(6). In determining the disconformity amount of the S1 share, this tentative reduction rule has no application with respect to S2's basis in the S3 share (because the S3 share is transferred in the transaction) or with respect to S3's basis in the S4 share (because the S4 stock is lower tier to the transferred S3 share). After the application of this paragraph (c) to the transfer of the S1 share, paragraph (b) of this section applies to P's transfer of the S share if the share is still a loss share.

(iv) *Application of section to transfer of S stock.* First, assuming the S share has remained a loss share, paragraph (b) of this section applies to P's transfer of S stock. However, no adjustment is required under paragraph (b) of this section, either because there is no potential for redetermination (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. The transferred share is still a loss share and therefore subject to the provisions of this paragraph (c). In determining the disconformity amount of the S share, S's net inside attributes are determined by taking into account S's actual basis in the S1 stock. The tentative reduction rule of this paragraph (c)(6) does not apply to S's basis in the S1 share because the S1 share is transferred in the transaction. All other shares are lower tier to the transferred S1 share and are therefore not subject to tentative reduction for purposes of determining the disconformity amount of the S share.

(7) *Netting of gains and losses taken into account*—(i) *General rule.* Solely for purposes of computing the basis reduction required under this paragraph (c), the basis of each transferred loss share of S stock is treated as reduced proportionately (as to loss) by the amount of gain taken into account by members with respect to all transferred gain shares of S stock, provided that—

(A) The gain and loss shares are transferred in the same transaction; and

(B) The gain is taken into account in the year of the transaction.

(ii) *Example.* The netting rule of this paragraph (c)(7) is illustrated by the following example:

Example. Disposition of gain and loss shares. (i) *Facts.* P owns the only two outstanding shares of S common stock. Share A has a basis of $54 and Share B has a basis of $100. In the same transaction, P sells the two S shares to X for $60 each. P realizes a gain of $6 on Share A and a loss of $40 on Share B. P's sale of Share B is a transfer of a loss share and therefore subject to the provisions of this section. (No adjustment is required under paragraph (b) of this section because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See paragraph (b)(1)(ii)(B) of this section.) The transfer is then subject to the provisions of this paragraph (c). However, for this purpose, P treats its basis in Share B as reduced by the $6 gain taken into account with respect to Share A. Thus, solely for purposes of computing the basis reduction required with respect to P's basis in Share B, P's basis in Share B is treated as $94 ($100 less $6). If, after the application of this paragraph (c), the sale of Share B is still a transfer of a loss share, then the transfer is subject to paragraph (d) of this section. (Although the basis of Share B is not reduced by gain for purposes of paragraph (d) of this section, paragraph (d)(3)(i)(A) of this section applies netting principles to limit adjustments under paragraph (d) of this section.)

(ii) *Allocation of gain amount to determine net loss.* The facts are the same as in paragraph (i) of this *Example*, except that, in addition to Share A and Share B, a third share of S stock, Share C, is outstanding. P's basis in Share C is $80. P sells all three shares of S stock to X for $60 each. P's sales of Share B and Share C are transfers of loss shares and therefore subject to the provisions of this section. (No adjustment is required under paragraph (b) of this section because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See paragraph (b)(1)(ii)(B) of this section.) The transfer is then subject to the provisions of this paragraph (c). However, for this purpose, P treats its bases in Share B and Share C as reduced by the $6 gain taken into account on Share A. The gain is allocated to Share B and Share C proportionately based on the amount of loss in each share. Thus, $4 of gain ($40/$60 × $6) is treated as allocated to Share B and $2 of gain ($20/$60 × $6) is treated as allocated to Share C. Accordingly, P computes the basis reduction required under this paragraph (c) by treating its basis in Share B as $96 ($100 less $4) and its basis in Share C as $78 ($80 less $2). If, after the application of this paragraph (c), the sales of Share B and Share C are still transfers of loss shares, then the transfers are subject to paragraph (d) of this section. (Although the bases of Share B and Share C are not reduced by gain for purposes of paragraph (d) of this section, paragraph (d)(3)(i)(A) of this section applies netting principles to limit adjustments under paragraph (d) of this section.)

(iii) *Disposition of stock with deferred gain.* The facts are the same as in paragraph (i) of this *Example*, except that P sells the gain share to a member. Under § 1.1502–13, P's gain recognized on Share A is not taken into account in the taxable year of the transfer and therefore cannot be treated as reducing P's loss recognized on Share B.

(8) *Examples.* The application of this paragraph (c) is illustrated by the following examples.

Example 1. Appreciation reflected in stock basis at acquisition. (i) *Appreciation recognized as gain.* (A) *Facts.* On January 1, year 1, P purchases the sole outstanding share of S stock for $100. At that time, S owns two assets, Asset 1 with a basis of $0 and a value of $40, and Asset 2 with a basis and value of $60. In year 1, S sells Asset 1 for $40. On December 31, year 1, P sells its S share for $100. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in the S share is $140 (P's original $100 basis increased under § 1.1502–32 to reflect the $40 gain recognized on the sale of Asset 1). P's sale of the S share is a transfer of a loss share and therefore subject to the provisions of this section.

(B) *Application of paragraph (b) of this section.* No adjustment is required under paragraph (b) of this section, either because redetermination would change no member's basis in a share (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. After the application of paragraph (b) of this section, P's sale of the S share is still a transfer of a loss share and therefore subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), P's basis in the S share is reduced, but not below value, by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is the greater of zero and the sum of all investment adjustments applied to the basis of the share, computed without taking distributions into account. There are no distributions. The only investment adjustment to the share is the $40 adjustment attributable to the gain recognized on the sale of Asset 1. Thus the share's net positive adjustment is $40. The share's disconformity amount is the excess, if any, of its basis ($140) over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is the sum of S's money ($40 from the sale of Asset 1) and S's basis in Asset 2 ($60), or $100. The share is the only outstanding S share and so its allocable portion of the $100 net inside attribute amount is the entire $100. Thus, the share's disconformity amount is $40, the excess of $140 over $100. The lesser of the net positive adjustment ($40) and the share's disconformity amount ($40) is $40. Accordingly, the basis in the share is reduced by $40, from $140 to $100, immediately before the sale.

(D) *Application of paragraph (d) of this section.* Because P's sale of the S share is no longer a transfer of a loss share after the application of this paragraph (c), paragraph (d) of this section does not apply.

(ii) *Appreciation recognized as income (instead of gain).* The facts are the same as in paragraph (i)(A) of this *Example 1*, except that, instead of selling Asset 1, the value of Asset 1 is consumed in the production of $40 of income in year 1 (reducing the value of Asset 1 to $0) Because the net positive adjustment includes items of income as well as items of gain, the results are the same as those described in paragraph (i) of this *Example 1.*

(iii) *Post-acquisition appreciation eliminates stock loss.* The facts are the same as in paragraph (i)(A) of this *Example 1*

except that, in addition, the value of Asset 2 increases to $100 before the stock is sold. As a result, P sells the S share for $140. Because P's sale of the S share is not a transfer of a loss share, this section does not apply to the transfer, notwithstanding that P's basis in the S share was increased by the gain recognized on Asset 1.

(iv) *Distributions.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 1* except that, in addition, S distributes a $10 dividend before the end of year 1. As a result, the value of the share decreases and P sells the share for $90. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in the S share is $130 (P's original $100 basis increased by $30 under § 1.1502–32 (the net of the $40 gain recognized on the sale of Asset 1 and the $10 dividend declared and distributed)). P's sale of the S share is a transfer of a loss share and therefore subject to the provisions of this section.

(B) *Application of paragraph (b) of this section.* No adjustment is required under paragraph (b) of this section, either because there redetermination would change no member's basis in a share (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. After the application of paragraph (b) of this section, P's sale of the S share is still a transfer of a loss share and therefore subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), P's basis in the S share is reduced, but not below value, by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $40 (the sum of all investment adjustments applied to the basis of the share, computed without taking distributions into account). The share's disconformity amount is the excess of its basis ($130) over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is the sum of S's money ($30, the $40 sale proceeds minus the $10 distribution) and S's basis in Asset 2 ($60), or $90. The share is the only outstanding S share and so its allocable portion of the $90 net inside attribute amount is the entire $90. The lesser of the share's net positive adjustment ($40) and its disconformity amount ($40) is $40. Accordingly, the basis in the share is reduced by $40, from $130 to $90, immediately before the sale.

(D) *Application of paragraph (d) of this section.* Because P's sale of the S share is no longer a transfer of a loss share after the application of this paragraph (c), paragraph (d) of this section does not apply.

Example 2. Loss of appreciation reflected in basis. (i) *Facts.* On January 1, year 1, P purchases the sole outstanding share of S stock for $100. At that time, S owns two assets, Asset 1 with a basis of $0 and a value of $40, and Asset 2 with a basis and value of $60. The value of Asset 1 declines to $0 and P sells its S share for $60. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in the S share remains $100. P's sale of the S share is a transfer of a loss share and therefore subject to the provisions of this section.

(ii) *Application of paragraph (b) of this section.* No adjustment is required under paragraph (b) of this section, either because redetermination would change no member's basis in a share (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. After the application of paragraph (b) of this section, P's sale of the S share is still a transfer of a loss share and therefore subject to this paragraph (c).

(iii) *Basis reduction under this paragraph (c).* Under this paragraph (c), P's basis in the S share ($100) is reduced immediately before the sale, but not below value ($60), by the lesser of the share's net positive adjustment and disconformity amount. There were no adjustments to P's basis in the share and so the share's net positive adjustment is $0. Thus, although the share's disconformity amount is $40 (the excess of P's basis in the share ($100) over the share's allocable portion of S's net inside attribute amount ($60)), no basis reduction is required under this paragraph (c).

(iv) *Application of paragraph (d) of this section.* After the application of this paragraph (c), P's sale of the S share is still a transfer of a loss share, and, accordingly, subject to paragraph (d) of this section. No adjustment is required under paragraph (d) of this section because there is no aggregate inside loss. See paragraph (d)(3)(iii) of this section.

Example 3. Items accruing after S becomes a member. (i) *Recognition of loss accruing after S becomes a member.* (A) *Facts.* On January 1, year 1, P purchases the sole outstanding share of S stock for $100. At that time, S owns two assets, Asset 1, with a basis of $0 and a value of $40, and Asset 2, with a basis and value of $60. In year 1, S sells Asset 1 for $40. Also in year 1, the value of Asset 2 declines and S sells Asset 2 for $20. On December 31, year 1, P sells its S share for $60. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in the S share is $100 (P's original $100 basis, unadjusted under § 1.1502–32 because the $40 gain recognized on the sale of Asset 1 offsets the $40 loss on the sale of Asset 2). P's sale of the S share is a transfer of a loss share and therefore subject to the provisions of this section.

(B) *Application of paragraph (b) of this section.* No adjustment is required under paragraph (b) of this section, either because redetermination would change no member's basis in a share (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. After the application of paragraph (b) of this section, P's sale of the S share is still a transfer of a loss share and therefore subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), P's basis in the S share ($100) is reduced immediately before the sale, but not below value ($60), by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $0. Thus, although the share has a disconformity amount of $40 (the excess of P's basis in the share ($100) over the share's allocable portion of S's net inside attribute amount ($60)), no basis reduction is required under this paragraph (c).

(D) *Application of paragraph (d) of this section.* After the application of this paragraph (c), P's sale of the S share is still a transfer of a loss share, and, accordingly, subject to paragraph (d) of this section. No adjustment is required under paragraph (d) of this section because there is no aggregate inside loss. See paragraph (d)(3)(iii) of this section.

(ii) *Recognition of gain accruing after S becomes a member.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 3*, except that neither P nor S sells anything in year 1. In addition, in year 2, the value of Asset 1 declines to $0, the value of Asset 2 returns to $60, and S creates Asset 3 (with a basis of $0). In year 3, S sells Asset 3 for $40. On December 31, year 3, P sells its S share for $100. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in the S share is $140 (P's original $100 basis increased under § 1.1502–32 to reflect the $40 gain recognized on the sale of Asset 3 in year 3).

(B) *Application of paragraph (b) of this section.* No adjustment is required under paragraph (b) of this section, either because redetermination would change no member's basis in a share (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. After the application of paragraph (b) of this section, P's sale of the S share is still a transfer of a loss share and therefore subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), P's basis in the S share ($140) is reduced immediately before the sale, but not below value ($100), by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $40 (the year 3 investment adjustment). The share's disconformity amount is the excess of its basis ($140) over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is $100, the sum of S's money ($40 from the sale of Asset 3) and its basis in its assets ($60 (the sum of Asset 1's basis of $0 and Asset 2's basis of $60)). S's $100 net inside attribute amount is allocable entirely to the sole outstanding S share. Thus, the share's disconformity amount is the excess of $140 over $100, or $40. The lesser of the share's net positive adjustment ($40) and its disconformity amount ($40) is $40. Accordingly, the basis in the share is reduced by $40, from $140 to $100, immediately before the sale.

(D) *Application of paragraph (d) of this section.* Because P's sale of the S share is no

longer a transfer of a loss share after the application of this paragraph (c), paragraph (d) of this section does not apply.

(iii) *Recognition of income earned after S becomes a member.* The facts are the same as in paragraph (ii)(A) of this *Example 3*, except that instead of creating Asset 3, S earns $40 of income from services provided in year 3. Because the net positive adjustment includes items of income as well as items of gain, the results are the same as those described in paragraph (ii) of this *Example 3.*

Example 4. Computing the disconformity amount. (i) *Unrecognized loss reflected in stock basis.* (A) *Facts.* P owns the sole outstanding share of S stock with a basis of $100. S owns two assets, Asset 1 with a basis of $20 and a value of $60, and Asset 2 with a basis of $60 and a value of $40. In year 1, S sells Asset 1 for $60. On December 31, year 1, P sells the S share for $100. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in the S share is $140 (P's original $100 basis increased under § 1.1502–32 to reflect the $40 gain recognized on the sale of Asset 1). P's sale of the S share is a transfer of a loss share and therefore subject to the provisions of this section.

(B) *Application of paragraph (b) of this section.* No adjustment is required under paragraph (b) of this section, either because redetermination would change no member's basis in a share (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. After the application of paragraph (b) of this section, P's sale of the S share is still a transfer of a loss share and therefore subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), P's basis in the S share ($140) is reduced immediately before the sale, but not below value ($100), by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $40 (the year 1 investment adjustment). The share's disconformity amount is the excess of its basis ($140) over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is the sum of S's money ($60 from the sale of Asset 1) and S's basis in Asset 2 ($60), or $120. S's net inside attribute amount is allocable entirely to the sole outstanding S share. Thus, the share's disconformity amount is the excess of $140 over $120, or $20. The lesser of the share's net positive adjustment ($40) and its disconformity amount ($20) is $20. Accordingly, the basis in the share is reduced by $20, from $140 to $120, immediately before the sale.

(D) *Application of paragraph (d) of this section.* After the application of this paragraph (c), P's sale of the S share is still a transfer of a loss share, and, accordingly, subject to paragraph (d) of this section. Paragraph (d) of this section reduces the basis of Asset 2 by $20 because the loss is duplicated.

(ii) *Loss carryover.* The facts are the same as in paragraph (i)(A) of this *Example 4*, except that Asset 2 has a basis of $0 (rather than $60) and S has a $60 loss carryover (as defined in paragraph (f)(6) of this section). Because the net positive adjustment includes items of income (and not just gain), the analysis of the application of this paragraph (c) is the same here as in paragraph (i)(C) of this *Example 4*. Furthermore, the analysis of the application of this paragraph (C) would also be the same if the $60 loss carryover were subject to a section 382 limitation from a prior ownership change, and if, instead, it would subject to the limitation in § 1.1502–21(c) on losses carried from separate return limitation years. However, under each alternative fact pattern, paragraph (d) of this section reduces the loss carryover by $20 because the loss is duplicated.

(iii) *Liabilities.* The facts are the same as in paragraph (i)(A) of this *Example 4*, except that S borrows $100 before P sells the S share. S's net inside attribute amount remains $120, computed as the sum of S's money ($160 ($60 from the sale of Asset 1 plus the $100 borrowed cash)) plus S's basis in Asset 2 ($60), minus its liabilities ($100). Thus, the S share's disconformity amount remains the excess of $140 over $120, or $20. The results are the same as in paragraph (i) of this *Example 4.*

Example 5. Computing the allocable portion of the net inside attribute amount. (i) *Facts.* On January 1, year 1, P owns all five outstanding shares of S stock with a basis of $20 per share. S owns Asset with a basis of $0. In year 1, S sells Asset for $100. On December 31, year 1, P sells one of its shares, Share 1, for $20. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in its Share 1 is $40 (P's original $20 basis increased by $20 under § 1.1502–32 to reflect the share's allocable portion of the $100 gain recognized on the sale of Asset). P's sale of Share 1 is a transfer of a loss share and therefore subject to the provisions of this section.

(ii) *Application of paragraph (b) of this section.* No adjustment is required under paragraph (b) of this section because redetermination would change no member's basis in a share (S has only one class of stock outstanding and there is no disparity in the basis of the shares). See paragraph (b)(1)(ii)(A) of this section. After the application of paragraph (b) of this section, P's sale of Share 1 is still a transfer of a loss share and therefore subject to this paragraph (c).

(iii) *Basis reduction under this paragraph (c).* Under this paragraph (c), P's basis in Share 1 ($40) is reduced immediately before the sale, but not below value ($20), by the lesser of the share's net positive adjustment and disconformity amount. Share 1's net positive adjustment is $20 (the year 1 investment adjustment). Share 1's disconformity amount is the excess of its basis ($40) over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is the sum of S's money ($100 from the sale of the asset), and Share 1's allocable portion of S's net inside attribute amount is $20 (⅕ × $100). Thus, Share 1's disconformity amount is the excess of $40 over $20, or $20. The lesser of the share's net positive adjustment ($20) and its disconformity amount ($20) is $20. Accordingly, the basis in the share is reduced by $20, from $40 to $20, immediately before the sale.

(iv) *Application of paragraph (d) of this section.* Because P's sale of Share 1 is no longer a transfer of a loss share after the application of this paragraph (c), paragraph (d) of this section does not apply.

Example 6. Liabilities. (i) *In general.* (A) *Facts.* On January 1, year 1, P purchases the sole outstanding share of S stock for $100. At that time, S owns Asset, with a basis of $0 and value of $100, and $100 cash. S also has a $100 liability. In year 1, S distributes $60 to P and earns $20. The value of Asset declines to $60 and, on December 31, year 1, P sells the S share for $20. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in the S share is $60 (P's original $100 basis decreased under § 1.1502–32 by $40 (the net of the $60 distribution and the $20 income earned)). P's sale of the S share is a transfer of a loss share and therefore subject to the provisions of this section.

(B) *Application of paragraph (b) of this section.* No adjustment is required under paragraph (b) of this section, either because redetermination would change no member's basis in a share (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. After the application of paragraph (b) of this section, P's sale of the S share is still a transfer of a loss share and therefore subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), P's basis in the S share ($60) is reduced immediately before the sale, but not below value ($20), by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $20 (the year 1 investment adjustment computed without taking the distribution into account). The share's disconformity amount is the excess of its basis ($60) over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is negative $40, computed as the sum of S's money ($60 ($100 minus the $60 distribution plus the $20 income earned)) plus S's basis in Asset ($0), minus S's liability ($100). S's net inside attribute amount is allocable entirely to the sole outstanding S share. Thus, the share's disconformity amount is the excess of $60 over negative $40, or $100. The lesser of the share's net positive adjustment ($20) and its disconformity amount ($100) is $20. Accordingly, the basis in the share is reduced by $20, from $60 to $40, immediately before the sale.

(D) *Application of paragraph (d) of this section.* After the application of this paragraph (c), the S share is still a loss share and, accordingly, S's attributes are subject to reduction under paragraph (d) of this section. No adjustment is required under paragraph (d) of this section, however, because there is no aggregate inside loss. See paragraph (d)(3)(iii) of this section.

(ii) *Excluded cancellation of indebtedness income—insufficient attributes available for*

reduction required by sections 108 and 1017, and § 1.1502–28. (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 6*, except that P does not sell the S share. Instead, in year 4, Asset is destroyed in a fire and S spends its $60 on deductible expenses that are not absorbed by the group. S's loss becomes part of the consolidated net operating loss (CNOL). In year 5, S becomes insolvent and S's debt is discharged. Because of S's insolvency, S's discharge of indebtedness income is excluded under section 108 and, as a result, S's attributes are subject to reduction under sections 108 and 1017, and § 1.1502–28. S's only attribute is the portion of the CNOL attributable to S ($60) and it is reduced to $0. There are no other consolidated attributes. In year 5, the S stock becomes worthless under section 165(g), taking into account the provisions of § 1.1502–80(c). After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in the S share is $60 (P's original $100 basis decreased under § 1.1502–32 by the year 1 investment adjustment of $40 (the net of the $60 distribution and the $20 income earned). The investment adjustment for year 5 is $0 ($60 tax exempt income from the excluded COD applied to reduce attributes minus $60 noncapital, nondeductible expense from the reduction of S's portion of the CNOL). Under paragraph (f)(11)(i)(D) of this section, a share is transferred on the last day of the taxable year during which it becomes worthless under section 165(g), taking into account the provisions of § 1.1502–80(c). Accordingly, P transfers a loss share of S stock on December 31, year 5, and the transfer is therefore subject to the provisions of this section.

(B) *Application of paragraph (b) of this section.* No adjustment is required under paragraph (b) of this section because redetermination would change no member's basis in a share. See paragraph (b)(1)(ii)(A) of this section. After the application of paragraph (b) of this section, P's transfer of the S share is still a transfer of a loss share and therefore subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), P's basis in its S share ($60) is reduced immediately before the sale, but not below value ($0), by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $20 (the year 1 investment adjustment computed without taking the distribution into account). The share's disconformity amount is the excess of its basis ($60) over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is $0 (S's basis in Asset). (The attribute reduction required under sections 108 and 1017 and § 1.1502–28 is given effect before the application of this section; therefore, S's portion of the CNOL was eliminated under section 108 and § 1.1502–28.) S's net inside attribute amount is allocable entirely to the sole outstanding S share. Thus, the share's disconformity amount is the excess of $60 over $0, or $60. The lesser of the share's net positive adjustment ($20) and its disconformity amount ($60) is $20. Accordingly, the basis in the share is reduced by $20, from $60 to $40, immediately before the transfer.

(D) *Application of paragraph (d) of this section.* After the application of this paragraph (c), the S share is still a loss share, and, accordingly, S's attributes are subject to reduction under paragraph (d) of this section. No adjustment is required under paragraph (d) of this section, however, because there is no aggregate inside loss. See paragraph (d)(3)(iii) of this section.

(iii) *Excluded cancellation of indebtedness income—full attribute reduction under sections 108 and 1017, and § 1.1502–28 (using attributes attributable to another member).* (A) *Facts.* The facts are the same as in paragraph (ii)(A) of this *Example 6* except that P loses the $60 distributed in year 1 and the loss is not absorbed by the group. Thus, as of December 31, year 5, the CNOL is $120, attributable $60 to S and $60 to P. As a result, under § 1.1502–28(a)(4), after the portion of the CNOL attributable to S is reduced to $0, the remaining $40 of excluded COD applies to the portion of the CNOL attributable to P, reducing it from $60 to $20. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in the S share at the end of year 5 is $100 (P's original $100 basis decreased under § 1.1502–32 by $40 at the end of year 1 and then increased under § 1.1502–32 by $40 at the end of year 5 ($100 tax exempt income from the excluded COD applied to reduce attributes minus $60 noncapital, nondeductible expense from the reduction of S's portion of the CNOL). Under paragraph (f)(11)(i)(D) of this section, a share is transferred on the last day of the taxable year during which it becomes worthless under section 165(g), taking into account the provisions of § 1.1502–80(c). Accordingly, P transfers a loss share of S stock on December 31, year 5, and the transfer is therefore subject to the provisions of this section.

(B) *Application of paragraph (b) of this section.* No adjustment is required under paragraph (b) of this section because redetermination would change no member's basis in a share. See paragraph (b)(1)(ii)(A) of this section. After the application of paragraph (b) of this section, P's transfer of the S share is still a transfer of a loss share and therefore subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), P's basis in the S share ($100) is reduced immediately before the sale, but not below value ($0), by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $60 (the sum of the year 1 investment adjustment computed without taking the distribution into account ($20) and the year 5 investment adjustment ($40)). The share's disconformity amount is the excess of its basis ($100) over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is $0 (S's basis in Asset). S's net inside attribute amount is allocable entirely to the sole outstanding S share. The share's disconformity amount is therefore $100. The lesser of the share's net positive adjustment ($60) and its disconformity amount ($100) is $60. Accordingly, P's basis in the share is reduced by $60, from $100 to $40, immediately before the transfer.

(D) *Application of paragraph (d) of this section.* After the application of this paragraph (c), the S share is still a loss share, and, accordingly, S's attributes are subject to reduction under paragraph (d) of this section. No adjustment is required under paragraph (d) of this section, however, because there is no aggregate inside loss. See paragraph (d)(3)(iii) of this section.

Example 7. Lower-tier subsidiary (no transfer of lower-tier stock). (i) *Facts.* P owns the sole outstanding share of S stock with a basis of $160. S owns two assets, Asset A with a basis and value of $100, and the sole outstanding share of S1 stock with a basis of $60. S1 owns one asset, Asset 1, with a basis of $20 and value of $60. In year 1, S1 sells Asset 1 to X for $60, recognizing $40 of gain. On December 31, year 1, P sells its S share to Y, a member of another consolidated group, for $160. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in the S share is $200 (P's original $160 basis increased under § 1.1502–32 by $40 (to reflect the tiering up of the increase to S's basis in S1 under § 1.1502–32 by $40 (to reflect the gain recognized on S1's sale of Asset 1)). P's sale of the S share is a transfer of a loss share and therefore subject to the provisions of this section. (S does not transfer the S1 share because S and S1 are members of the same group following the transfer. See paragraph (f)(11) of this section.)

(ii) *Application of paragraph (b) of this section.* No adjustment is required under paragraph (b) of this section, either because redetermination would change no member's basis in a share (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. After the application of paragraph (b) of this section, P's sale of the S share is still a transfer of a loss share and therefore subject to this paragraph (c).

(iii) *Basis reduction under this paragraph (c).* (A) *In general.* Under this paragraph (c), P's basis in the S share ($200) is reduced immediately before the sale, but not below value ($160), by the lesser of the share's net positive adjustment and disconformity amount. The S share's net positive adjustment is $40. The share's disconformity amount is the excess, if any, of the basis of the share ($200) over the share's allocable portion of S's net inside attribute amount. S's net inside attribute amount is the sum of S's basis in Asset A ($100) plus S's basis in the S1 share.

(B) *S's basis in the S1 share.* Although S's actual basis in the S1 share is $100 (S's original $60 basis increased by S1's year 1 positive $40 investment adjustment), for purposes of computing the S share's disconformity amount, S's basis in the S1 share is tentatively reduced by the lesser of the S1 share's net positive adjustment and its disconformity amount. The S1 share's net positive adjustment is $40 (the year 1 investment adjustment). The S1 share's disconformity amount is the excess, if any, of its basis ($100) over its allocable portion of S1's net inside attribute amount. S1's net inside attribute amount is $60 (its cash received on the sale of Asset 1) and it is

entirely attributable to S's S1 share. The S1 share's disconformity amount is therefore the excess of $100 over $60, or $40. The lesser of the S1 share's net positive adjustment ($40) and its disconformity amount ($40) is $40. Accordingly, for purposes of computing the disconformity amount of the S share, S's basis in its S1 share is tentatively reduced by $40, from $100 to $60.

(C) *The disconformity amount of P's S share.* S's net inside attribute amount is treated as the sum of its basis in Asset A ($100) and its (tentatively reduced) basis in its S1 share ($60), or $160. S's net inside attribute amount is allocable entirely to P's S share. Thus, the S share's disconformity amount is the excess of $200 over $160, or $40.

(D) *Amount of reduction.* P's basis in its S share is reduced by the lesser of the S share's net positive adjustment ($40) and disconformity amount ($40), or $40. Accordingly, P's basis in the S share is reduced by $40, from $200 to $160, immediately before the sale.

(E) *Effect on S's basis in its S1 share.* The transaction has no effect on S's basis in the S1 share. Thus, S owns the S1 share with a basis of $100, S's original $60 basis in the share plus the $40 adjustment for the gain recognized on the sale of Asset 1 in year 1.

(iv) *Application of paragraph (d) of this section.* Because P's sale of the S share is no longer a transfer of a loss share after the application of this paragraph (c), paragraph (d) of this section does not apply.

(d) *Attribute reduction to prevent duplication of loss*—(1) *In general.* The rules of this paragraph (d) reduce S's attributes to the extent they duplicate a net loss on shares of S stock transferred by members in a single transaction. This rule furthers single entity principles by preventing S from using deductions and losses to the extent that the group or its members (including former members) have either used, or preserved for later use, a corresponding loss in S shares. This rule applies without regard to whether S ceases to be a member after the transfer of its shares.

(2) *Attribute reduction rule*—(i) *General.* If a transferred share is a loss share after the application of paragraph (c) of this section, S's attributes are reduced by S's attribute reduction amount. S's attribute reduction amount is determined under paragraph (d)(3) of this section and applied in accordance with the provisions of paragraphs (d)(4), (d)(5), and (d)(6) of this section.

(ii) *Transfers of stock of subsidiaries at multiple tiers.* If stock of subsidiaries at multiple tiers is transferred in a transaction, this paragraph (d) (other than paragraph (d)(6) to the extent necessary to make the election to reattribute attributes) applies only after paragraphs (b) and (c) of this section have applied with respect to all transfers of loss shares. See paragraph (a)(3)(ii) of this section regarding the order of application of this section.

(3) *Attribute reduction amount*—(i) *General.* S's *attribute reduction amount* is the lesser of—

(A) The net stock loss (see paragraph (d)(3)(ii) of this section); and

(B) S's aggregate inside loss (see paragraph (d)(3)(iii) of this section).

(ii) *Net stock loss.* The *net stock loss* is the excess, if any, of—

(A) The aggregate basis of all shares of S stock transferred by members in the transaction (taking into account any adjustments required under paragraphs (b) and (c) of this section, any gain or loss recognized at lower tiers, and any other related or resulting adjustments); over

(B) The aggregate value of those shares.

(iii) *Aggregate inside loss*—(A) *General.* S's *aggregate inside loss* is the excess, if any, of—

(*1*) S's net inside attribute amount; over

(*2*) The value of all outstanding shares of S stock.

(B) *Net inside attribute amount.* S's *net inside attribute amount* generally has the same meaning as in paragraph (c)(5) of this section. However, if S holds stock of a lower-tier subsidiary, the provisions of paragraph (d)(5) of this section (and not the provisions of paragraph (c)(6) of this section) modify the computation of S's net inside attribute amount for purposes of this paragraph (d).

(iv) *Transactions that adjusted stock or asset basis.* See paragraph (e)(2) of this section for special rules that may apply if a prior transaction, such as an exchange subject to section 362(e)(2), adjusted the basis in any share of S stock or S's attributes in a manner that altered the potential for loss duplication.

(v) *Lower-tier subsidiaries.* See paragraph (d)(5) of this section for special rules relating to the application of this paragraph (d) if S owns shares of stock of a subsidiary.

(4) *Application of attribute reduction*—(i) *Attributes available for reduction.* S's attributes available for reduction under this paragraph (d) are—

(A) *Category A.* Net operating loss carryovers;

(B) *Category B.* Capital loss carryovers;

(C) *Category C.* Deferred deductions;

(D) *Category D.* Basis in publicly traded property (other than stock of a subsidiary), but only to the extent of the amount, if any, that each such property's basis exceeds its value; and

(E) *Category E.* Basis of assets excluding—

(*1*) Money and cash equivalents, and

(*2*) The basis of publicly traded property (other than stock of a subsidiary).

(ii) *Rules of application*—(A) *In general.* S's attribute reduction amount is allocated and applied to reduce the attributes in each category in the order that the categories are set forth in paragraph (d)(4)(i) of this section. If the amount to be allocated and applied to any category equals or exceeds the amount of attributes in the category, the attributes in that category are reduced to zero and any excess is then allocated and applied to the attributes in the next category. If the amount to be allocated and applied is less than the amount of attributes in any category other than Category A or Category B, it is allocated and applied proportionately to all attributes in the category based on the amount of each attribute. If the amount to be allocated and applied to attributes in Category E exceeds the amount of attributes in that category, then—

(*1*) To the extent of any liabilities of S (or a lower-tier subsidiary) that are not taken into account for tax purposes before the transfer, such excess is suspended and allocated and applied proportionately to reduce any amounts that would be deductible or capitalizable as a result of such liabilities later being taken into account by S or another person; solely for purposes of this paragraph (d)(4)(ii)(A)(*1*), *liability* means any liability or obligation that would be required to be capitalized as an assumed liability by a person that purchased all of S's assets and assumed all of S's liabilities in a single transaction; and

(*2*) To the extent such excess is greater than any amount suspended by paragraph (d)(4)(ii)(A)(*1*) of this section, it is disregarded and has no further effect.

(B) *Order of reduction of loss carryovers.* With respect to attributes in Category A and Category B, the attribute reduction amount is applied first to reduce losses carried from the first taxable year in which a loss carryover arose, and then to reduce loss carryovers that arose in each next successive year.

(C) *Time and effect of attribute reduction.* In general, the reduction of attributes is effective immediately before the transaction in which there is a transfer of a loss share of S stock. If the reduction to a member's basis in a share of S stock exceeds the basis of that share, the excess is an excess loss account to which the member owning the share succeeds (and such excess loss account is not taken into account under § 1.1502–19 or otherwise as a result of the transaction). The reductions to

attributes required under this paragraph (d)(4), including by reason of paragraph (d)(5)(ii)(D) of this section (tier down of attribute reduction amounts to lower-tier subsidiaries), are not noncapital, nondeductible expenses described in § 1.1502–32(b)(2)(iii). Accordingly, such reductions have no effect on the basis of stock of upper-tier subsidiaries.

(5) *Special rules applicable if S holds stock of a lower-tier subsidiary (S1) immediately before a transfer of loss shares of S stock*—(i) *Computation of S's attribute reduction amount.* For purposes of determining S's attribute reduction amount under paragraph (d)(3) of this section—

(A) *Single share.* All of S's shares of S1 stock held immediately before the transaction (whether or not transferred in, or held by S immediately after, the transaction) are treated as a single share (generally referred to as the S1 stock); and

(B) *Deemed basis.* S's basis in its S1 stock is treated as its *deemed basis* in the stock, which is equal to the greater of—

(*1*) The sum of S's basis in each share of S1 stock (adjusted to reflect any gain or loss recognized on the transfer of any S1 shares in the transaction, whether allowed or disallowed); and

(*2*) The portion of S1's net inside attribute amount allocable to S's shares of S1 stock.

(C) *Multiple tiers.* If S owns (directly or indirectly) stock of subsidiaries in multiple tiers (whether or not transferred in, or held by S, directly or indirectly, immediately after, the transaction), S's deemed basis in such stock is determined first with respect to shares of stock of the lowest-tier subsidiary or subsidiaries. Deemed basis is then determined with respect to the basis of stock of subsidiaries in each next higher tier.

(ii) *Allocation and application of S's attribute reduction amount*—(A) *Allocation of attribute reduction amount between S1 stock and other assets.* For purposes of allocating S's attribute reduction amount, S's basis in S1 stock is treated as equal to its deemed basis in the S1 stock (determined under paragraph (d)(5)(i)(B) of this section), reduced by—

(*1*) The value of S's transferred shares of S1 stock,

(*2*) The excess of the sum of S1's money, S1's cash equivalents, the value of S1's publicly traded property (other than stock of a subsidiary) and S1's transferred shares of lower-tier subsidiary (S2) stock, and all corresponding S2 amounts (net of S2's liabilities) that are allocable to S1's nontransferred shares of S2 stock, over the total amount of S1's liabilities, to the extent that such excess is allocable to S's nontransferred shares of S1 stock, and

(*3*) The corresponding amounts with respect to shares of stock of all lower tier subsidiaries.

(B) *Application of attribute reduction amount to S's S1 stock.* The attribute reduction amount allocated to S's S1 stock (the allocated amount) is apportioned among, and applied to reduce S's bases in, S's individual S1 shares in accordance with the following—

(*1*) No allocated amount is apportioned to a share of transferred S1 stock if gain or loss is recognized on its transfer;

(*2*) The allocated amount is apportioned among all of S's other shares of S1 stock in a manner that, when applied to those shares, reduces the disparity in S's bases in the S1 shares to the greatest extent possible;

(*3*) The allocated amount that is apportioned to any S1 share transferred in a transfer in which no gain or loss was recognized is applied only to the extent necessary to reduce the bases of that share to, but not below, the value of the share; and

(*4*) The allocated amount that is apportioned to S1 shares not transferred in the transaction is applied to reduce the basis of such shares without limitation.

(C) *Further effects of allocated amount.* Any portion of the allocated amount that is not applied to reduce S's basis in a share of S1 stock has no effect on any other attributes of S, it is not a noncapital, nondeductible expense of S, and it does not cause S to recognize income or gain. However, as provided in paragraph (d)(5)(ii)(D) of this section, such amounts continue to be part of the allocated amount for purposes of the tier down rule in paragraph (d)(5)(ii)(D) of this section.

(D) *Tier down of attribute reduction amount*—(1) *General rule.* The portion of S's attribute reduction amount that is allocated to S1 stock (the allocated amount) is an attribute reduction amount of S1. Thus, subject to the basis conforming limitation in paragraph (d)(5)(ii)(D)(*2*) of this section, the allocated amount applies to reduce S1's attributes under the provisions of this paragraph (d). The allocated amount is an attribute reduction amount of S1 that must be allocated to S1's assets even if its application to S's basis in S1 stock is limited under paragraph (d)(5)(ii)(B) of this section and even if its application to S1's attributes is limited under paragraph (d)(5)(ii)(D)(*2*) of this section.

(*2*) *Conforming limitation on reduction of lower-tier subsidiary's attributes.* Notwithstanding the general rule in paragraph (d)(5)(ii)(D)(*1*) of this section, and subject to any modification in paragraph (e)(2) of this section, the application of S's attribute reduction amount to S1's attributes (the tier down amount) is limited such that, when combined with any attribute reduction amount computed with respect to a transfer of S1 stock, the total amount of reduction to S1's attributes does not exceed the excess of—

(i) The portion of S1's net inside attributes that is allocable to all S1 shares held by members immediately before the transaction; over

(ii) The sum of the value of all S1 shares transferred by members in the transaction and the sum of all members' bases in any other shares of S1 stock held immediately before the transaction (after any reduction under this section, including this paragraph (d)).

(iii) *Stock basis restoration.* After this paragraph (d) has applied with respect to all shares of subsidiary stock transferred in the transaction, basis is restored under this paragraph (d)(5)(iii). In general, under this paragraph (d)(5)(iii), reductions otherwise required under paragraph (d)(5)(ii)(B) of this section are reversed to the extent necessary to restore members' bases in subsidiary stock to conform the basis of each member's share of subsidiary stock to the share's allocable portion of the subsidiary's net inside attribute amount as defined in paragraph (c)(5) of this section, without regard to paragraph (c)(6) of this section. The restoration adjustments are first made at the lowest tier and then at each next higher tier successively. Restoration adjustments do not tier up to affect the bases of higher-tier shares. Rather, restoration is computed and applied separately at each tier. For purposes of this rule—

(A) A subsidiary's net inside attribute amount is determined by treating the basis in stock of a lower-tier subsidiary as the actual basis of the stock, as adjusted under this section;

(B) The net inside attribute amount is treated as decreased by any attribute reduction amount suspended under paragraph (d)(4)(ii)(A)(*1*) of this section (liabilities not taken into account); and

(C) If a subsidiary received property in a prior intercompany section 362(e)(2) transaction and the stock of such subsidiary was reduced as the result of an election under section 362(e)(2)(C) (taking into account the provisions of § 1.1502–13(e)(4)), the net inside attribute amount must be reduced as provided in paragraph (e)(2) of this section.

(6) *Elections to reduce the potential for loss duplication*—(i) *In general.* Notwithstanding the general operation of this paragraph (d), the common parent of the group of which S is a member immediately before the transaction (P) may make an irrevocable election to reduce the potential for loss duplication, and thereby avoid or reduce attribute reduction. Under this paragraph (d)(6), P may elect to reduce members' bases in transferred loss shares of S stock, or reattribute S's attributes (including attributes of lower-tier subsidiaries) to the extent such attributes would otherwise be subject to reduction under this paragraph (d), or both. The combined amount of stock basis reduction and reattribution of attributes may not exceed S's attribute reduction amount, tentatively computed without regard to any election under this paragraph (d)(6).

(ii) *Order of application*—(A) *Stock of one subsidiary transferred in the transaction.* If shares of stock of only one subsidiary are transferred in the transaction, any stock basis reduction and reattribution of attributes (including from lower-tier subsidiaries) is deemed to occur immediately before the application of this paragraph (d), based on the tentatively computed attribute reduction amount. If a transferred share is still a loss share after giving effect to this election, the provisions of this paragraph (d) then apply with respect to that share.

(B) *Stock of multiple subsidiaries transferred in the transaction.* If shares of stock of more than one subsidiary are transferred in the transaction and elections under this paragraph (d)(6) are made with respect to transfers of stock of subsidiaries in multiple tiers, effect is given to the elections from the lowest tier to the highest tier in the manner provided in this paragraph (d)(6)(ii)(B). The scope of the election for the transfer at the lowest tier is determined by tentatively applying paragraph (d) with respect to the transferred loss shares of this lowest-tier subsidiary immediately after applying paragraphs (b) and (c) of this section to the stock of such subsidiary. The effect of any stock basis reduction or reattribution of losses immediately tier up (under the principles of § 1.1502–32) to adjust members' bases in all higher-tier shares. The process is repeated for elections for each next higher-tier transfer.

(iii) *Special rules for reattribution elections*—(A) *In general.* Because the reattribution election is intended to provide the group a means to retain certain S attributes, and not to change the location of attributes where S continues to be a member, the election to reattribute attributes may only be made if S becomes a nonmember (within the meaning of § 1.1502–19(c)(2)) as a result of the transaction. The election to reattribute S's attributes can only be made for attributes in Category A, Category B, and Category C. Attributes subject to the election will be reattributed to P in the same order, manner, and amount that they would otherwise be reduced under paragraph (d)(4) of this section. P succeeds to reattributed attributes as if such attributes were succeeded to in a transaction described in section 381(a). Any owner shift of the subsidiary (including any deemed owner shift resulting from section 382(g)(4)(D) or section 382(l)(3)) in connection with the transaction is not taken into account under section 382 with respect to the reattributed attributes. The reattribution of S's attributes is a noncapital, nondeductible expense described in § 1.1502–32(b)(2)(iii). See § 1.1502–32(c)(1)(ii)(B) regarding special allocations applicable to such noncapital, nondeductible expense. If P elects to reattribute S attributes (including attributes of a lower-tier subsidiary) and reduce S stock basis, the reattribution is given effect before the stock basis reduction.

(B) *Insolvency limitation.* If S, or any higher-tier subsidiary, is insolvent within the meaning of section 108(d)(3) at the time of the transfer, S's losses may be reattributed only to the extent they exceed the sum of the separate insolvencies of any subsidiaries (taking into account only S and its higher-tier subsidiaries) that are insolvent. For purposes of determining insolvency, liabilities owed to higher-tier members are not taken into account, and stock of a subsidiary that is limited and preferred as to dividends and that is not owned by higher-tier members is treated as a liability to the extent of the amount of preferred distributions to which the stock would be entitled if the subsidiary were liquidated on the date of the disposition.

(C) *Limitation on reattribution from lower-tier subsidiaries.* P's ability to reattribute attributes of lower-tier subsidiaries is limited under this paragraph (d)(6)(iii)(C) in order to prevent circular computations of the attribute reduction amount. Accordingly, attributes that would otherwise be reduced as a result of tier down attribute reduction under paragraph (d)(5)(ii)(D) of this section may only be reattributed to the extent that the reduction in the basis of any lower-tier subsidiary stock resulting from the noncapital, nondeductible expense (as allocated under § 1.1502–32(c)(1)(ii)(B)) will not create an excess loss account in any such stock.

(iv) *Special rules for stock basis reduction elections.* An election to reduce basis in S stock is effective for all members' basis in loss shares of S stock that are transferred in the transaction. The reduction is allocated among all such shares in proportion to the amount of loss on each share. This reduction in S stock basis is a noncapital, nondeductible expense of the transferring member. The attribute reduction amount (determined under paragraph (d)(3)(i) of this section) is treated as reduced by the amount of any reduction in the basis of the S stock under this paragraph (d)(6). Accordingly, the election to reduce stock basis under this paragraph (d)(6) is treated as reducing or eliminating the duplication even if the shares of S stock are loss shares after giving effect to the election.

(v) *Form and manner of election.* An election under this paragraph (d)(6) is made in the form of a statement titled ''Section 1.1502–36 Election to Reattribute Attributes,'' ''Section 1.1502–36 Election to Reduce Stock Basis,'' or ''Section 1.1502–36 Election to Reattribute Attributes and Reduce Stock Basis,'' as applicable. The statement must include the name and employer identification number of the subsidiary the stock of which is transferred, the name and employer identification number of any lower-tier subsidiary whose attributes are reattributed, and the amount by which the group is electing to reattribute attributes and/or reduce stock basis. The statement must be included on or with the group's timely filed original return for the taxable year of the transfer of the subsidiary stock to which the election relates.

(7) *Examples.* The application of this paragraph (d) is illustrated by the following examples:

Example 1. Computation of attribute reduction amount. (i) *Transfer of all S shares.* (A) *Facts.* P owns all 100 of the outstanding shares of S stock with a basis of $2 per share. S owns land with a basis of $100, has a $120 loss carryover, and has no liabilities. Each share has a value of $1. P sells 30 of the S shares to X for $30. As a result of the sale, P and S cease to be members of the same group. Accordingly, P transfers all 100 S shares. See paragraphs (f)(11)(i)(A) and (f)(11)(i)(B) of this section. P's transfer of the S shares is a transfer of loss shares and therefore subject to the provisions of this section.

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) of this section either redetermination would not change any member's basis in an S share (there is only

one class of stock outstanding and there is no disparity in the basis of the shares). See paragraph (b)(1)(ii)(A) of this section. No adjustment is required under paragraph (c) of this section because the net positive adjustment is $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, P's transfer of the S shares is still a transfer of loss shares and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* Under this paragraph (d), S's attributes are reduced by S's attribute reduction amount. Paragraph (d)(3) of this section provides that S's attribute reduction amount is the lesser of the net stock loss and S's aggregate inside loss. The net stock loss is the excess of the aggregate bases of the transferred shares ($200) over the aggregate value of the transferred shares ($100), or $100. S's aggregate inside loss is the excess of its net inside attribute amount ($220, the sum of the $100 basis of the land and the $120 loss carryover) over the value of all outstanding S shares ($100), or $120. The attribute reduction amount is therefore the lesser of the net stock loss ($100) and the aggregate inside loss ($120), or $100. Under paragraph (d)(4) of this section, S's $100 attribute reduction amount is allocated and applied to reduce S's $120 loss carryover to $20. Under paragraph (d)(4)(ii)(C) of this section, the reduction of the loss carryover is not a noncapital, nondeductible expense and has no effect on P's basis in the S stock.

(ii) *Transfer of less than all S shares.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 1,* except that P only sells 20 S shares to X. P's sale of the 20 S shares is a transfer of loss shares and therefore subject to the provisions of this section.

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) or paragraph (c) of this section for the reasons set forth in paragraph (i)(B) of this *Example 1.* Thus, after the application of paragraph (c) of this section, P's transfer of the S shares is still a transfer of loss shares and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* Under this paragraph (d), S's attributes are reduced by S's attribute reduction amount. Paragraph (d)(3) of this section provides that S's attribute reduction amount is the lesser of the net stock loss and S's aggregate inside loss. The net stock loss is the excess of the aggregate bases of the transferred shares ($40) over the aggregate value of the transferred shares ($20), or $20. S's aggregate inside loss is the excess of its net inside attribute amount ($220) over the value of all outstanding S shares ($100), or $120. The attribute reduction amount is therefore the lesser of the net stock loss ($20) and the aggregate inside loss ($120), or $20. Under paragraph (d)(4) of this section, S's $20 attribute reduction amount is allocated and applied to reduce S's $120 loss carryover to $100. Under paragraph (d)(4)(ii)(C) of this section, the reduction of the loss carryover is not a noncapital, nondeductible expense and has no effect on P's basis in the S stock.

Example 2. Proportionate allocation of attribute reduction amount. (i) *Facts.* P owns the sole outstanding share of S stock with a basis of $150. S owns land with a basis of $100, a factory with a basis of $20, and rental property with a basis of $30. P sells its S share for $90. P's sale of the S share is a transfer of a loss share and therefore subject to the provisions of this section.

(ii) *Application of paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) of this section, either because redetermination would not change any member's basis in a share (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. No adjustment is required under paragraph (c) of this section because the net positive adjustment is $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, P's sale of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(iii) *Attribute reduction under this paragraph (d).* Under paragraph (d)(3) of this section, S's attribute reduction amount is determined to be $60, the lesser of the net stock loss ($60) and S's aggregate inside loss ($60, the excess of S's $150 net inside attribute amount (the $100 basis of the land plus the $20 basis of the factory plus the $30 basis of the rental property) over the $90 value of the S share). Under paragraph (d)(4) of this section, the $60 attribute reduction amount is allocated and applied proportionately to reduce S's attributes as follows:

Available attributes	Attribute amount	Allocable portion of attribute reduction amount	Adjusted attributes amount
Category E:			
Basis of land	$100	(100/150 × $60) $40	$60
Basis of factory	20	(20/150 × $60) $8	12
Basis of rental property	30	(30/150 × $60) $12	18
Total attributes	150	$60	90

Example 3. Publicly traded property. (i) *Facts.* The facts are the same as in paragraph (i) of *Example 2*, except that, instead of the factory and rental property, S holds two shares of publicly traded stock, Share X (basis and value of $20) and Share Y (basis of $30 and value of $5). P's sale of the S share is a transfer of a loss share and therefore subject to the provisions of this section.

(ii) *Application of paragraphs (b) and (c) of this section.* No adjustment is made under paragraph (b) or paragraph (c) of this section for the reasons set forth in paragraph (ii) of *Example 2.* Thus, after the application of paragraph (c) of this section, P's sale of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(iii) *Attribute reduction under this paragraph (d).* Under paragraph (d)(3) of this section, S's attribute reduction amount is determined to be $60, the lesser of the net stock loss ($60) and S's aggregate inside loss ($60, the excess of S's $150 net inside attribute amount (the $20 basis of Share X plus the $30 basis of Share Y plus the $100 basis of the land) over the $90 value of the S share). Although S has $150 of attributes, S's attributes available for reduction include the basis of publicly traded property only to the extent it exceeds the value of the property. That loss on publicly traded property is a Category D attribute. S's attribute reduction amount is allocated and applied to reduce S's attributes as follows:

Available attributes	Attribute amount	Application of attribute reduction amount	Adjusted attribute amount
Category D:			
Loss in Share Y	$25	$25	$0
Category E:			
Basis of land	100	35	65
Total attributes	125	60	65

ATTRIBUTES AFTER APPLICATION OF PARAGRAPH (D)

Attribute	Amount
Basis of Share X	$20
Basis of Share Y	5
Basis of land	65

Example 4. Attributes attributable to liability not taken into account. (i) *S operates one business.* (A) *Facts.* On January 1, year 1, P forms S by exchanging $100 and land with a basis of $50 for the sole outstanding share of S stock. In year 1, S earns $500, spends $100 to build a factory on its land, and purchases $450 of publicly traded property. S also earns a section 38 general business credit of $50. However, pollution generated by S's business gives rise to a substantial environmental remediation liability under Federal law. Before any amounts have been taken into account with respect to the environmental remediation liability, P sells its S share to X for $150. At the time of the sale, the value of the publicly traded property was $450. If X had purchased S's assets and assumed S's liabilities directly, X would have been required to capitalize any expenses related to environmental remediation. After giving effect to all other provisions of law, P's basis in the S share is $650 (the original basis of $150 increased by the $500 income earned). The sale is therefore a transfer of a loss share of subsidiary stock and subject to this section.

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) of this section, either because redetermination would not change any member's basis in a share (P holds only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. No adjustment to basis is made under paragraph (c) of this section because, although the net positive adjustment is $500, the disconformity amount is $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, P's sale of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of the net stock loss ($500) and the aggregate inside loss. The aggregate inside loss is $500, computed as the excess of S's net inside attribute amount ($650, the sum of $100 (basis in factory), $50 (basis in land), $450 (basis in publicly traded property), and $50 (cash remaining after purchases)) over the value of the S share ($150). Thus, S's attribute reduction amount is $500, the lesser of the net stock loss ($500) and the aggregate inside loss ($500). Under paragraph (d)(4) of this section, S's $500 attribute reduction amount is allocated and applied to reduce S's attributes as follows:

Available attributes	Attribute amount	Allocable portion of attribute reduction amount	Adjusted attribute amount
Category D:			
Loss on publicly traded property	$0	$0	$0
Category E:			
Basis of factory	100	100	0
Basis of land	50	50	0

Under the general rule of this paragraph (d), the remaining $350 attribute reduction amount would have no further effect (and would not be applied to reduce S's general business tax credit). However, S has a liability that has not been taken into account, and, therefore, under paragraph (d)(4)(ii)(A)(*1*) of this section, the remaining $350 attribute reduction amount is suspended and allocated and applied to reduce any amounts that would be deductible or capitalizable as a result of the liability later being taken into account. If the liability is satisfied for an amount that is less than $350, under paragraph (d)(4)(ii)(A)(*2*) the remaining portion of that $350 is disregarded and has no further effect.

(ii) *S operates more than one business.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of *Example 4*, except that S operates a business providing environmental remediation services. Prior to P's sale of the S share, S transfers its environmental remediation services business and its $50 of cash to S1 in exchange for the sole outstanding share of S1 stock. (S's basis in the assets transferred in connection with the environmental remediation business is $0.)

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is made under paragraph (b) or paragraph (c) of this section for the reasons set forth in paragraph (i)(B) of this *Example 4*. Thus, after the application of paragraph (c) of this section, P's sale of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of the net stock loss ($500) and the aggregate inside loss. The aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. Under paragraph (d)(5)(i)(B) of this section, S's net inside attribute amount is determined by using S's deemed basis in the S1 share ($50, the greater of its basis ($50) and S1's net inside attribute amount ($50)). Accordingly, S's net inside attribute amount is $650 (the sum of $100 (basis in factory), $50 (basis in land), $450 (basis in publicly traded property), and $50 (deemed basis in S1 stock)). The aggregate inside loss is $500, computed as the excess of S's net inside attribute amount ($650) over the value of the S share ($150). Thus, S's attribute reduction amount is $500, computed as the lesser of the net stock loss ($500) and the aggregate inside loss ($500).

(*2*) *Allocation, apportionment, and application of attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $500 attribute reduction amount is allocated proportionately (by basis) between its assets and the S1 share. Under paragraph (d)(5)(ii)(A) of this section, for this purpose, S's basis in its S1 share is its deemed basis ($50) reduced by S1's cash ($50), or, $0. As a result, no portion of S's attribute reduction amount is allocated to the S1 share and the entire attribute reduction amount is allocated as set forth in paragraph (i)(C) of this *Example 4*. In addition, as in paragraph (i)(C) of this *Example 4*, under paragraph (d)(4)(ii)(A)(*1*) of this section, the remaining $350 excess attribute reduction amount is suspended and applied to the extent of S's environmental remediation liability to reduce any amounts that would be deductible or capitalizable as a result of such liability later being taken into account. Alternatively, assume that S1 had liabilities for employee medical expenses that had not been taken into account for tax purposes, the $350 excess attribute reduction amount would be suspended and then allocated and applied as S's and S1's liabilities are taken into account. In either case, under paragraph (d)(4)(ii)(A)(*2*) of this section, to the extent the suspended amount exceeds the liabilities taken into account, that excess is disregarded and has no further effect.

Example 5. Wholly owned lower-tier subsidiary (no lower-tier transfer). (i) *Application of conforming limitation.* (A)

Facts. P owns the sole outstanding share of S stock with a basis of $250. S owns Asset with a basis of $100 and the only two outstanding shares of S1 stock (Share A has a basis of $40 and Share B has a basis of $60). S1 owns Asset 1 with a basis of $50. P sells its S share to P1, the common parent of another consolidated group, for $50. The sale is a transfer of a loss share and therefore subject to this section.

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) of this section, either because redetermination would not change any member's basis in a share (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. No adjustment is required under paragraph (c) of this section because, although there is a $50 disconformity amount, the net positive adjustment is $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, P's sale of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of P's net stock loss and S's aggregate inside loss. P's net stock loss is $200 ($250 basis minus $50 value). S's aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. Under paragraphs (d)(3)(iii)(B) and (d)(5)(i) of this section, S's net inside attribute amount is $200, computed as the sum of S's basis in Asset ($100) and its deemed basis in the S1 stock (treated as a single share) ($100, computed as the greater of S's $100 total basis in the S1 shares and S1's $50 basis in Asset 1). S's aggregate inside loss is therefore $150 ($200 net inside attribute amount minus $50 value of the S share). Accordingly, S's attribute reduction amount is $150, the lesser of the net stock loss ($200) and the aggregate inside loss ($150).

(*2*) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $150 attribute reduction amount is allocated proportionately (by basis) between Asset (basis $100) and the S1 stock (treated as a single share) (deemed basis $100). Accordingly, $75 of the attribute reduction amount ($100/$200 × $150) is allocated to Asset and $75 of the attribute reduction amount ($100/$200 × $150) is allocated to the S1 stock. The $75 allocated to Asset is applied to reduce S's basis in Asset to $25. The $75 allocated to the S1 stock is first apportioned between the shares in a manner that reduces disparity to the greatest extent possible. Thus, of the total $75 allocated to the S1 stock, $27.50 is apportioned to Share A and $47.50 is apportioned to Share B. The application of the apportioned amounts reduces the basis of each share to $12.50. As a result, immediately after the allocation, apportionment, and application of S's attribute reduction amount, S's basis in Asset is $25 and S's basis in each of the S1 shares is $12.50.

(*3*) *Tier down of S's attribute reduction amount, application of conforming limitation.* Under paragraph (d)(5)(ii)(D) of this section, any portion of S's attribute reduction amount allocated to S1 stock is an attribute reduction amount of S1 (regardless of the extent, if any, to which it is apportioned and applied to reduce the basis of any shares of S1 stock). Under the general rules of this paragraph (d), the $75 allocated to the S1 stock would be applied to reduce S1's basis in Asset 1 to $0. However, under paragraph (d)(5)(ii)(D)(*2*) of this section, S1's attributes can be reduced by only $25 as a result of tier down attribute reduction, the excess of the portion of S1's net inside attribute amount that is allocable to all S1 shares held by members immediately before the transaction ($50) over the sum of aggregate value of S1 shares transferred by members in the transaction (none) and the aggregate amount of members' bases in nontransferred S1 shares, after reduction under this paragraph ($25). Thus, of S1's $75 tier down attribute reduction amount, only $25 is applied to reduce S1's basis in Asset 1, from $50 to $25. The remaining $50 of allocated amount has no further effect.

(*4*) *Basis restoration.* Under paragraph (d)(5)(iii) of this section, after this paragraph (d) has been applied with respect to all transfers of subsidiary stock, any reduction made to the basis of a share of subsidiary stock under paragraph (d)(5)(ii)(B) of this section is reversed to the extent necessary to conform the basis of that share to the share's allocable portion of the subsidiary's net inside attribute amount. S1's net inside attribute amount after the application of this paragraph (d) is $25 and thus each of the two S1 share's allocable portion of S1's net inside attribute amount is $12.50. Accordingly, the basis of each share (as reduced by this paragraph (d)) is already conformed with its allocable portion of S1's net inside attribute amount and no restoration will be required or permitted under paragraph (d)(5)(iii) of this section.

(ii) *Application of basis restoration rule.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 5*, except that S's basis in Share A is $15 and S's basis in Share B is $35, and S1's basis in Asset 1 is $100.

(B) *Basis redetermination and basis reduction under paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) or paragraph (c) of this section for the reasons set forth in paragraph (i)(B) of this *Example 5.* Thus, after the application of paragraph (c) of this section, P's transfer of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of P's net stock loss and S's aggregate inside loss. P's net stock loss is $200 ($250 basis minus $50 value). S's aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. Under paragraphs (d)(3)(iii)(B) and (d)(5)(i) of this section, S's net inside attribute amount is $200, computed as the sum of S's basis in Asset ($100) and its deemed basis in the S1 stock (treated as a single share) ($100, computed as the greater of S's $50 total basis in the S1 shares and S1's $100 basis in Asset 1). S's aggregate inside loss is therefore $150 ($200 net inside attribute amount minus $50 value of the S share). Accordingly, S's attribute reduction amount is $150, the lesser of the net stock loss ($200) and the aggregate inside loss ($150).

(*2*) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $150 attribute reduction amount is allocated proportionately (by basis) between Asset (basis $100) and the S1 stock (treated as a single share) (deemed basis $100). Accordingly, $75 of the attribute reduction amount ($100/$200 × $150) is allocated to Asset and $75 of the attribute reduction amount ($100/$200 × $150) is allocated to the S1 stock. The $75 allocated to Asset is applied to reduce S's basis in Asset to $25. The $75 allocated to the S1 stock is first apportioned between the shares in a manner that reduces disparity to the greatest extent possible. Thus, of the total $75 allocated to the S1 stock, $27.50 is apportioned to Share A and $47.50 is apportioned to Share B. The application of the apportioned amounts reduces the basis of each share to an excess loss account of $12.50. As a result, immediately after the allocation, apportionment, and application of S's attribute reduction amount, S's basis in Asset is $25 and S's basis in each of the S1 shares is an excess loss account of $12.50.

(*3*) *Tier down of S's attribute reduction amount, application of limitation.* Under paragraph (d)(5)(ii)(D) of this section, any portion of S's attribute reduction amount allocated to S1 stock is an attribute reduction amount of S1 (regardless of the extent, if any, to which it is apportioned and applied to reduce the basis of any shares of S1 stock). Accordingly, under the general rules of this paragraph (d), the $75 allocated to the S1 stock is applied to reduce S1's basis in Asset 1 from $100 to $25.

(*4*) *Basis restoration.* Under paragraph (d)(5)(iii) of this section, after this paragraph (d) has been applied with respect to all transfers of subsidiary stock, any reduction made to the basis of a share of subsidiary stock under paragraph (d)(5)(ii)(B) of this section is reversed to the extent necessary to conform the basis of that share to the share's allocable portion of the subsidiary's net inside attribute amount. S1's net inside attribute amount after the application of this paragraph (d) is $25 and thus each of the two S1 share's allocable portion of S1's net inside attribute amount is $12.50. Accordingly, the reductions to share A and to share B under this paragraph (d) are reversed to restore the basis of each share to $12.50. Thus, $25 of the $27.50 attribute reduction applied to reduce the basis of share A and $25 of the $47.50 attribute reduction applied to reduce the basis of share B are reversed, restoring the basis of each share to $12.50.

Example 6. Multiple blocks of lower-tier subsidiary stock outstanding. (i) *Excess loss*

account taken into account (transfer of upper-tier share causes disposition within the meaning of § 1.1502–19(c)(1)(ii)(B)). (A) *Facts.* P owns the sole outstanding share of S stock with a basis of $200. S holds all five outstanding shares of S1 common stock (shares A, B, C, D, and E). S has an excess loss account of $20 in share A and a positive basis of $20 in each of the other shares. The only investment adjustment applied to any S1 share was a negative $20 investment adjustment applied to share A when it was the only outstanding share, and this amount tiered up and adjusted P's basis in the S share. S1 owns one asset with a basis of $250. P sells its S share to P1, the common parent of a consolidated group, for $20. The sale of the S share is a disposition of share A under § 1.1502–19(c)(1)(ii)(B) (after the transaction, S1 will no longer be a member of the P group). Under paragraph (a)(3)(i) of this section, before the application of this section, S's excess loss account in share A is taken into account, increasing S's basis in share A to $0 and P's basis in its S share to $220. After giving effect to the recognition of the excess loss account, P's sale of the S share is a transfer of a loss share and therefore subject to the provisions of this section.

(B) *Basis redetermination and basis reduction under paragraphs (b) and (c) of this section.* No adjustment is made under paragraph (b) of this section, either because redetermination would change no member's basis in a share (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. No adjustment is made under paragraph (c) of this section because, even though there is a disconformity amount of $120, the net positive adjustment is zero. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, P's sale of the S share remains a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of P's net stock loss and S's aggregate inside loss. P's net stock loss is $200 (the S share's $220 basis minus its $20 value). S's aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. Under paragraphs (d)(3)(iii)(B) and (d)(5)(i) of this section, S's net inside attribute amount is $250, S's deemed basis in the S1 stock (treated as a single share) ($250, computed as the greater of S's $80 total basis in the S1 shares ($0 basis of share A plus $20 of basis in each of the four other shares) and S1's $250 basis in its asset). S's aggregate inside loss is therefore $230 ($250 net inside attribute amount minus $20 value of the S share). Accordingly, S's attribute reduction amount is $200, the lesser of the net stock loss ($200) and the aggregate inside loss ($230).

(*2*) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $200 attribute reduction amount is allocated entirely to the S1 stock (treated as a single share) and then apportioned among the shares in a manner that reduces disparity to the greatest extent possible. Thus, $24 is apportioned to share A and $44 is apportioned to each of the other shares. Because there is no transfer of the S1 shares, the apportioned amounts are applied fully to reduce the basis of each share to an excess loss account of $24.

(*3*) *Tier down of S's attribute reduction amount.* Under paragraph (d)(5)(ii)(D) of this section, the $200 of S's attribute reduction amount allocated to the S1 shares is an attribute reduction amount of S1 (regardless of the extent, if any, to which it is apportioned and applied to reduce the basis of any shares of S1 stock). Accordingly, under the general rules of this paragraph (d), S1's $200 attribute reduction amount is allocated and applied to reduce S1's basis in its asset from $250 to $50.

(*4*) *Basis restoration.* Under paragraph (d)(5)(iii) of this section, after this paragraph (d) has been applied with respect to all transfers of subsidiary stock, any reduction made to the basis of a share of subsidiary stock under paragraph (d)(5)(ii)(B) of this section is reversed to the extent necessary to conform the basis of that share to the share's allocable portion of the subsidiary's net inside attribute amount. S1's net inside attribute amount after the application of this paragraph (d) is $50 and thus each of the five S1 share's allocable portion of S1's net inside attribute amount is $10. Accordingly, the reductions to the bases of S1 stock under this paragraph (d) are reversed to restore (to the extent possible) the basis of each share to $10. Thus, $24 of the $24 attribute reduction applied to reduce the basis of share A is reversed, restoring the basis of share A to $0, and $34 of the $44 attribute reduction applied to reduce the basis of each other share is reversed, restoring the basis of each of those shares to $10.

(ii) *Sale of gain share to member.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 6*, except that P owns shares A, B, C, and D, S owns share E, S has a liability of $20, and S1's basis in its asset is $500. Also, as part of the transaction, S sells share E to P for $40. Unlike under the facts of paragraph (i)(A) of this *Example 6*, there is no disposition of share A within the meaning of § 1.1502–19(c)(1)(ii)(B) (because the share continues to be held by P, and S1 continues to be a member of the P group). As a result, the share A excess loss account is not taken into account. Although S's sale of share E is a transfer of that share, the share is not a loss share and thus the transfer is not subject to this section. P's sale of the S share, however, is a transfer of a loss share and therefore subject to the provisions of this section.

(B) *Transfer in lowest tier (gain share).* S's sale of share E is the lowest tier transfer in the transaction. Under paragraph (a)(3)(ii)(A)(1) of this section, because there are no transfers of loss shares at that tier, no adjustments are required under paragraphs (b) and (c) of this section. However, S's gain recognized on the transfer of share E is computed and immediately adjusts members basis in subsidiary stock under the principles of § 1.1502–32 (because P and S are not members of the same group immediately after the transaction the sale is not subject to § 1.1502–13). Accordingly, P's basis in its S share is increased by $20, from $200 to $220.

(C) *Transfers in next higher (the highest) tier (application of paragraphs (b) and (c) of this section).* The next highest tier transfer is P's sale of the S stock. Because the sale is a transfer of a loss share, first paragraph (b) of this section and then paragraph (c) of this section apply to the transfer. No adjustments are required under paragraph (b), either because there is no potential for redetermination (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. Under paragraph (c) of this section, P's basis in its S share is decreased by $20, the lesser of the disconformity amount ($200, computed as the excess of stock basis ($220) over S's net inside attribute amount ($20, the $40 value of the transferred Share E minus the $20 liability)) and the net positive adjustment ($20). Thus, after the application of paragraph (c) of this section, P's basis in the S share is $200, and the sale remains a transfer of a loss share. There are no higher tier transfers and, therefore, P's transfer of the S share is then subject to this paragraph (d).

(D) *Attribute reduction under this paragraph (d).* (1) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of P's net stock loss and S's aggregate inside loss. After the application of paragraph (c) of this section, P's net stock loss is $180 (the S share's $200 basis minus its $20 value). S's aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. Under paragraphs (d)(3)(iii)(B) and (d)(5)(i) of this section, S's net inside attribute amount is $80, computed as $100 (S's deemed basis in share E (the greater of S's basis in share E, adjusted for the gain recognized, ($40) and share E's allocable portion of S1's net inside attribute amount ($100, representing 1/5 of S1's $500 basis in its asset)) minus S's liability ($20). Accordingly, S's net aggregate inside loss is $60 ($80 net inside attribute amount minus $20 value of the S stock). S's attribute reduction amount is therefore the lesser of $180 and $60, or $60.

(*2*) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $60 attribute reduction amount is allocated entirely to its S1 stock, share E. However, under paragraph (d)(5)(ii)(B)(*1*) of this section, none of the allocated amount is apportioned to, or applied to reduce the basis of share E because share E was transferred in a transaction in which gain or loss was recognized. Under paragraph (d)(5)(ii)(C) of this section, the $60 allocated amount not apportioned to share E has no effect on S or S's attributes.

(*3*) *Tier down of S's attribute reduction amount.* Notwithstanding the fact that no portion of the allocated amount was apportioned to or applied to reduced the basis of share E, the entire $60 allocated amount tiers down and is an attribute

reduction amount of S1. See paragraphs (d)(5)(ii)(C) and (d)(5)(ii)(D) of this section. Under the general rules of this paragraph (d), S1's $60 attribute reduction amount is allocated and applied to reduce S1's basis in its asset from $500 to $440.

(*4*) *Basis restoration.* Under paragraph (d)(5)(iii) of this section, after this paragraph (d) has been applied with respect to all transfers of subsidiary stock, any reduction made to the basis of a share of subsidiary stock under paragraph (d)(5)(ii)(B) of this section is reversed to the extent necessary to conform the basis of that share to the share's allocable portion of the subsidiary's net inside attribute amount. No reduction was made to the basis of any share of subsidiary stock under paragraph (d)(5)(ii)(B) of this section. Therefore, no stock basis is increased under the basis restoration rule in paragraph (d)(5)(iii) of this section.

Example 7. Allocation of attribute reduction if lower-tier subsidiary has nonloss assets or liabilities. (i) *S1 holds cash.* (A) *Facts.* P owns the sole outstanding share of S stock with a basis of $800. S owns Asset 1 with a basis of $400 and the sole outstanding share of S1 stock with a basis of $300. S1 holds Asset 2 with a basis of $50, and $100 cash. P sells its S share to P1, the common parent of a consolidated group, for $100.

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) of this section, either because redetermination would change no member's basis in a share (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. No adjustment is required under paragraph (c) of this section because the net positive adjustment is $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, P's sale of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of P's net stock loss and S's aggregate inside loss. P's net stock loss is $700 (the S share's $800 basis minus its $100 value). S's aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. Under paragraphs (d)(3)(iii)(B) and (d)(5)(i) of this section, S's net inside attribute amount is the sum of its basis in Asset 1 of $400 and its deemed basis in the S1 share. S's deemed basis in the S1 share is $300, the greater of S's basis in the S1 share ($300) and S1's net inside attribute amount ($150, S1's $50 basis in Asset 2 plus S1's $100 cash). Therefore, S's net inside attribute amount is $700 and S's aggregate inside loss is $600 ($700 net inside attribute amount less $100 value). S's attribute reduction amount is $600, the lesser of the net stock loss ($700) and the aggregate inside loss ($600).

(*2*) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii)(A) of this section, S's $600 attribute reduction amount is allocated proportionately (by basis) between S's basis in Asset 1 ($400) and its deemed basis in the S1 share. For purposes of allocating the attribute reduction amount, S's deemed basis in the S1 share is reduced by S1's $100 cash (from $300 to $200). Thus, the $600 is allocated $400 to Asset 1 ($400/$600 × $600) and $200 to the S1 share ($200/$600 × $600). The $400 allocated to Asset 1 is applied to reduce S's basis in Asset 1 to $0. The $200 allocated to the S1 share is apportioned and applied to reduce S's basis in the S1 share to $100.

(*3*) *Tier down of S's attribute reduction amount.* Under paragraph (d)(5)(ii)(D) of this section, any portion of S's attribute reduction amount allocated to the S1 stock is an attribute reduction amount of S1 (regardless of the extent, if any, to which it is apportioned and applied to reduce the basis of any shares of S1 stock). Accordingly, under the general rules of this paragraph (d), the $200 allocated to the S1 share is an attribute reduction amount of S1 that is allocated and applied entirely to reduce S1's basis in Asset 2 from $50 to $0. The remaining $150 S1 attribute reduction amount is disregarded and has no further effect.

(*4*) *Basis restoration.* Under paragraph (d)(5)(iii) of this section, after this paragraph (d) has been applied with respect to all transfers of subsidiary stock, any reduction made to the basis of a share of subsidiary stock under paragraph (d)(5)(ii)(B) of this section is reversed to the extent necessary to conform the basis of that share to the share's allocable portion of the subsidiary's net inside attribute amount. S1's net inside attribute amount after the application of this paragraph (d) is $100 and thus the S1 share's allocable portion of S1's net inside attribute amount is $100. Accordingly, the basis of the share (as reduced by this paragraph (d)) is already conformed with its allocable portion of S1's net inside attribute amount and no restoration will be required or permitted under paragraph (d)(5)(iii) of this section.

(ii) *S1 borrows cash.* The facts are the same as in paragraph (i)(A) of this *Example 7* except that S1 borrows $50 from X, an unrelated person, immediately before P sells the S share. The computation of the attribute reduction amount is the same as in paragraph (i)(C) of this *Example 7* (because the $50 cash from the loan proceeds and the $50 liability offset in the computation of S's net inside attribute amount). However, under paragraph (d)(5)(ii)(A) of this section, for purposes of allocating the attribute reduction amount, deemed basis is reduced by the amount of S1's cash, but only to the extent it exceeds S1's liabilities. S1's cash ($150, the original $100 plus the $50 loan proceeds) exceeds its liability ($50) by $100, so S's deemed basis in the S1 share is reduced by $100 (from $300 to $200) for allocation purposes. The results are the same as in paragraph (i) of this *Example 7.*

(iii) *S1 borrows cash and invests in non-publicly traded property.* (A) *Facts.* The facts are the same as in paragraph (ii) of this *Example 7* except that S1 uses its $150 (the original $100 plus the $50 loan proceeds) to purchase Asset 3, an asset that is not publicly traded.

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) or paragraph (c) of this section for the reasons set forth in paragraph (i)(B) of this *Example 7.* Thus, after the application of paragraph (c) of this section, P's sale of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* The attribute reduction amount is the same as computed in paragraph (i)(C)(*1*) of this *Example 7* (because $50 of the basis in S1's assets and the $50 liability offset in the computation of S1's net inside attribute amount of $150).

(*2*) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii)(A) of this section, S's $600 attribute reduction amount is allocated proportionately (by basis) between S's basis in Asset 1 ($400) and its deemed basis in the S1 share. For purposes of allocating the attribute reduction amount, deemed basis is only reduced for allocation purposes by cash, cash equivalents, and the value of publicly traded property (reduced by liabilities). Thus, there is no reduction to the basis of the S1 share for purposes of allocating the attribute reduction amount. Accordingly, S's $600 attribute reduction amount is allocated $343 ($400/$700 × $600) to Asset 1 and $257 ($300/$700 × $600) to the S1 share.

(*3*) *Tier down of S's attribute reduction amount, application of conforming limitation.* Under paragraph (d)(5)(ii)(D) of this section, any portion of S's attribute reduction amount allocated to the S1 stock is an attribute reduction amount of S1 (regardless of the extent, if any, to which it is apportioned and applied to reduce the basis of any shares of S1 stock). Thus, the entire $257 of S's attribute reduction amount allocated to the S1 share is an attribute reduction amount of S1. Under the general rules of this paragraph (d), the entire amount is allocated to, and would be applied to reduce, S1's bases in Asset 2 and Asset 3, reducing the basis of both assets to $0. However, under paragraph (d)(5)(ii)(D)(*2*) of this section, the reduction is limited to the excess of S1's net inside attribute amount ($150) over S's basis in the S1 share after reduction under this paragraph (d) ($43). Thus, of the $257 attribute reduction amount allocated to the S1 share, only $107 is applied proportionately to reduce S1's bases in Asset 2 by $26.75 ($50/$200 × $107), to $23.25, and Asset 3 by $80.25 ($150/$200 × $107), to $69.75. The remaining $150 S1 attribute reduction amount is disregarded has no further effect.

(*4*) *Basis restoration.* Under paragraph (d)(5)(iii) of this section, after this paragraph (d) has been applied with respect to all transfers of subsidiary stock, any reduction made to the basis of a share of subsidiary stock under paragraph (d)(5)(ii)(B) of this section is reversed to the extent necessary to conform the basis of that share to the share's allocable portion of the subsidiary's net inside attribute amount. S1's net inside

attribute amount after the application of this paragraph (d) is $43 ($23.25 basis in Asset 2 plus $69.75 basis in Asset 3 minus $50 liability) and thus the S1 share's allocable portion of S1's net inside attribute amount is $43. Accordingly, the basis of the share (as reduced by this paragraph (d)) is already conformed with its allocable portion of S1's net inside attribute amount and no restoration will be required or permitted under paragraph (d)(5)(iii) of this section.

Example 8. Election to reduce stock basis or reattribute attributes under paragraph (d)(6) of this section. (i) *Deconsolidating sale.* (A) *Facts.* P owns the sole outstanding share of M stock with a basis of $1,000. M owns all 100 outstanding shares of S stock with a basis of $2.10 per share ($210 total). M sells all its S shares to X for $1 per share (total $100) and makes no election under paragraph (d)(6) of this section. At the time of the sale, S has no liabilities and the following:

Category	Attribute	Attribute amount
Category A	NOL	$10
Category E	Basis of Asset 1	20
	Basis of Asset 2	180
	Total Category E	200

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is made under paragraph (b) of this section, either because redetermination would change no member's basis in a share (S has only one class of stock outstanding and there is no disparity in the basis of the shares) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. No adjustment is required under paragraph (c) of this section because the net positive adjustment is $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, M's transfer of the S shares is still a transfer of loss shares and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of the net stock loss ($110, P's aggregate basis in the transferred S shares ($210) less the aggregate value of the transferred shares ($100)) and S's aggregate inside loss. S's aggregate inside loss is $110 (S's $210 net inside attribute amount (the $10 NOL plus the $20 basis of Asset 1 plus the $180 basis of Asset 2) less the $100 value of all outstanding S shares). Thus, the attribute reduction amount is $110.

(*2*) *Application of attribute reduction amount.* S's $110 attribute reduction amount is applied as follows:

Category	Attribute	Attribute amount	Allocation of attribute reduction amount	Adjusted attribute amount
Category A	NOL	$10	$10	$0
Category E	Basis of Asset 1	20	(20/200 x $100) $10	10
	Basis of Asset 2	180	(180/200 x $100) $90	90
	Total Category E	200	$100	100

(D) *Results.* The P group realizes a $110 loss on M's sale of the S shares, which reduces P's basis in the M share from $1,000 to $890. The reduction of S's attributes is not a noncapital, nondeductible expense of S and does not tier up to reduce the basis of the S shares or M share. Immediately after the transaction, the entities own the following:

Entity	Asset	Basis
P	M share	$890
X	100 S shares	100
S	Asset 1	10
	Asset 2	90

(E) *Election to reduce stock basis.* The facts are the same as in paragraph (i)(A) of this *Example 8* except that P elects under paragraph (d)(6) of this section to reduce M's basis in the S shares by the full attribute reduction amount of $110, in lieu of S reducing its attributes. The election is effective for all transferred loss shares and is allocated to such shares in proportion to the loss in each share. Accordingly, the basis of each of the 100 transferred shares is reduced from $2.10 to $1.00. After giving effect to the election, the S shares are not loss shares and this section has no further application to the transfer. The reduction of M's basis in the S shares pursuant to the election under paragraph (d)(6) of this section is a noncapital, nondeductible expense of M that will reduce P's basis in the M share. See paragraph (d)(6)(iv) of this section. Immediately after the transaction, the entities own the following:

Entity		Basis/attribute
P	M share	$890
X	100 S shares	100
S	NOL	10
	Asset 1	20
	Asset 2	180

(F) *Election to reattribute losses.* The facts are the same as in paragraph (i)(A) of this *Example 8* except that P elects under paragraph (d)(6) of this section to reattribute S's attributes. Although S's attribute reduction amount is $110, P can only

reattribute attributes in Category A, Category B, and Category C. P can therefore elect to reattribute $10 of attributes (the NOL), and, as a result, will reduce S's NOL to $0. The reattribution of the $10 NOL is a noncapital, nondeductible expense of S, and under § 1.1502–32(c)(1)(ii)(B) this expense is allocated to the loss shares of S stock sold in proportion to the loss in the shares, or $.10 per share. Further, this expense tiers up under the general rules of § 1.1502–32 and reduces P's basis in the M stock by $10. After giving effect to the election, the P group would realize a $100 loss on M's sale of the S shares. M could recognize the $100 stock loss (in which case S's basis in Asset 1 and Asset 2 would be reduced to $10 and $90, respectively, as in paragraph (i)(C)(*2*) of this *Example 8*) or P could elect to reduce M's basis in the S shares by all or any portion of the $100 stock loss (in which case S's attribute reduction amount would be reduced by the amount of the reduction in the basis of the S stock, and S's basis in Asset 1 and Asset 2 would be reduced proportionately).

(ii) *Nondeconsolidating sale.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 8*, except that M only sells 20 S shares (for a total of $20).

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) or paragraph (c) of this section for the reasons set forth in paragraph (i)(B) of this *Example 8*. Thus, after the application of paragraph (c) of this section, M's sale of the S shares is still a transfer of loss shares and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of the net stock loss ($22, P's aggregate basis in the transferred S shares ($42) less the aggregate value of the transferred shares ($20)) and S's $110 aggregate inside loss (as calculated in paragraph (i)(C)(*1*) of this *Example 8*). Thus, the attribute reduction amount is $22.

(*2*) *Application of attribute reduction amount.* S's $22 attribute reduction amount is applied as follows:

Category	Attribute	Attribute amount	Allocation of attribute reduction amount	Adjusted attribute amount
Category A	NOL	$10	$10	$0
Category E	Basis of Asset 1	20	(20/200 x $12) $1.20	18.80
	Basis of Asset 2	180	(180/200 x $12) $10.80	169.20
	Total Category E	200	$12	188

(D) *Results.* The P group realizes a $22 loss on M's sale of the S shares, which reduces P's basis in the M share from $1,000 to $978. The reduction of S's attributes is not a noncapital, nondeductible expense of S and does not tier up to reduce the basis of the S shares or M share. Immediately after the transaction, the entities have the following:

Entity	Asset	Basis
P	M share	$978
X	20 S shares	20
S	Asset 1	18.80
	Asset 2	169.20

(E) *Election to reduce stock basis.* The facts are the same as paragraph (ii)(A) of this *Example 8*, except that P elects under paragraph (d)(6) of this section to reduce M's basis in the S shares by the full attribute reduction amount of $22, in lieu of S reducing its attributes. The election is effective for all transferred loss shares and is allocated to such shares in proportion to the loss in each share. Accordingly, the basis of each of the 20 transferred shares is reduced from $2.10 to $1.00. The P group realizes no loss on M's sale of the S shares. The reduction of M's basis in the S shares pursuant to the election under paragraph (d)(6) of this section is a noncapital, nondeductible expense of M that will reduce P's basis in the M share. Immediately after the transaction, the entities have the following:

Entity		Basis/attribute
P	M share	$978
X	20 S shares	20
S	NOL	10
	Asset 1	20
	Asset 2	180

(F) *Subsequent events.* As the NOL is absorbed and/or Asset 1 or Asset 2 are depreciated or sold, the anti-duplication provision of § 1.1502–80(a) prevents the inclusion of the $10 NOL and $12 of realized loss on Asset 1 and Asset 2 in the investment adjustment to any shares.

(G) *Election to reattribute attributes.* The facts are the same as paragraph (ii)(A) of this *Example 8.* Because S remains a member of the P group following M's sale of S stock, P cannot elect under paragraph (d)(6) of this section to reattribute any portion of S's attributes in lieu of attribute reduction.

Example 9. Transfers at multiple tiers, gain and loss shares. (i) *Facts.* P owns the sole outstanding share of S stock with a basis of $700. S owns Asset 1 (basis of $170) and all ten outstanding shares of S1 common stock ($170 basis in share 1, $10 basis in share 2, and $15 basis in each of share 3 through share 10). S1 owns the sole outstanding share of S2 ($0 basis), the sole outstanding share of S3 ($60 basis), and the sole outstanding share of S4 ($100 basis). S2's sole asset is Asset 2 ($75 basis). S3's sole asset is Asset 3 ($75 basis). S4's sole asset is Asset 4 ($80 basis). In one transaction, P sells its S share to P1 (the common parent of a consolidated group) for $240, S sells S1 share 1 to X for $20, S transfers S1 share 2 to a partnership in a section 721 transaction, and S1 sells its S2 share to Y for $50. No election is made under paragraph (d)(6) to reduce stock basis or reattribute attributes.

(ii) *Transfer in lowest tier (only gain share).* S1's sale of the S2 share is a transfer of the S2 share and that is the lowest tier in which there is a transfer. There is no transfer of a loss share at that tier, and thus this section does not apply to that transfer. The gain recognized on the transfer of the S2 share is computed and is applied to adjust the basis of members' shares of subsidiary stock under the principles of § 1.1502–32. Accordingly, $5 is allocated to each of S1 shares, increasing the basis of share 1 to $175, the basis of share 2 to $15, and the basis of each other share to $20. The $50 applied to S's

bases in S1 shares then tiers up to increase P's basis in the S share from $700 to $750.

(iii) *Transfers in next highest tier (loss share).* S's sale of the S1 share 1 and S's transfer of the S1 share 2 to a partnership are both transfers of stock in the next higher tier. However, only the S1 share 1 is a loss share and so this section only applies with respect to the transfer of that share.

(A) *Basis redetermination under paragraph (b) of this section.* Under paragraph (b)(2)(i)(A) of this section, members' bases in S1 shares are redetermined by first removing the positive investment adjustments applied to the bases of transferred loss shares. Accordingly, the $5 positive investment adjustment applied to the basis of S1 share 1 is removed, reducing the basis of S1 share 1 from $175 to $170. Because there were no negative adjustments made to the bases of S1 shares, there are no negative adjustments that can be reallocated to further reduce the basis of S1 share 1. Finally, under paragraph (b)(2)(ii)(B), the positive investment adjustment removed from S1 share 1 is reallocated and applied to increase the bases of other S1 shares in a manner that reduces disparity to the greatest extent possible. Accordingly, the entire $5 is reallocated and applied to increase the basis of S1 share 2, from $15 to $20. After basis is redetermined under paragraph (b) of this section, S1 share 1 is still a loss share and therefore subject to basis reduction under paragraph (c) of this section.

(B) *Basis reduction under paragraph (c) of this section.* No adjustment is required to the basis of S1 share 1 under paragraph (c) of this section because, although the disconformity amount is $149 (the excess of the $170 stock basis over the share's $21 allocable portion of S1's net inside attribute amount ($210, determined under paragraph (c)(5) of this section as S1's basis in the stock of S2 (adjusted for the gain recognized) ($50), S3 ($60), and S4 ($100))), the share's net positive adjustment is $0 (because the $5 positive investment adjustment originally allocated to S1 share 1 was reallocated to S1 share 2 under paragraph (b) of this section). See paragraph (c)(3) of this section.

(C) *Computation of loss, adjustments to stock basis.* S recognizes a loss of $150 on the sale of the S1 share 1 ($170 adjusted basis minus $20 amount realized). P's basis in its S share is therefore decreased by the $150 loss recognized by S (on the sale of the S1 share) and increased by the $50 gain that tiered up from S1 (as a result of S1's sale of the S2 share). Following these adjustments, P's basis in the S share is $600 and the sale of the S share is still a transfer of a loss share.

(iv) *Transfer in highest tier (loss share).* The sale of the S share is a transfer in the next higher tier, which is the highest tier in this transaction. Because the sale is a transfer of a loss share, it is subject to this section.

(A) *Basis redetermination and basis reduction under paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) of this section, either because there is no potential for redetermination (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. In addition, no adjustment is required under paragraph (c) of this section because, although the disconformity amount is $230 (the excess of the $600 stock basis over the $370 allocable portion of S's net inside attribute amount ($370, determined under paragraph (c)(5) of this section as S's basis in the stock of S1 (adjusted for the loss recognized) ($200) and Asset 1 ($170))), the share's net positive adjustment is $0. See paragraph (c)(3) of this section. Accordingly, the sale of the S share is still a transfer of a loss share. Because there are no higher-tier loss shares transferred in the transaction, this paragraph (d) then applies with respect to the transfer of the S share.

(B) *Attribute reduction under this paragraph (d).* (*1*) *Computation of S's attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of P's net stock loss and S's aggregate inside loss. P's net stock loss is $360 (the S share's $600 adjusted basis minus $240 amount realized). S's aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. S's net inside attribute amount is the sum of its bases in its assets, treating its S1 shares as a single share (the S1 stock) and treating S's deemed basis in the S1 stock as its basis in that stock. Under paragraph (d)(5)(i)(C) of this section, when subsidiaries are owned in multiple tiers, deemed basis is first determined for shares at the lowest tier, and then for stock in each next higher tier. S1's deemed basis in the S2 stock is $75 (the greater of $50 (S1's basis in the S2 share ($0) increased by the $50 gain recognized) and $75 (S2's basis in Asset 2)). S1's deemed basis in the S3 stock is $75 (computed as the greater of $60 (S1's basis in the S3 share) and $75 (S3's basis in Asset 3)). S1's deemed basis in the S4 stock is $100 (computed as the greater of $100 (S1's basis in the S4 share) and $80 (S4's basis in Asset 4)). Accordingly, S1's net inside attribute amount is $250 ($75 deemed basis in the S2 stock plus $75 deemed basis in the S3 stock plus $100 deemed basis in the S4 stock). S's deemed basis in the S1 stock is the greater of the sum of S's actual basis in each share of S1 stock (adjusted for any gain or loss recognized) and S1's net inside attribute amount. S's actual basis in the S1 stock, adjusted for the loss recognized, is $200 (the sum of S's $170 basis in the S1 share 1 and S's $20 basis in each other S1 share, reduced by the $150 loss recognized). Thus, S's deemed basis in the S1 stock is $250, the greater of $200 (aggregate basis in S1 shares, adjusted for loss recognized) and $250 (S1's net inside attribute amount). As a result, S's net inside attribute amount is $420, the sum of $250 (S's deemed basis in S1 stock) and $170 (S's basis in Asset 1). Accordingly, the aggregate inside loss is $180, the excess of S's net inside attribute amount ($420) over the value of all of the S stock ($240). S's attribute reduction amount is therefore $180, the lesser of the net stock loss ($360) and the aggregate inside loss ($180).

(*2*) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $180 attribute reduction amount is allocated proportionately (by basis) between Asset 1 and its S1 stock. Under paragraph (d)(5)(ii)(A) of this section, for purposes of allocating S's $180 attribute reduction amount, S's deemed basis in the S1 stock is reduced by the value of any transferred S1 shares (and other items that are not relevant here). Additionally, for this purpose, S's deemed basis in S1 stock is reduced by S's nontransferred S1 shares' allocable portion of the value of S1's transferred shares of each lower-tier subsidiary's stock (and other items that are not relevant here). Accordingly, for purposes of allocating S's attribute reduction amount, S's deemed basis in the S1 stock must be reduced by $80 (the $40 value of the two transferred S1 shares, and S's eight nontransferred S1 shares' $40 allocable portion of the $50 value of the transferred S2 share), to $170. Thus, $90 of the attribute reduction amount ($170/$340 × $180) is allocated to Asset 1 and $90 of the attribute reduction amount ($170/$340 × $180) is allocated to the S1 stock. Under paragraph (d)(5)(ii)(B)(*1*) of this section, none of the $90 allocated to the S1 stock is apportioned to share 1 because loss is recognized on the transfer of share 1. Under paragraph (d)(5)(ii)(B)(*2*) of this section, the $90 allocated amount is apportioned among other nine shares of S1 stock in a manner that reduces disparity to the greatest extent possible. Accordingly, of the total $90 allocated amount, $10 is apportioned to each of the remaining shares of S1 stock. Under paragraph (d)(5)(ii)(B)(*3*) of this section, however, an apportioned amount cannot be applied to reduce the basis of a transferred share below its value. Because the basis of share 2 is already equal to its value, none of the $10 apportioned to share 2 is applied to reduce its basis. The amounts apportioned to the remaining S1 shares, however, are applied to reduce the bases of those shares without limitation, reducing the basis of each from $20 to $10. As a result, immediately after the allocation and application of S's attribute reduction amount, S's basis in Asset 1 is $80 ($170 minus $90), its basis in share 1 is $170, its basis in share 2 is $20, and its basis in each other share of S1 stock is $10. Under paragraph (d)(5)(ii)(D) of this section, the entire $90 of S's attribute reduction amount that was allocated to the S1 stock is an attribute reduction amount of S1, regardless of the fact that none of the allocated amount was apportioned to share 1 and none of the amount apportioned to share 2 was applied to reduce the basis of share 2.

(v) *Attribute reduction under this paragraph (d) in next lower tier.* (A) *Computation of S1's attribute reduction amount.* S's sale of share 1 is a transfer of a loss share and is in the next lower tier. Thus, this paragraph (d) next applies with respect to S's transfer of share 1. S1's attribute reduction amount will include both the $90 attribute reduction amount that tiered down from S and any attribute reduction amount resulting from the application of this paragraph (d) with respect to S's transfer of the S1 share 1 (S1's direct attribute reduction amount). Under paragraph (d)(3) of this section, S1's direct attribute reduction amount is the lesser of the net stock loss on

transferred S1 shares and S1's aggregate inside loss. The net stock loss on transferred S1 shares is $150, computed as the excess of S's $190 adjusted bases in transferred shares of S1 stock ($170 in share 1 plus $20 in share 2) over the value of those shares ($40). S1's aggregate inside loss is $50, the excess of S1's $250 net inside attribute amount (as calculated in paragraph (iv)(B)(*1*) of this *Example 10*) over the $200 value of all outstanding S1 shares (extrapolated from the amount realized on the sale of share 1). Therefore, S1's direct attribute reduction amount is $50, the lesser of the $150 net stock loss and S1's $50 aggregate inside loss. S1's total attribute reduction amount is thus $140, the sum of the $90 attribute reduction amount that tiered down from S and the $50 direct attribute reduction amount computed with respect to the transfer of share 1.

(B) *Allocation, apportionment, and application of S1's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S1's $140 attribute reduction amount is allocated proportionately (by basis) among the S2 stock, the S3 stock, and the S4 stock. As described in paragraph (iv)(B)(*2*) of this *Example 10*, under paragraph (d)(5)(ii)(A) of this section, for purposes of allocating S1's $140 attribute reduction amount, S1's deemed basis in the S2 stock is reduced by the value of the transferred S2 share. Accordingly, for purposes of allocating S1's attribute reduction amount, S1's deemed basis in the S2 stock must be reduced by $50 (the value of the transferred S2 share), to $25. Thus, $17.50 of S1's attribute reduction amount ($25/$200 × $140) is allocated to the S2 stock, $52.50 of S1's attribute reduction amount ($75/$200 × $140) is allocated to the S3 stock, and $70 of S1's attribute reduction amount ($100/$200 × $140) is allocated to the S4 stock. Under paragraph (d)(5)(ii)(B)(*1*) of this section, none of the amount allocated to S2 stock is apportioned to the S2 share because gain was recognized on the transfer of the S2 share. However, the $52.50 allocated to the S3 stock is apportioned and applied to reduce the basis in the S3 share, from $60 to $7.50, and the $70 allocated to the S4 stock is apportioned and applied to reduce the basis of the S4 share, from $100 to $30. (Note: Although the conforming limitation in paragraph (d)(5)(ii)(D)(*2*) of this section limits the application of tier down attribute reduction such that the total amount of attribute reduction applied to reduce S1's attributes does not exceed $130 (the excess of S1's $250 net inside attribute amount over $120, the value of the transferred S1 shares ($40) plus the basis of the nontransferred S1 shares after reduction ($80)), this limitation does not apply because only $122.50 ($52.50 plus $70) of attribute reduction is applied to reduce S1's attributes.) Under paragraph (d)(5)(ii)(D) of this section, the attribute reduction amount allocated to the S2 stock, the S3 stock, and the S4 stock becomes an attribute reduction amount of S2, S3, and S4, respectively (even though the amount allocated to S2 stock was not apportioned or applied to reduce the basis of the S2 share).

(vi) *Attribute reduction under this paragraph (d) in lowest tier.* Although the sale of the S2 share is a transfer of subsidiary stock at the next lower tier, the S2 share is not a loss share. Thus, this paragraph (d) does not apply with respect to that transfer. However, S2, S3, and S4 have attribute reduction amounts that tiered down from S1 and that are applied to reduce attributes under the provisions of this paragraph (d).

(A) *Tier down of S1's attribute reduction amount to S2.* Under the general rules of this paragraph (d), S2's $17.50 attribute reduction amount is allocated and applied to reduce S2's basis in Asset 2 from $75 to $57.50.

(B) *Tier down of S1's attribute reduction amount to S3.* Under the general rules of this paragraph (d), S3's $52.50 of attribute reduction amount is allocated and applied to reduce S3's basis in Asset 3 from $75 to $22.50.

(C) *Tier down of S1's attribute reduction amount to S4, application of conforming limitation.* Under the general rules of this paragraph (d), S4's $70 attribute reduction amount is allocated to, and would be applied to reduce, S4's basis in Asset 4. However, under paragraph (d)(5)(ii)(D)(*2*) of this section, the reduction is limited to the excess of S4's net inside attribute amount ($80) over the basis of the S4 share ($30, after reduction under this paragraph (d)). As a result, only $50 (the excess of $80 over $30) of S4's $70 attribute reduction amount is applied to S4's basis in Asset 4, reducing it from $80 to $30. The remaining $20 of S4's attribute reduction amount is disregarded and has no further effect.

(vii) *Application of basis restoration rule.* After all adjustments required under this paragraph (d) have been given effect, reductions made to the basis of subsidiary stock under this paragraph (d) are subject to reversal under the basis restoration rule in paragraph (d)(5)(iii) of this section. Under this rule, adjustments are reversed (and basis is restored) only to the extent necessary to conform the basis of each share with its allocable portion of the subsidiary's net inside attribute amount. The restoration adjustments are first made at the lowest tier and then at each next higher tier successively.

(A) *Basis restoration at lowest tier.* No restoration is permitted with respect to the S2 share because the basis of the S2 share was not reduced under paragraph (d)(5)(ii)(B) of this section. S3's net inside attribute amount ($22.50, after reduction under this paragraph (d)) exceeds S1's basis in the S3 share ($7.50, after reduction under this paragraph (d)) by $15. To conform S1's basis in the S3 share to S3's net inside attribute amount, the $52.50 reduction to the basis of the S3 share under paragraph (d)(5)(ii)(B) of this section is reversed by $15 (restoring basis to $22.50). The restoration of S1's basis in the S3 share does not tier up to affect the basis in stock of any other subsidiary. S1's basis in the S4 share ($30, after reduction under this paragraph (d)) is already conformed with S4's net inside attribute amount ($30, after reduction under this paragraph (d)) and no restoration will be required or permitted under paragraph (d)(5)(iii) of this section.

(B) *Basis restoration at next higher tier.* Each share of S1 stock has an allocable portion of S1's net inside attribute amount equal to $10.25 (1/10 × $102.50, the sum of S1's adjusted bases in its S2 stock ($50, $0 plus $50 gain recognized), S3 stock ($22.50 after restoration), and S4 stock ($30)). Neither S's basis in S1 share 1 nor S's basis in S1 share 2 was reduced under this paragraph (d). Accordingly the basis of neither share is subject to restoration under paragraph (d)(5)(iii) of this section. However, S's basis in each of its other shares of S1 stock was reduced by $10, from $20 to $10. Accordingly, the reduction to the basis of each of those shares is reversed to the extent of $.25, to restore the basis of each such share to $10.25 (its allocable portion of S1's net inside attribute amount).

(vii) *Results.* After the application of this section, P recognizes a loss of $360 on the sale of the S share, S recognizes a loss of $150 on the sale of S1 share 1, and S1 recognizes a $50 gain on the sale of the S2 share. Immediately after the transaction, the entities each directly own the following:

Entity	Asset	Basis	Value
P1	S share	$240	$240
P	Proceeds of the sale of S share	240	240
S	Proceeds of sale of Share 1 of S1 stock	20	20
	Partnership interest received for Share 2	$20	20
	Shares 3 through 10 of S1 stock	82 ($10.25 per share)	
S1	Proceeds of sale of S2 share	50	50
	The S3 share	22.50	
	The S4 share	30	
S2	Asset 2	57.50	
S3	Asset 3	22.50	
S4	Asset 4	30	
X	Share 1 of S1 stock	20	20
Y	The S2 share	50	50
Partnership	Share 2 of S1 stock	20	20

(e) *Operating rules*—(1) *Predecessors, successors.* This section applies to predecessor or successor persons, groups, and assets to the extent necessary to effectuate the purposes of the section.

(2) *Adjustments for prior transactions that altered stock basis or other attributes.* In certain situations, M's basis in S stock or S's attributes are adjusted in a manner that alters the relationship between stock basis and inside attributes. Such adjustments affect the extent to which this relationship identifies unrecognized asset gain reflected in stock basis and the extent to which loss is duplicated. The provisions of this paragraph (e)(2) modify the computations in paragraphs (c) and (d) of this section to adjust for the effects of such adjustments.

(i) *Reductions to S's basis in assets or other attributes pursuant to section 362(e)(2)(A).* If S's attributes have been reduced under section 362(e)(2) (taking into account the provisions of § 1.1502–13(e)(4)), then the disconformity amount of the S shares received (or deemed received) in the transaction to which section 362(e)(2) applied is reduced by the amount that the basis in such shares would have been reduced under section 362(e)(2)(C) (taking into account the provisions of § 1.1502–13(e)(4)) had such an election been made. In addition, for purposes of determining the attribute reduction amount under paragraph (d) of this section resulting from the transfer of any S shares received (or deemed received) in a transaction to which section 362(e)(2) applied, and for purposes of applying paragraph (d)(5)(ii)(D)(*2*) of this section (conforming limitation) to S, the basis in such shares is treated as reduced by the amount the basis in such shares would have been reduced under section 362(e)(2)(C) (taking into account the provisions of § 1.1502–13(e)(4)) had such an election been made.

(ii) *Reductions to the basis of any share of S stock pursuant to an election under section 362(e)(2)(C).* If the basis of any share of S stock has been reduced as the result of an election under section 362(e)(2)(C) (taking into account the provisions of § 1.1502–13(e)(4)), then, for purposes of computing either any S share's disconformity amount or S's aggregate inside loss, and for purposes of applying paragraph (d)(5)(iii) of this section (stock basis restoration) to S, S's net inside attribute amount is reduced by the amount that S's attributes would have been reduced under section 362(e)(2)(A) (taking into account the provisions of § 1.1502–13(e)(4)) in the absence of an election under section 362(e)(2)(C) (taking into account the provisions of § 1.1502–13(e)(4)).

(iii) *Other adjustments.* The Commissioner shall make such adjustments as appropriate if the relationship between a member's basis in a share of S stock and the share's allocable portion of S's attributes has been altered, other than by the operation of § 1.1502–32 or this section, provided that such change is not otherwise addressed in this section. Taxpayers may request a written determination from the Commissioner determining that other adjustments to M's basis in S stock or S's attributes are to be adjusted in a manner consistent with the principles of this paragraph (e)(2) for purposes of making the computations under paragraphs (c) and (d) of this section.

(iv) *Example.* The application of this paragraph (e)(2) is illustrated by the following example:

Example. Adjustments for intercompany section 362(e)(2) transaction. (i) Adjustments for reduction of S's basis in assets. (A) *Facts.* In an intercompany section 362(e)(2) transaction (within the meaning of § 1.1502–13(e)(4)(i)), P contributes Asset 1 to newly formed S in exchange for the sole outstanding share of S stock. At the time of the contribution, P's basis in Asset 1 was $100 and its value was $20. Accordingly, S's basis of A1 would have been reduced by $80 under section 362(e)(2) and that $80 is a section 362(e)(2) amount within the meaning of § 1.1502–13(e)(4)(ii)(A). P sells the S share for $20 in year 3. As of the time of the sale, no portion of the section 362(e)(2) amount has been taken into account and thus the entire $80 is a remaining section 362(e)(2) amount reflected in S's basis in Asset 1 and P's basis in the share of S stock. P's sale of the S share is a section 362(e)(2) application event within the meaning of § 1.1502–13(e)(4)(iii) and therefore, immediately before the sale, S's basis in Asset 1 is reduced by $80 pursuant to section 362(e)(2) and § 1.1502–13(e)(4)(iv). Under § 1.1502–13(e)(4)(iv)(C), this reduction is not a noncapital, nondeductible expense described in § 1.1502–32(b)(2)(iii), and does not affect P's basis in the S share. The sale is also a transfer of a loss share and therefore subject to the provisions of this section.

(B) *Application of paragraph (b) of this section.* No adjustment is required under paragraph (b) of this section, either because there is no potential for redetermination (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. After the application of paragraph (b) of this section, P's sale of the S share is still a transfer of a loss share and therefore subject to this paragraph (c).

(C) *Basis reduction under paragraph (c) of this section.* In determining the reduction of basis under paragraph (c) of this section, the share's disconformity amount is reduced by $80, the amount that the basis in the S share would have been reduced under § 1.1502–13(e)(4)(v) had such an election been made. The disconformity amount (and the net positive adjustment) are $0 and so no basis adjustment will be made under paragraph (c) of this section. The transferred share is still a loss share and so is therefore subject to paragraph (d) of this section.

(D) *Attribute reduction under paragraph (d) of this section.* In determining the attribute reduction amount under paragraph (d)(3) of this section, P's basis in the transferred share is treated as reduced by $80, the amount that the basis in the S share would have been reduced under § 1.1502–13(e)(4)(v) had such an election been made. As a result, P recognizes an $80 loss on the sale of the S stock, but, for purposes of applying paragraph (d) of this section, the net stock loss and, therefore, the attribute reduction amount are $0.

(ii) *Adjustments for election to reduce stock basis under section 362(e)(2)(C).* The facts are the same as in paragraph (i) of this *Example,* except that P and S elect to reduce P's basis in the S share by $80 under § 1.1502–13(e)(4)(v). As a result, the basis of Asset 1 remains $100 and, immediately before the sale of the S stock, P's basis in the S share is reduced to $20. Because the share is then not a loss share, this section does not apply to the transfer. If, instead, the share were sold for less than $20, it would be a loss share and the transfer would be subject to this section. In that case, for purposes of computing the S share's disconformity amount, S's aggregate inside loss, and applying paragraph (d)(5)(iii) of this section, S's net inside attributes would be treated as reduced by $80,the amount that S's attributes would have been reduced under § 1.1502–13(e)(4)(iv) had the election under § 1.1502–13(e)(4)(v) not been made.

(3) *Plural, singular.* All terms used in this section include both the plural and singular as the context may require.

(f) *Definitions.* In addition to the definitions in other paragraphs of this section and in § 1.1502–1, the following definitions apply for purposes of this section.

(1) *Allocable portion* has the same meaning as in § 1.1502–32(b)(4)(iii)(B). Thus, for example, within a class of stock, each share has the same allocable portion of the net inside attribute amount and, if there is more than one class of stock, the net inside attribute amount is allocated to each class by taking into account the terms of each class and all other facts and circumstances relating to the overall economic arrangement.

(2) *Deferred deduction* means any deduction for expenses or loss that would be taken into account under general tax accounting principles as of the time of the transfer of the share, but that is nevertheless not taken into account immediately after the transfer by reason of the application of a deferral provision. Such provisions include, for

example, sections 267(f) and 469, and § 1.1502–13. *Deferred deduction* also includes equivalent amounts, such as negative adjustments under section 475 (mark to market accounting method for dealers in securities) and 481 (adjustments required by changes in method of accounting).

(3) *Distribution* has the same meaning as in § 1.1502–32(b)(3)(v).

(4) *Higher tier, lower tier.* A subsidiary (S1) (and its shares of stock) is *higher tier* with respect to another subsidiary (S2) (and its shares of stock) if investment adjustments made to the basis of shares of S2 stock under § 1.1502–32 affect the investment adjustments made to the basis of the stock of S1. A subsidiary (S1) (and its shares of stock) is *lower tier* with respect to another subsidiary (S) (and its shares of stock) if investment adjustments made to the basis of shares of S1 stock affect the investment adjustments made to the basis of shares of S stock. The term lowest-tier subsidiary generally refers to a subsidiary that owns no stock of another subsidiary. The term highest-tier subsidiary generally refers to a subsidiary the stock of which is not lower tier to any shares transferred in the transaction.

(5) *Liability* means a liability that has been incurred within the meaning of section 461(h), except to the extent otherwise provided in paragraph (d)(4)(ii)(A)(*1*) of this section.

(6) *Loss carryover* means any net operating or capital loss carryover attributable to S that is or, under the principles of § 1.1502–21, would be carried to S's first taxable year, if any, following the year of the transfer.

(7) *Loss share, gain share.* A *loss share* is a share of stock with a basis that exceeds its value. A *gain share* is a share of stock with a value that exceeds its basis.

(8) *Preferred stock, common stock. Preferred stock* and *common stock* have the same meanings as in § 1.1502–32(d)(2) and (3), respectively.

(9) *Publicly traded property.* Property is *publicly traded property* if it is traded on an established market within the meaning of § 1.1273–2(f).

(10) *Transaction* includes all the steps taken pursuant to the same plan or arrangement.

(11) *Transfer*—(i) *Definition.* Except as provided in paragraph (f)(11)(ii) of this section, for purposes of this section, M transfers a share of S stock on the earliest of—

(A) The date that M ceases to own the share as a result of a transaction in which, but for the application of this section, M would recognize gain or loss with respect to the share;

(B) The date that M and S cease to be members of the same group;

(C) The date that a nonmember acquires the share from M; and

(D) The last day of the taxable year during which the share becomes worthless under section 165(g), taking into account the provisions of § 1.1502–80(c).

(ii) *Excluded transactions.* Notwithstanding paragraph (f)(11)(i) of this section, M does not transfer a share of S stock if—

(A) M ceases to own the share as a result of a section 381(a) transaction in which any member acquires assets from S or in which S acquires assets from M, provided that, in either case, M recognizes no gain or loss with respect to the share; or

(B) M ceases to own the share as a result of a distribution of the share to a nonmember in a transaction to which section 355 applies, provided M does not recognize any gain or loss with respect to the share as a result of the distribution of the share.

(12) *Value* means the amount realized, if any, or otherwise the fair market value.

(g) *Anti-abuse rule*—(1) *General rule.* If a taxpayer acts with a view to avoid the purposes of this section or to apply the rules of this section to avoid the purposes of any other rule of law, appropriate adjustments will be made to carry out the purposes of this section or such other rule of law.

(2) *Examples.* The following examples illustrate the principles of the anti-abuse rule in this paragraph (g). No implication is intended regarding the potential applicability of any other anti-abuse rules:

Example 1. Stuffing gain asset to eliminate loss. (i) *Facts.* On January 1, year 1, P owns Asset 1 with a basis of $0 and a value of $100. On that same date, P purchases the sole outstanding share of S stock for $100. At that time, S owns Asset 2 with a basis of $0 and a value of $100. In year 1, S sells Asset 2 for $100. In year 2, with a view to avoiding the basis reduction rule in paragraph (c) of this section upon the sale of the S share, P contributes Asset 1 to S in a transaction to which section 351 applies and receives an additional share of S stock with a basis of $0 under section 358. On December 31, year 2, P sells its two S shares for $200. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in the original share of S stock is $200 (P's original $100 basis, increased by $100 under § 1.1502–32 to reflect the $100 gain recognized on the sale of Asset 2), and P's basis in the other share of S stock is $0.

(ii) *Analysis.* Absent the application of this paragraph (g), P would not recognize any net gain or loss on the sale of the two S shares. Under paragraph (c)(7) of this section, for purposes of computing the basis reduction required by paragraph (c) of this section, P's basis in the original share of S stock would be treated as reduced by the gain recognized on the other share of S stock. Further, P would not recognize any net stock loss within the meaning of paragraph (d)(3)(ii) of this section. Accordingly, this section would not apply to the transfer of the S shares. However, because P contributed Asset 1 to S with a view to avoiding the basis reduction rule in paragraph (c) of this section, the contribution of Asset 1 is disregarded for purpose of applying this section. Accordingly, this section applies to the sale of the S share without regard to the contribution of Asset 1, and the basis of the original S share is reduced by $100 under paragraph (c) of this section. P recognizes no gain or loss on the sale of the original S share, and $100 of gain on the sale of the other S share.

Example 2. Loss Trafficking. (i) *Facts.* On January 1, year 1, P purchases the sole outstanding share of S stock for $100. At that time, S owns one asset, Asset 1, with a basis of $0 and a value of $100. In year 1, S sells Asset 1 for $100 and, with a view to eliminating the disconformity amount, S purchases the sole outstanding share of X stock, a corporation with a $100 NOL and an asset with a basis and value of $1, from an unrelated party for $1. In year 2, X is liquidated into S in a transaction to which section 332 applies. On December 31, year 2, P sells its S share for $100. After applying and giving effect to all generally applicable rules of law (other than this section), P's basis in the S share is $200 (P's original $100 basis, increased under § 1.1502–32 to reflect the $100 gain recognized on the sale of Asset 1). P's sale of the S share is a transfer of a loss share and therefore subject to the provisions of this section.

(ii) *Analysis.* No adjustment is required under paragraph (b) of this section, either because there is no potential for redetermination (members hold only one share of S stock) or because P transfers the group's entire interest in S to a nonmember in a fully taxable transaction. See, respectively, paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section. Under paragraph (c) of this section, P's basis in the S share ($200) is reduced, but not below the share's value ($100), by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is the greater of zero and the sum of all investment adjustments applied to the basis of the share, computed without taking distributions into account. There are no distributions. The only investment adjustment to the S share is the $100 positive adjustment attributable to the gain recognized on the sale of Asset 1. The share's net positive adjustment is therefore $100. The share's disconformity amount is the excess, if any, of its basis ($200) over its allocable portion of S's net inside attribute amount. Because S purchased the X stock and liquidated X with a view to avoiding the purposes of this section (to utilize X's attributes to minimize the disconformity amount of the S loss share), the attributes acquired from X are disregarded for purposes

of applying this section. Accordingly, S's net inside attribute amount is limited to S's money ($100 from the sale of Asset 1, less $1 for the purchase of the X stock), or $99. The loss share's allocable portion of the $99 net inside attribute amount is $99. The loss share's disconformity amount is therefore the excess of $200 over $99, or $101. The lesser of the share's net positive adjustment ($100) and disconformity amount ($101) is $100. As a result, the basis in the loss share is reduced by $100, and P recognizes no gain or loss on the sale of the S share.

Example 3. Use of a partnership to prevent current attribute reduction. (i) *Facts.* P owns 100 shares of S stock with a basis of $10 each. S owns Asset 1 with a basis of $1000 and a value of $100. In year 1, with a view to preventing a current reduction in the basis of Asset 1, S and M form a partnership. S contributes Asset 1 and M contributes Asset 2. On December 31, year 1, P sells 20 S shares for $1 each. After applying paragraph (c) of this section, P's basis in each transferred S share is still $10, and P recognizes a $180 loss (a $9 loss on each transferred S share).

(ii) *Analysis.* No adjustment is required under paragraph (b) of this section because S has only one class of stock outstanding and there is no disparity in the basis of the shares. See paragraph (b)(1)(ii)(A) of this section. No adjustment is required under paragraph (c) of this section because the net positive adjustment is $0. See paragraph (c)(3) of this section. Absent the application of this paragraph (g), under paragraph (d) of this section S's attribute reduction amount of $180 would be applied to reduce S's basis in the partnership interest. Because S acted with a view to avoiding a current reduction in the basis of Asset 1 under paragraph (d) of this section, this section is applied by treating S as if it held Asset 1 at the time of the stock sale.

Example 4. Creation of an intercompany receivable to mitigate attribute reduction. (i) *Facts.* P owns 100 shares of S stock each with equal basis that exceeds value. S owns Asset 1 with a basis that exceeds value and cash. In year 1, with a view to mitigating a reduction in the basis of Asset 1, S lends the cash to M. On December 31, year 1, P sells 20 S shares and recognizes a loss.

(ii) *Analysis.* No adjustment is required under paragraph (b) of this section because S has only one class of stock outstanding and there is no disparity in the basis of the shares. See paragraph (b)(1)(ii)(A) of this section. No adjustment is required under paragraph (c) of this section because the net positive adjustment is $0. See paragraph (c)(3) of this section. Absent the application of this paragraph (g), under paragraph (d) of this section S's attribute reduction amount would be applied to proportionately reduce the basis in S's assets. Accordingly, S's basis in both its intercompany receivable and Asset 1 would be reduced. Because S acted with a view to mitigating the reduction in the basis of Asset 1 under paragraph (d) of this section, this section is applied without regard to the intercompany receivable. Accordingly, S's basis in Asset 1 is reduced by the full attribute reduction amount.

(h) *Effective date.* This section applies to all transfers on or after the date these regulations are published as final regulations in the **Federal Register**. For rules applicable on and after March 10, 2006, and before the date these regulations are published as final regulations in the **Federal Register**, see §§ 1.1502–35 and 1.337(d)–2 as contained in 26 CFR part 1 in effect on January 1, 2007. For rules applicable on and after March 3, 2005 and before March 10, 2006, see §§ 1.337(d)–2T, 1.1502–20 and 1.1502–35T as contained in 26 CFR part 1 in effect on April 1, 2005. For rules applicable before March 3, 2005, see §§ 1.337(d)–2T, 1.1502–20, and 1.1502–35T as contained in 26 CFR part 1 in effect on April 1, 2004.

Par. 16. Section 1.1502–80 is amended by:

1. Revising paragraphs (a) and (c).
2. Adding new paragraph (g).

The revisions and addition reads as follows:

§ 1.1502–80 Applicability of other provisions of law.

(a) *In general.* The Internal Revenue Code, or other law, shall be applicable to the group to the extent the regulations do not exclude its application. To the extent not excluded, other rules operate in addition to, and may be modified by, these regulations. Thus, for example, in a transaction to which section 381(a) applies, the acquiring corporation will succeed to the tax attributes described in section 381(c). Furthermore, sections 269 and 482 apply for any consolidated year. However, in a recognition transaction otherwise subject to section 1001, for example, the rules of section 1001 continue to apply, but may be modified by the intercompany transaction regulations under § 1.1502–13. Nothing in these regulations shall be interpreted or applied to require an adjustment to a member's basis in subsidiary stock or other attributes to the extent the adjustment would have the effect of duplicating another adjustment required under the Code or other rule of law, including other provisions of these regulations.

* * * * *

(c) *Deferral of section 165*—(1) *General rule.* Subsidiary stock is not treated as worthless under section 165 until immediately before the earlier of the time—

(i) The stock is worthless within the meaning of § 1.1502–19(c)(1)(iii); and

(ii) The subsidiary for any reason ceases to be a member of the group.

(2) *Cross reference.* See § 1.1502–36 for additional rules relating to stock loss.

* * * * *

(g) *Effective dates.* Paragraphs (a) and (c) of this section are applicable on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 17. Section 1.1502–91 is amended by revising paragraph (h)(2) to read as follows:

§ 1.1502–91 Application of section 382 with respect to a consolidated group.

* * * * *

(h) * * *

(2) *Disposition of stock or an intercompany obligation of a member.* Gain or loss recognized by a member on the disposition of stock (including stock described in section 1504(a)(4) and § 1.382–2T(f)(18)(ii) and (iii)) of another member is treated as a recognized gain or loss for purposes of section 382(h)(2) (unless disallowed) even though gain or loss on such stock was not included in the determination of a net unrealized built-in gain or loss under paragraph (g)(1) of this section. Gain or loss recognized by a member with respect to an intercompany obligation is treated as recognized gain or loss only to the extent (if any) the transaction gives rise to aggregate income or loss within the consolidated group. The first sentence of this paragraph (h)(2) is applicable on or after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 18. For each section listed in the table, remove the language in the ''Remove'' column and add in its place the language in the ''Add'' column as set forth below:

Section	Remove	Add
§ 1.267(f)–1(k)	§ 1.337(d)–2; § 1.1502–35	§ 1.1502–36.
§ 1.597–4(g)(2)(v)	§§ 1.337(d)–2 and § 1.1502–35(f)	§ 1.1502–36.
§ 1.1502–11(b)(3)(ii)(c)	§§ 1.337(d)–2 and § 1.1502–35	§ 1.1502–36.
§ 1.1502–12(r)	§§ 1.337(d)–2 and § 1.1502–35	§ 1.1502–36.
§ 1.1502–15(b)(2)(iii)	§§ 1.337(d)–2, 1.1502–35, or	§ 1.1502–36.
§ 1.1502–32(b)(3)(iii)(B)	§ 1.1502–35(b) or (f)(2).	

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 07–187 Filed 1–16–07; 10:51 am]

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Federal Register

Tuesday,
January 23, 2007

Part IV

The President

Proclamation 8101—National Sanctity of Human Life Day, 2007

Federal Register
Vol. 72, No. 14
Tuesday, January 23, 2007

Presidential Documents

Title 3—

The President

Proclamation 8101 of January 18, 2007

National Sanctity of Human Life Day, 2007

By the President of the United States of America

A Proclamation

America was founded on the principle that we are all endowed by our Creator with the right to life and that every individual has dignity and worth. National Sanctity of Human Life Day helps foster a culture of life and reinforces our commitment to building a compassionate society that respects the value of every human being.

Among the most basic duties of Government is to defend the unalienable right to life, and my Administration is committed to protecting our society's most vulnerable members. We are vigorously promoting parental notification laws, adoption, abstinence education, crisis pregnancy programs, and the vital work of faith-based groups. Through the ''Born-Alive Infants Protection Act of 2002,'' the ''Partial-Birth Abortion Ban Act of 2003,'' and the ''Unborn Victims of Violence Act of 2004,'' we are helping to make our country a more hopeful place.

One of our society's challenges today is to harness the power of science to ease human suffering without sanctioning practices that violate the dignity of human life. With the right policies, we can continue to achieve scientific progress while living up to our ethical and moral responsibilities.

National Sanctity of Human Life Day serves as a reminder that we must value human life in all forms, not just those considered healthy, wanted, or convenient. Together, we can work toward a day when the dignity and humanity of every person is respected.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Sunday, January 21, 2007, as National Sanctity of Human Life Day. I call upon all Americans to recognize this day with appropriate ceremonies and to underscore our commitment to respecting and protecting the life and dignity of every human being.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of January, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 07–310
Filed 1–22–07; 8:49 am]
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Diflubenzuron; comments due by 1-29-07; published 11-29-06 [FR E6-20147]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Missoula Intercarrier Compensation Reform

LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 159/P.L. 110–1

To redesignate the White Rocks National Recreation Area in the State of Vermont as the ''Robert T. Stafford White Rocks National Recreation Area''. (Jan. 17, 2007; 121 Stat. 3)

A cumulative list of Public Laws for the second session of the 109th Congress will be published in the **Federal Register** on January 31, 2007.

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